

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE BROILER CHICKEN
ANTITRUST LITIGATION

Case No. 1:16-cv-08637

Hon. Judge Thomas M. Durkin

FINAL JURY INSTRUCTIONS

INTRODUCTION

The parties submit these final instructions, subject to any objections put on the record on October 19, 20, and 22, 2023. The parties agree these final instructions reflect the Court's rulings on October 19, 20, and 22, 2023, as well as agreements of the parties.

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INSTRUCTION NO. 1
Functions of the Court and the Jury

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law. Although I read preliminary instructions at the beginning of the case, these are the final instructions and you should rely on them during your deliberations.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone. Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Your shopping experience, including the purchase of chicken, should not influence your deliberations and consideration of this case.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION NO. 2
Jury conduct

All jurors must follow certain rules of conduct, and you must follow them, too.

First, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. You must not communicate with anyone about this case through email, text messaging, blogs, social media, or apps. You must not let others discuss the case with you. If anyone tries to talk to you about the case, please let me know about it immediately.

Second, you must not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it.

Third, you must not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own.

INSTRUCTION NO. 3

Note taking

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you did not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony. You will not be given transcripts from court testimony or video depositions when you deliberate.

INSTRUCTION NO. 4
All litigants equal before the law

In this case some of the parties are corporations. All parties are equal before the law. These entities are entitled to the same fair consideration that you would give any individual person. That a corporate representative is not present in court should not be taken as an indication that they are not intensely interested in these proceedings. It is merely that there is not enough space in the courtroom for them to attend.

INSTRUCTION NO. 5
What is Evidence

The evidence consists of the witnesses' testimony, the exhibits admitted in evidence, admissions, stipulations of fact, and testimonial stipulations.

A stipulation of fact is an agreement between both sides that certain facts are true.

The facts within the testimonial stipulations are not stipulated to be true. You may consider the testimony within those stipulations as if the witness had testified to you live at trial.

INSTRUCTION NO. 6
What is not evidence

Certain things are not to be considered as evidence. I will list them for you: First, if I told you to disregard any testimony or struck any testimony from the record, such testimony is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet, or television reports you may have seen or heard. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements, interim statements, and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

INSTRUCTION NO. 7

Consideration of all evidence regardless of who introduced it

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 8
Number of witnesses

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NO. 9
Absence of evidence

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 10
Testimony of witnesses (deciding what to believe)

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

For some individual plaintiffs, you heard what their testimony would have been had they testified at trial. These facts are not stipulated to be true. You may consider this testimony as if the witness had testified to you live at trial.

INSTRUCTION NO. 11
Weighing the evidence

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 12
Definition of “direct” and “circumstantial” evidence

You have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 13
Stipulations of fact

The parties have stipulated, which means they have agreed, that the following facts are true:

CHICKEN PRODUCERS

1. The chicken producers, as listed below, either directly or through their wholly-owned or controlled affiliates, produced, sold, and shipped chicken in a continuous and uninterrupted flow of interstate commerce.

Amick Farms

2. Amick Farms, LLC is a limited liability company organized in Delaware with its headquarters located in Batesburg-Leesville, South Carolina, and it operates facilities in South Carolina, Maryland, and Delaware.

3. Amick Farms, LLC is a majority-owned subsidiary of OSI Group, LLC, which is itself a privately held Delaware limited liability company headquartered in Aurora, Illinois.

4. Amick sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

George's

5. George's Inc. is a privately held Arkansas corporation headquartered in Springdale, Arkansas.

6. George's Farms, Inc., is a privately held Arkansas corporation headquartered in Springdale, Arkansas.

7. George's sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

Harrison

8. Harrison Poultry, Inc. is a Georgia corporation headquartered in Bethlehem, Georgia.

9. Harrison sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

House of Raeford

10. House of Raeford Farms, Inc. is an agricultural marketing cooperative incorporated under North Carolina law with its main office in Rose Hill, North Carolina.

11. HRF sold broilers in interstate commerce to its direct purchaser customers in certain parts of the United States.

Keystone

12. Keystone Foods, LLC was formerly an indirect subsidiary of Marfrig Alimentos, S.A., a Brazilian company, and a part of the Keystone Foods business.

13. On November 30, 2018, Tyson Foods, Inc. announced it had completed its acquisition of the Keystone Foods business from Marfrig. Tyson Foods, Inc. characterized the acquisition of the Keystone Foods business as Tyson Foods' latest investment in furtherance of its growth strategy and expansion of its value-added protein capabilities. Tyson Foods, Inc.'s acquisition of the Keystone Foods business was structured as a stock acquisition, which resulted in Tyson Foods, Inc.'s acquisition of all assets and liabilities of the Keystone Foods business. Keystone Foods, LLC continued to exist as an operating entity subsequent to the acquisition.

14. Equity Group Eufaula Division, LLC was a Delaware limited-liability company with its headquarters in Bakerhill, Alabama and was an indirect subsidiary of Grow-Out Holdings, LLC.

15. Equity Group Kentucky Division, LLC, formerly known as Cagles-Keystone Foods, LLC, was a Delaware limited liability company with its headquarters in West Conshohocken, Pennsylvania and was a wholly-owned subsidiary of Grow-Out Holdings, LLC.

16. Equity Group Kentucky Division LLC sold broilers in interstate commerce, directly or through its wholly- owned or controlled affiliates, to purchasers in the United States.

17. Equity Group – Georgia Division LLC was a Delaware limited liability company with its headquarters in Camilla, Georgia, and was a wholly-owned subsidiary of Grow-Out Holdings, LLC.

18. Keystone Foods LLC, Equity Group – Georgia Division LLC, Equity Group Kentucky Division LLC, and Equity Group Eufaula Division, LLC sold broilers in interstate commerce, directly or through their wholly-owned or controlled affiliates, to purchasers in the United States.

19. As a result of Tyson Foods' acquisition of the Keystone Foods business, Tyson also acquired all of the assets and liabilities of Keystone Foods, LLC, Equity Group Eufaula Division, LLC, Equity Group Kentucky Division, LLC, and Equity Group – Georgia Division, LLC.

Koch

20. Koch Foods, Inc. is a privately held company headquartered in Park Ridge, Illinois.

21. Koch, directly or through their subsidiaries, sold broilers in interstate commerce to purchasers in the United States.

22. An affiliate of Koch Foods, Inc. purchased the assets of Cagle's Inc. in June 2012.

Mar-Jac

23. Mar-Jac Poultry, Inc. is a Georgia corporation located in Gainesville, Georgia. Mar-Jac Poultry MS, LLC is a Mississippi limited liability company located in Mississippi. Mar-Jac Poultry AL, LLC is an Alabama limited liability company located in Alabama. Mar-Jac AL/MS, Inc. is a Delaware corporation located in Gainesville, Georgia. Mar-Jac Poultry, LLC is a Delaware limited liability company located in Alabama. Mar-Jac Holdings, Inc. is a Delaware corporation located in Gainesville, Georgia.

24. Mar-Jac sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

Mountaire

25. Mountaire Farms Inc. is a privately held corporation with its headquarters in Millsboro, Delaware.

26. Mountaire Farms LLC is a privately held Arkansas corporation located in Little Rock, Arkansas.

27. Mountaire Farms of Delaware, Inc. is a privately held Delaware corporation located in Millsboro, Delaware.

28. Mountaire sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

O.K. Foods

29. O.K. Foods, Inc. is an Arkansas corporation headquartered in Fort Smith, Arkansas.

30. O.K. Foods, Inc. is a private company and non-public, wholly-owned subsidiary of Industrias Bachoco.

31. O.K. Foods, Inc. sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

Pilgrim's

32. Pilgrim's Pride Corporation is a publicly held Delaware corporation headquartered in Greeley, Colorado.

33. Pilgrim's sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

Peco

34. Peco Farms of Mississippi, LLC is a Mississippi limited-liability company and is a wholly-owned subsidiary of Peco Foods, Inc.

35. Peco sold broilers in interstate commerce, directly or through its owned or controlled subsidiaries and affiliates, to purchasers in the United States.

Sanderson

36. During the conduct at issue, Sanderson Farms, Inc. was a publicly held corporation headquartered in Laurel, Mississippi. Sanderson Farms, Inc. (Foods Division) was a Mississippi corporation located in Laurel, Mississippi, and was a wholly-owned subsidiary of Sanderson Farms, Inc. Sanderson Farms, Inc. (Production Division) was a Mississippi corporation located in Laurel, Mississippi, and was a wholly-owned subsidiary of Sanderson Farms, Inc. Sanderson Farms, Inc. (Processing Division) was a Mississippi

corporation located in Laurel, Mississippi, and was a wholly-owned subsidiary of Sanderson Farms, Inc.

37. Sanderson sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

38. In 1989, Joe Sanderson became president and CEO of Sanderson. During the conduct at issue, Joe Sanderson was chairman and CEO of Sanderson.

Simmons

39. Simmons Foods, Inc. is a privately held Arkansas corporation headquartered in Siloam Springs, Arkansas.

40. Simmons Prepared Foods, Inc. is a privately held Arkansas company headquartered in Siloam Springs, Arkansas.

41. Simmons sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

Tyson

42. Tyson Foods, Inc. is a publicly traded Delaware corporation headquartered in Springdale, Arkansas. Tyson Chicken, Inc. is a Delaware corporation headquartered in Springdale, Arkansas and is a wholly-owned subsidiary of Tyson Foods, Inc. Tyson Breeders, Inc. is a Delaware corporation headquartered in Springdale, Arkansas and is a wholly-owned subsidiary of Tyson Foods, Inc. Tyson Poultry, Inc. is a Delaware corporation headquartered in Springdale, Arkansas and is a wholly-owned subsidiary of Tyson Foods, Inc.

43. Tyson sold broilers in interstate commerce, directly or through its wholly-owned or controlled affiliates, to purchasers in the United States.

OTHER ENTITIES

Southern Hens, Inc.

44. Southern Hens, Inc. is a Mississippi corporation headquartered in Moselle, Mississippi.

Tip Top Poultry, Inc.

45. Tip Top Poultry, Inc. is a Georgia corporation headquartered in Marietta, Georgia and with facilities in other states, including Oklahoma.

Agri Stats, Inc.

46. Agri Stats, Inc. is an Indiana corporation with its headquarters in Fort Wayne, Indiana.

47. Express Markets, Inc. is a wholly owned subsidiary of Agri Stats. Express Markets, Inc. is an Indiana corporation headquartered in Fort Wayne, Indiana.

OTHER FACTS

48. Winn-Dixie's net sales for 2008 were \$7,281,000,000. Winn-Dixie's net sales for 2011 were \$6,881,000,000. The net sales figures include all of Winn-Dixie's sales, not just chicken sales.

49. The attachment entitled "TopCo Meat Market Update, .doc" in DX1875 should be dated 2010.

You must now treat these facts as having been proved for the purpose of this case.

INSTRUCTION NO. 14
Deposition testimony

During the trial, certain testimony was presented to you by showing videotaped depositions of witnesses. A deposition is the sworn testimony of a witness taken before a trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded. You should give this deposition testimony the same consideration you would give it had the witnesses appeared and testified here in court.

INSTRUCTION NO. 15
Prior inconsistent statements

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give the witness's testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath that is inconsistent with the witness's testimony here in court, you may consider the earlier statement only in deciding whether the witness's testimony here in court was true and what weight to give to the witness's testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 16
Demonstrative exhibits

Certain demonstrative exhibits, such as charts, graphs, diagrams, drawings, slides, and other graphics, were shown to you during the trial. Those demonstrative exhibits are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts. You will not be given demonstrative exhibits when you deliberate.

INSTRUCTION NO. 17
Opinion witnesses

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given such an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all the other evidence in the case.

INSTRUCTION NO. 18
Dual-capacity witness testimony

Defendant's opinion witness, Mr. Keith Cooper, gave two kinds of testimony. First, he testified regarding matters within his personal knowledge, the same as other fact witnesses you heard from in this case. Second, he gave opinions based on his training and experience, similar to other opinion witnesses you heard from in this case. The witness's training and experience did not make his testimony regarding what he saw or heard any more reliable than that of any other witness.

Part of your job as jurors is to decide whether the testimony of Mr. Cooper was truthful and accurate, and how much weight to give his testimony. Give his testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all the other evidence in the case.

INSTRUCTION NO. 19
Burden of proof

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 20
General overview

As I instructed you at the beginning of the case, there are two groups of plaintiffs: the class plaintiffs and the individual plaintiffs. The class plaintiffs are bringing claims on behalf of a class of businesses to recover alleged overcharges on their purchases of chicken. When I refer to the class plaintiffs, I am referring to all of the members of the class and the five plaintiffs who are representing the class. Unless I instruct you otherwise, you may consider the class as if it were a single plaintiff for purposes of these instructions.

The second group of plaintiffs are the individual plaintiffs. The individual plaintiffs are businesses that are bringing claims on behalf of themselves to recover alleged overcharges on their purchases of chicken. I will refer to both the class plaintiffs and individual plaintiffs collectively as “plaintiffs.”

The individual plaintiffs are:

- Action Meat Distributors, Inc.
- Affiliated Foods, Inc.
- Albertsons Companies, Inc.
- Alex Lee, Inc.
- Associated Food Stores, Inc.
- Associated Grocers, Inc.
- Associated Grocers of Florida, Inc.
- Associated Grocers of New England, Inc.
- Associated Grocers of the South, Inc.
- Associated Wholesale Grocers, Inc.
- Bashas’ Inc.
- Big Y Foods, Inc.
- Bi-Lo Holdings, LLC
- Brookshire Brothers, Inc.
- Brookshire Grocery Company
- Colorado Boxed Beef Co.

- Certco, Inc.
- Columbia Meats, Inc.
- The Distribution Group, Inc.
- Fareway Stores, Inc.
- Giant Eagle, Inc.
- Golub Corporation
- Greenville Meats, Inc.
- Howard Samuels, Trustee in Bankruptcy for Central Grocers, Inc.
- Hy-Vee, Inc.
- Ira Higdon Grocery Company, Inc.
- King Solomon Foods, Inc.
- The Kroger Co.
- Latina Boulevard Foods, LLC
- Meijer, Inc. and Meijer Distribution, Inc. (“Meijer”)
- Nicholas & Co., Inc.
- OSI Restaurant Partners, LLC
- Pacific Food Distributors, Inc.
- Piggly Wiggly Alabama Distributing Co., Inc.
- Publix Super Markets, Inc.
- S&S Trading, LLC
- Save Mart Supermarkets
- Schnuck Markets, Inc.
- SpartanNash Co.
- Springfield Grocer Co.

- SuperValu Inc.
- Topco Associates, LLC
- Troyer Foods, Inc.
- Unified Grocers, Inc.
- URM Stores, Inc.
- W. Lee Flowers & Co.
- Wakefern Food Corp.
- Weinstein Wholesale Meats, Inc.
- Winn-Dixie Stores, Inc.
- Woodman's Food Market

The defendant is Sanderson Farms, Inc.

INSTRUCTION NO. 21
Corporations

Under the law, a corporation is a person, but it acts only through its agents. A corporation's agents include its directors, officers, employees, or others acting on its behalf. A corporation is not capable under the law of conspiring with its own agents, its unincorporated divisions, or its wholly-owned subsidiaries. Through its agents, however, a corporation is capable of conspiring with other persons or independent corporations.

A corporation is legally bound by the acts and the statements of its agents or employees done or made within the scope of the agent's employment or apparent authority.

Acts done within the scope of employment are acts performed on behalf of a corporation or a limited liability company and directly related to the performance of the duties the agent has general authority to perform. Apparent authority is the authority that persons outside the corporation could reasonably believe the agent would have, judging from his or her position with the company, the responsibilities previously entrusted to the person or the office, and the circumstances surrounding his or her past conduct. An agent can have apparent authority even when, despite these appearances, the agent is actually acting in a dishonest, fraudulent, or anti-competitive manner.

To summarize, for a corporation to be legally responsible for the acts or statements of its agents, you must find that the agent was acting within the scope of his or her employment with apparent authority.

The fact that a corporation has instructed its agents not to violate the antitrust laws does not excuse the corporation from responsibility for the unlawful acts of its agents done within the scope of their employment or apparent authority.

A corporation is entitled to the same fair trial as a private individual. The acts of a corporation are to be judged by the same standard as the acts of a private individual, and you may hold a corporation liable only if such liability is established by the preponderance of the evidence. All persons, including corporations, are equal before the law.

INSTRUCTION NO. 22
Other entities

The following chicken producers and Agri Stats, EMI, and Rabobank are not defendants in this case: Case Foods, Claxton Poultry, Fieldale Farms, Foster Farms, Perdue Farms, and Wayne Farms, and are not members of the alleged conspiracy. Do not consider or speculate on the reasons.

The following chicken producers are not defendants, but plaintiffs allege that they are co-conspirators: Amick Farms, George's, Harrison Poultry, House of Raeford Farms, Keystone Foods, Koch Foods, Mar-Jac, Mountaire Farms, O.K. Foods, Peco Foods, Pilgrim's Pride, Simmons Foods, and Tyson Foods, Inc. While you have heard evidence regarding some or all of these alleged co-conspirators, you should not consider or speculate why they are not at trial.

INSTRUCTION NO. 23
Class action

Part of this case is brought as a class action. A class action is a lawsuit that has been brought by one or more persons or businesses called class representatives on behalf of a larger group of people or businesses who have similar legal claims. All of these people or businesses together are called a class. A class action lawsuit allows the claims of many persons or businesses to be resolved at the same time, rather than requiring each person or business to sue separately. Everyone in the class is not required to testify, but you may assume that the testimony of the class representatives and other evidence admitted during trial applies to all class members, unless I instructed you otherwise. The fact that this case is proceeding as a class action does not mean any decision has been made about the merits of the case, and you must not infer anything about the merits of this case based on the fact that it is a class action.

The five class representatives are: Maplevale Farms; John Gross & Company; Cedar Farms; Ferraro Foods, Inc.; and Joe Christiana Food Distributors. The individual plaintiffs, including those who have testified in this trial, are not members of the class and do not represent the class; they have brought claims on their own behalf.

INSTRUCTION NO. 24
Purpose of the Sherman Act

The purpose of the Sherman Act is to preserve free and unfettered competition in the marketplace. The Sherman Act rests on the central premise that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress. These instructions sometimes refer to the Sherman Act as the antitrust laws.

INSTRUCTION NO. 25
Definition, existence, and evidence of a conspiracy

Plaintiffs allege that defendant entered a conspiracy to restrain trade by limiting the supply of chicken in order to increase prices. A conspiracy is an agreement or mutual understanding between two or more persons or businesses to restrain trade in the way alleged by plaintiffs.

Plaintiffs must prove both of the following elements by a preponderance of the evidence:

- (1) that the alleged conspiracy existed; and
 - (2) that defendant knowingly became a member of that conspiracy.
- To act knowingly means to participate deliberately, and not because of mistake or accident or other innocent reason.

The basis of a conspiracy is an agreement or mutual understanding between two or more persons or businesses. An agreement or mutual understanding between two or more persons or businesses exists when they share a commitment to a common scheme. To establish the existence of a conspiracy, the evidence need not show that its members entered into any formal or written agreement. The agreement itself may have been entirely unspoken. A person or business can become a member without full knowledge of all of the details of the conspiracy, the identity of all of its members, or the parts such members played in the alleged conspiracy. The members of the conspiracy need not necessarily have met together, directly stated what their object or purpose was to one another, or stated the details or the means by which they would accomplish their purpose. To prove a conspiracy existed, the evidence must show that the alleged members of the conspiracy came to an agreement or mutual understanding among themselves to accomplish a common purpose.

A conspiracy may be formed without all parties coming to an agreement at the same time. Similarly, it is not essential that all persons or businesses acted exactly alike, nor is it necessary that they all possessed the same motive for entering the agreement. It is also not necessary that all of the means or methods claimed by plaintiff were agreed upon to carry out the alleged conspiracy, nor that all of the means or methods that were agreed upon were actually used or put into operation, nor that everyone alleged to be members of the conspiracy were actually members. It is the agreement or mutual understanding to limit chicken supply that constitutes a conspiracy. Therefore, you may find a conspiracy existed regardless of whether it succeeded or failed.

Plaintiffs may prove the existence of the alleged conspiracy through direct evidence, circumstantial evidence, or both. Direct evidence is explicit and requires no inferences to establish the existence of the alleged conspiracy.

Direct evidence of an agreement may not be available, and therefore a conspiracy also may be shown through circumstantial evidence. You may infer the existence of a conspiracy from the circumstances, including what you find the alleged members actually did and the words they used. Mere similarity of conduct among various persons, however,

or the fact that they may have associated with one another and may have met or assembled together, does not by itself establish the existence of a conspiracy. If they acted similarly but independently of one another, without any agreement among them, then there would not be a conspiracy.

In determining whether an agreement or mutual understanding between two or more persons or businesses has been proved, you must view the evidence as a whole and not piecemeal.

INSTRUCTION NO. 26
Agreement to limit supply

Plaintiffs claim that defendant and other chicken producers are competitors and have violated the Sherman Act by agreeing to limit the supply of chicken in order to raise prices. Defendant denies this claim.

A business has the right to determine on its own how much of its product to produce, provided that the decision results from the exercise of an independent business judgment and not from any agreement with a competitor. The Sherman Act prohibits agreements between competitors that limit how much of a product one or more of them will produce.

By way of example, this includes an agreement by two or more competitors that one of them will reduce the amount of a product it produces in competition with the other's products, to set a quota on the amount of product to be produced, or to require one of them to discontinue the development or production of a product which the other will continue to produce and sell.

To prevail on this claim against the defendant, plaintiffs must prove each of the following elements by a preponderance of the evidence:

- (1) defendant and at least one other chicken producer were competitors;
- (2) defendant and at least one other chicken producer entered into an agreement;
- (3) defendant and at least one other chicken producer agreed that the supply of chicken would be limited; and
- (4) plaintiffs were injured in their business or property because of the agreement.

If you find that the evidence is insufficient to prove any one or more of these elements as to the defendant, then you must find for the defendant and against plaintiffs on plaintiffs' claim that the defendant conspired to limit the supply of chicken. If you find that the evidence is sufficient to prove all four elements as to the defendant, then you must find for plaintiffs and against the defendant on the plaintiffs' claim with respect to an agreement to limit supply.

INSTRUCTION NO. 27
Participation and intent

Before you can find that defendant was a member of the conspiracy alleged by plaintiffs, the evidence must show that defendant knowingly joined in the unlawful plan at its inception, or at some later time, with the intent to further the purpose of the conspiracy.

To act knowingly means to participate deliberately and not because of mistake, accident, or other innocent reason. A person or business may become a member of a conspiracy without full knowledge of all the details of the conspiracy, the identity of all its members, or the parts they played. Knowledge of the essential nature of the plan is enough. On the other hand, a person or business who has no knowledge of a conspiracy but happens to act in a way that helps the conspiracy succeed, does not thereby become a conspirator.

A person or business who knowingly joins an existing conspiracy, or who participates only in part of a conspiracy with knowledge of the overall conspiracy, is just as responsible as if they had been one of those who formed or began the conspiracy and participated in every part of it.

In determining whether defendant or another chicken producer was a member of the alleged conspiracy, you should consider only the evidence about that particular defendant's or alleged co-conspirator's statements and conduct, including any evidence of that defendant's or alleged co-conspirator's knowledge and participation in the events involved and any other evidence of that particular defendant's or alleged co-conspirator's participation in the conspiracy alleged.

You may not find that defendant or an alleged co-conspirator was a member of a conspiracy based only on its association with or knowledge of wrongdoing, but it is a factor you may consider to determine whether defendant or an alleged co-conspirator was a member of the alleged conspiracy.

If you find that the alleged conspiracy existed, then the acts and statements of the conspirators are binding on all of those whom you find were members of the conspiracy.

Once you have found that defendant or an alleged co-conspirator is a member of a conspiracy, it is presumed to remain a member and is responsible for all actions taken by all co-conspirators during and in furtherance of the conspiracy until it is shown that the conspiracy has been completed or abandoned.

INSTRUCTION NO. 28
Parallel conduct

Plaintiffs contend that the defendant and alleged co-conspirators engaged in similar conduct, namely by limiting the supply of chicken. Plaintiffs further contend that this conduct, when considered with other evidence, shows that a conspiracy existed among defendant and alleged co-conspirators. The mere fact that defendant and the alleged co-conspirators have limited the supply of chicken does not by itself establish the existence of a conspiracy among defendant and its alleged co-conspirators. Their behavior may be no more than the result of the exercise of independent judgment in response to identical or similar market conditions. For example, everyone might open their umbrellas on a rainy day, but that similar behavior would not necessarily mean that they had agreed or conspired to open their umbrellas. A business may lawfully adopt the same prices, conditions of sale, or other practices, as its competitors as long as it does so independently and not as part of an agreement or mutual understanding with one or more of its competitors. If defendant and the alleged co-conspirators acted similarly but independently of one another, without any agreement or mutual understanding between two or more of them, then there would not be a conspiracy.

You must decide whether defendant's and the alleged co-conspirators' similar conduct was, more probably than not, the result of an agreement or mutual understanding among them. In doing so, you may consider defendant's and the alleged co-conspirators' similar conduct along with other evidence. You may infer that a conspiracy existed only if you find that the evidence, when viewed as a whole, makes it more likely that defendant and the alleged co-conspirators had an agreement or mutual understanding with one another than that they acted independently of one another. In making this determination, you should consider the similar conduct against the entire background in which it took place. The evidence, when viewed all together, must satisfy you that it is more likely that defendant's and the alleged co-conspirators' similar actions were the product of an agreement or mutual understanding with one another than their own independent decisions.

If after considering all of the evidence, you conclude that plaintiffs have shown that it was more likely than not that defendant's and the alleged co-conspirators' similar conduct was the result of an agreement or mutual understanding among them than their independent decisions, you must find for plaintiffs on the question of whether defendant participated in a conspiracy. If, after considering all of the evidence, you conclude that plaintiffs failed to prove that defendant's similar conduct was more likely than not the result of an agreement or mutual understanding with one or more of the other alleged co-conspirators, then you must find against plaintiffs and in favor of defendant on the question of whether defendant participated in a conspiracy.

INSTRUCTION NO. 29
Good intent not a defense

If you find that defendant engaged in a conspiracy to limit the supply of chicken in order to raise prices, it is not a defense that defendant acted with good motives, thought its conduct was legal, or that the conduct may have had some good results.

INSTRUCTION NO. 30
Evidence of competition

Evidence that defendant engaged in competition with the alleged coconspirators in some manner has been admitted to assist you in deciding whether they entered into the alleged conspiracy to limit the supply of chicken in order to raise prices. If you find that such a conspiracy existed, it is no defense that defendant and any alleged coconspirator actually competed in some respects with each other or failed to eliminate all competition between themselves. Similarly, a conspiracy to limit the supply of chicken is unlawful even if it did not extend to all products sold by defendant or did not affect all of their customers or transactions.

INSTRUCTION NO. 31

Use of trade associations or industry consultants to commit antitrust violations

Businesses that are actual or potential competitors, such as the defendant and alleged co-conspirators here, may lawfully form into trade, industry, or professional associations or similar organizations or hire industry consultants to advance common interests, and may communicate and meet with one another in furtherance of lawful activities. For example, trade associations and industry consultants may lawfully keep businesses informed and hold meetings among their members for topics such as new or changed services, technology, standard practices, or legislation and regulations in the industry.

Trade associations and industry consultants, however, may not be used by businesses to commit violations of the antitrust laws. For example, trade associations and industry consultants cannot be used as vehicles by businesses to reach an agreement or mutual understanding between two or more persons or businesses to limit the supply of products in a market in which those business compete.

If businesses use a trade association or industry consultant to exchange with each other confidential, competitively sensitive information, such as current or future supply, that is evidence which you may consider in deciding whether or not the businesses have entered into an unlawful agreement in violation of the antitrust laws.

INSTRUCTION NO. 32
Multiple plaintiffs

You must give separate consideration to each party in this case. Although there are fifty individual plaintiffs and a class, it does not follow that if one is successful, the others are too.

INSTRUCTION NO. 33
Injury and causation

If you find that defendant violated the antitrust laws, then you must decide if each individual plaintiff and the Class are entitled to recover damages from defendant.

Each individual plaintiff and the Class are entitled to recover damages for injuries to their business or property if they have established the following:

First, each individual plaintiff and the Class were in fact injured as a result of defendant's alleged violation of the antitrust laws; and

Second, defendant's alleged illegal conduct was a material cause of the injuries of each individual plaintiff and the Class.

The first element is sometimes referred to as "injury in fact." For each individual plaintiff and the Class to establish that they are entitled to recover damages, they must prove that they were injured by paying more for chicken on at least one transaction as a result of defendant's alleged violation of the antitrust laws. Proving the fact of injury does not require plaintiffs to prove the dollar value of their injury. It requires only that each individual plaintiff and the Class prove that they were in fact injured by defendant's alleged antitrust violation. If you find that plaintiffs have established that they were in fact injured, then you may consider the amount of plaintiffs' damages. It is important to understand, however, that the injury, on the one hand, and the amount of damages, on the other, are different concepts. You may not consider the amount of damage unless and until you have concluded that an individual plaintiff or the Class has established that they were in fact injured.

Plaintiffs must also offer evidence that establishes by a preponderance of the evidence that defendant's alleged illegal conduct was a material cause of the plaintiffs' injury. This means that each individual plaintiff and the Class must prove that they paid more for chicken as a result of defendant's alleged agreement or understanding to limit the supply of chicken, and not some other cause. Plaintiffs are not required to prove that defendant's alleged antitrust violation was the sole cause of their injury; nor need plaintiffs eliminate all other possible causes of injury. It is enough if each individual plaintiff and the Class have proved that the alleged antitrust violation was a material cause of their injury.

In summary, if each individual plaintiff and the Class can establish that they were in fact injured by defendant's conduct, and that defendant's conduct was a material cause of plaintiffs' injuries, then plaintiffs are entitled to recover damages for the injury to their business or property.

INSTRUCTION NO. 34

Antitrust damages – Introduction and purpose

If you find that defendant violated the antitrust laws and that this violation caused injury to one or more plaintiffs, then you must determine the amount of damages, if any, that each plaintiff is entitled to recover. The fact that I am giving you instructions concerning the issue of plaintiff's damages does not mean that I believe plaintiffs should, or should not, prevail in this case. If you reach a verdict for defendant on the issue of liability, you should not consider the issue of damages, and you may disregard the damages instruction that I am about to give.

The law provides that each plaintiff should be fairly compensated for all damages to its business or property that were a direct result or likely consequence of the conduct that you have found to be unlawful. A party is liable for all damages caused by the conspiracy even if those damages occurred after the conspiratorial conduct as long as the conduct was a material cause of those damages.

Antitrust damages are only compensatory, meaning their purpose is to put an injured plaintiff as near as possible in the position in which it would have been had the alleged antitrust violation not occurred. The law does not permit you to award damages to punish a wrongdoer—what we sometimes refer to as punitive damages—or to deter particular conduct in the future. Furthermore, you are not permitted to award to plaintiffs an amount for attorneys' fees or the costs of maintaining this lawsuit.

INSTRUCTION NO. 35
Damages for purchases – Overcharges based on supply

If you have determined that there was a conspiracy among competitors to limit the supply of chicken that caused some injury to an individual plaintiff or the Class, you must now determine the amount of damages to award. The proper way to calculate those damages is to determine the difference between the prices plaintiffs actually paid for chicken and the prices the plaintiffs would have paid had there been no conspiracy to limit the supply of chicken. This is referred to as the overcharge.

Plaintiffs' opinion witnesses testified regarding how they calculated the overcharges caused by the alleged conspiracy to limit the supply of chicken. The opinion witnesses testified that they estimated the alleged overcharges using what is referred to as multiple regression models.

INSTRUCTION NO. 36
Multiple plaintiffs

If you award damages, you will be asked what sum of money would fairly and reasonably compensate each individual plaintiff and the Class. If you find that more than one individual plaintiff or the Class is entitled to recover damages, exercise caution to be sure that each is awarded damages only for its own injuries.

INSTRUCTION NO. 37
Damages for purchases – Class damages

The class representative plaintiffs are seeking to recover damages on behalf of a class of over three thousand businesses to recover alleged overcharges on their purchases of chicken. To award damages for the class, you do not need to determine the overcharge paid by each class member with absolute mathematical certainty or precision. It is sufficient for you to determine the average overcharge paid by class members or estimate the overcharge paid by class members, as long as the average or estimate is based on evidence and reasonable inferences. You may not base your damages award on guesswork or speculation. If determining the amount of damages requires you to guess or speculate, or make speculative assumptions or inferences, you may not award damages.

INSTRUCTION NO. 38
Basis for calculating damages

You are permitted to make just and reasonable estimates in calculating the damages of an individual plaintiff or the Class. You are not required to calculate damages with mathematical certainty or precision. However, the amount of damages must have a reasonable basis in the evidence and must be based on reasonable, non-speculative assumptions and estimates. Damages may not be based on guesswork or speculation. An individual plaintiff and the Class must prove the reasonableness of each of the assumptions upon which the damages calculation is based.

If you find that an individual plaintiff and/or the Class has provided a reasonable basis for determining damages, then you may award damages based on a just and reasonable estimate supported by the evidence.

If you find that an individual plaintiff and/or the Class has failed to carry its burden of providing a reasonable basis for determining damages, then you may not award damages or you may award nominal damages, not to exceed one dollar.

INSTRUCTION NO. 39
No need to consider damages

If you decide for the defendant on the question of liability, then you should not consider the question of damages.

INSTRUCTION NO. 40
Joint and several liability

Each member in a conspiracy that violates the antitrust laws is jointly and severally liable for all of the damages resulting from the conspiracy. This means that each conspirator is fully liable for all of the damages caused by the conspiracy and not solely for damages caused by an individual conspirator. One who knowingly joins an ongoing conspiracy is liable for the previous acts of the other conspirators in furtherance of the conspiracy.

If you find that plaintiffs have proven the existence of the alleged conspiracy, that defendant joined in the conspiracy, and that plaintiffs are entitled to recover damages based on the other instructions in this case, then defendant would be liable for all damages caused by the conspiracy, including any overcharges on the purchases of the product.

Thus, in that event, defendant would be liable for overcharges on all purchases of chicken by plaintiffs from all members of the conspiracy, and not merely on purchases from defendant. If, however, you find that any of the other alleged conspirators was not a member of the conspiracy, then defendant would not be liable for damages based on plaintiffs' purchases from those alleged conspirators.

INSTRUCTION NO. 41
Causation

If you find that defendant and one or more of the alleged coconspirators violated the antitrust laws and that one or more plaintiffs were injured by that violation, those plaintiffs are entitled to recover for such injury that was the result or likely consequence of the unlawful acts of defendant. Plaintiffs bear the burden of showing that their injuries were caused by defendant's antitrust violation, as opposed to any other factors. If you find that plaintiff's alleged injuries were caused in part by defendant's alleged antitrust violation and in part by other factors, then you may award damages only for that portion of plaintiff's alleged injuries that was caused by defendant's alleged antitrust violation.

Plaintiffs claim that they suffered injury because they paid higher prices for broiler chicken than they would have paid if the alleged conspiracy to limit broiler supply had not occurred. Defendant claims that any such higher prices occurred as a result of other factors that have nothing to do with the alleged antitrust violation. Plaintiffs are not entitled to recover for changes in price that resulted solely from these or other causes arising from the normal course of business activity. The presence of these factors does not mean plaintiffs did not suffer antitrust injury, but plaintiffs are not entitled to recover for damages caused by them. Plaintiffs only may recover for damages caused by the alleged antitrust violation.

The Class Plaintiffs and each Individual Plaintiff bears the burden of proving their damages by a preponderance of the evidence, including apportioning damages between lawful and unlawful causes. If you find that the Class Plaintiffs or an Individual Plaintiff was injured by defendant's alleged antitrust violation, and there is a reasonable basis to apportion that plaintiff's injury between lawful and unlawful causes, then you may award damages.

If you find that plaintiff's alleged injuries were solely caused by factors other than defendant's alleged antitrust violation, then you must return a verdict for defendant. If you find that there is no reasonable basis to apportion plaintiff's alleged injury between lawful and unlawful causes, or that apportionment can only be accomplished through speculation or guesswork, then you may not award any damages at all, or you may award nominal damages not to exceed one dollar.

INSTRUCTION NO. 42
Statute of Limitations

Plaintiffs may recover for injuries that occurred after September 2, 2012. However, the statute of limitations bars any recovery by plaintiffs for injuries that occurred before September 2, 2012, which is four years prior to the date plaintiffs filed this lawsuit. There is an exception to this bar called “the discovery rule.”

To establish the discovery rule exception, a plaintiff must prove each of the following two elements by a preponderance of the evidence:

(1) that plaintiff did not know of the alleged conspiracy prior to September 2, 2012; and

(2) that plaintiff could not have discovered the alleged conspiracy before September 2, 2012, through the exercise of reasonable diligence.

In considering the second element of the discovery rule, if facts were reasonably available to a plaintiff that should have aroused suspicion that the conspiracy had occurred, that plaintiff must have made a reasonable investigation to discover the conspiracy. Parallel conduct or parallel pricing by itself does not give rise to the duty to investigate. If you conclude that a plaintiff has proven by a preponderance of the evidence that a reasonable investigation would not have uncovered the alleged conspiracy, then you must find that the second element has been established. If, under all the circumstances of the case, no suspicious facts were reasonably available to a plaintiff, no investigation was required.

Although a plaintiff is not required to prove that the defendant concealed the alleged conspiracy in order to establish the discovery rule exception, you may consider evidence of active concealment in determining whether a plaintiff has met its burden of proving by a preponderance of the evidence that it should have discovered the alleged conspiracy through the exercise of reasonable diligence. To establish active concealment, a plaintiff must show affirmative acts of concealment. Mere silence does not constitute concealment. Rather, a plaintiff must show that defendant or its alleged co-conspirators took affirmative steps to prevent plaintiff from learning about the alleged conspiracy.

Defendant is responsible for its own acts of concealment as well as any acts of concealment committed by coconspirators as long as the act of concealment occurred during the course and in furtherance of the conspiracy. Plaintiff need not establish concealment on a victim-by-victim basis; affirmative acts of concealment generally are considered to have an industry-wide effect.

If you find that a plaintiff has proved both elements of the discovery rule, then that plaintiff is entitled to recover for injuries that occurred before September 2, 2012. If you find that a plaintiff has failed to prove any one of the two elements of the discovery rule, then that plaintiff may not recover for injuries that occurred before September 2, 2012.

If you find that a plaintiff who has failed to prove any one of the two elements of the discovery rule suffered injuries spanning both before and after September 2, 2012, then

you must apportion the damages between the two periods and you may award damages only for the portion of the injuries suffered after September 2, 2012. When apportioning the damages between the two periods, you should be guided by the same principles I explained to you earlier. That is, you are permitted to make just and reasonable estimates in apportioning plaintiff's damages. You are not required to apportion damages with absolute mathematical certainty or precision. However, the apportionment of damages must have a reasonable basis in the evidence. If you find that you cannot apportion the damages between the two periods without relying on guesswork or speculation, then you may not award damages at all, or you may award nominal damages not to exceed one dollar.

INSTRUCTION NO. 43
No inference from Judge's questions

During this trial, I have asked a witness a question myself. Do not assume that because I asked a question, I hold any opinion on the matter I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 44
Limited purpose of evidence

During the course of this trial, I have instructed you that I admitted certain evidence for a limited purpose. You must consider that evidence only for the limited purpose for which it was admitted. In addition, I instructed you that certain evidence is admitted only against one party and not the other parties. You must consider this evidence only against that party and not the other parties.

INSTRUCTION NO. 45
Communication with the Court

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

INSTRUCTION NO. 46
Disagreement among jurors

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.