

Litigators of the Week: Cracking the 10-Year Egg Antitrust Case

Antitrust class actions almost never go to trial. But three companies trusted their legal teams to get them through—and the lawyers delivered with an across-the-board win against some of the most prominent plaintiffs lawyers in the country.

By P.J. D’Annunzio
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To make an omelet, you have to break a few eggs.

In this case, the eggs were the expectations of a class of buyers suing the country’s leading hen farms for a billion-dollar payday. They claimed the egg producers conspired to manipulate the supply and raise prices for eggs. Previously, 10 of the 13 producers named in the suit cracked and settled the cases against them for roughly \$150 million.

But the legal teams convinced a federal jury in the Eastern District of Pennsylvania that their egg producer clients were not part of a vast conspiracy: Jim King’s team from Porter Wright Morris & Arthur, representing Rose Acre Farms, Steven Bizar’s team from Dechert, representing R.W. Sauder, and lawyers from Keating Muething & Klekamp representing Ohio Fresh Eggs.

After a 27-day trial, the jury handed up its defense verdict on June 14, concluding that Sauder and Ohio Fresh did not conspire to raise prices. As for Rose Acre the jurors found that



Jim King, of Porter Wright, and Steven Bizar, of Dechert

the purported market restraints were reasonable and lawful.

The case was a complex one, a challenge for both lawyers to explain and jurors to comprehend. And preparing to go to trial in a decade-long case is no small feat in itself.

“It took a while,” King laughed.

But after reading through reams of documents and vast discovery, King had a clear picture of the direction he wanted the argument to go.

“The theme that we used in the opening was that actions speak louder than words,” he said.

“That is, look at what Rose Acre did and not what others said they did. This was a conspiracy in which the plaintiffs said egg prices went up and supply went down.”

He continued, “This wasn’t a company that was reducing anything—they were growing. At the end of the day that’s what the jury found.”

That tack was a departure from Porter Wright’s initial strategy, which was to argue that complying with animal welfare regulations that increased cage sizes for hens meant that the birds were more productive.

Bizar, like King, also took a cut-to-the-chase approach.

“The team felt it was important not to get so involved in antitrust law, and the economist’s arguments, but to focus on things that would hit home with a juror,” Bizar said.

Bizar focused on dismantling the plaintiffs’ theory that Sauder’s export business meant that it was shipping product overseas to reduce the number of eggs in the U.S., thereby hiking the price.

U.S. Egg Marketers, an exporter, approaches member farms and offers their eggs for sale abroad. Sauder, while not a member, would contribute eggs several times a year.

“Eggs are seasonal...in terms of demand,” Bizar said. Sales peak during Thanksgiving, Christmas

and Easter. Outside of the time surrounding those holidays, demand for eggs drops.

“To have enough demand to service your number of customers during those times of demand, you have to maintain the same number of hens year-round,” he said. “Sometimes you know you’re going to have excess eggs, and you have to export the extras.”

Prior to the defense win for the three holdouts, the trend of the litigation bent toward settlement.

In 2016, defendant Midwest Poultry Services agreed to pay \$2.5 million; National Food Corp. agreed to pay \$1 million; United Egg Producers and United States Egg Marketers agreed to jointly pay \$500,000; NuCal Foods agreed to pay \$1.425 million; and Hillandale Farms agreed to pay \$3 million, according to an opinion issued by presiding judge Gene E.K. Pratter at the time.

Cal-Maine Foods paid \$28 million. Moark, Norco Ranch, and Land O’Lakes agreed to pay \$25 million.

Then came a \$75 million settlement from Michael Foods, a subsidiary of packaged food producing giant Post, last year.

Plaintiffs lawyers included Stephen Neuwirth of Quinn Emanuel Urquhart & Sullivan; Michael Hausfeld of Hausfeld; Stephen Susman of Susman Godfrey and Stanley Bernstein of Bernstein Liebhard.