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Pa. Jury Fries Egg Price-Fixing Conspiracy Claims

By **Matt Fair**

Law360, Philadelphia (December 12, 2019, 12:51 PM EST) -- A Pennsylvania federal jury on Thursday rejected claims that the nation's second-largest egg producer conspired with two industry groups in an anti-competitive scheme to reduce the supply of egg-laying hens and inflate commodity prices for grocery stores.

The jurors shot down arguments from a dozen major grocery chains, including Kroger Co. and Giant Eagle Inc., that egg producer Rose Acre Farms Inc. participated in an industrywide conspiracy hatched by the United Egg Producers to give egg-laying hens extra cage space as a pretext to reduce the supply of eggs and raise prices.

The panel spent about a day and a half deliberating on some six weeks' worth of testimony in the antitrust dispute.

"We are very pleased after all these years to have a complete vindication of the egg industry after being accused of price-fixing," said Jan Levine, an attorney with Pepper Hamilton LLP representing United Egg. "We did not, and the jury found that."

An attorney for the plaintiffs declined to comment.

The trial kicked off at the beginning of November as the retailers alleged that United Egg had drafted standards increasing the amount of cage space provided to egg-laying hens as a pretext to reduce both the overall nationwide flock and the number of eggs being produced.

As a result, the retailers said, the industry hoped to increase prices on eggs.

The alleged anti-competitive scheme resulted in United Egg's creation of its so-called certified program, under which producers that agreed to implement the new standards could advertise that their eggs had been deemed in compliance.

Meanwhile, the retailers said that another industry group, the United States Egg Marketers, had assisted in the overall scheme to hike up egg prices by floating recommendations that producers export eggs to foreign markets at a loss in order to reduce the domestic supply.

The grocery chains pinned their case on correspondence between United Egg officials suggesting that, at the time the certified program was adopted in 2002, they were focused not on addressing concerns over animal welfare but on reducing the size of the egg-producing flock to boost anemic prices.

In one such message sent to Rose Acre and its competitors two years after the program took effect, United Egg's then-president said that the new standards have given the industry "a roadmap for the future like no supply/demand program could have."

But United Egg and Rose Acre argued that the program could not be considered an improper restraint on trade because it was something that retailers had demanded as a result of mounting pressure from animal rights groups in the late 1990s and early 2000s to improve conditions for egg-laying hens.

Levine told jurors during closing arguments on Tuesday that the Food Marketing Institute, an industry group representing the grocery industry, had been working on its own animal welfare guidelines for egg-producing hens at the time United Egg started to put the program together.

Meanwhile, Porter Wright Morris & Arthur LLP attorney James King told jurors on behalf of Rose Acre that, despite the purportedly anti-competitive scheme, the overall egg-producing flock in the country continued to grow from 2002 onward and that egg prices went on to fall to historic lows in 2006 and 2007.

King told Law360 following the verdict that he was "happy" with the outcome.

The case is the second to go to trial out of a multidistrict litigation program in the Eastern District of Pennsylvania, and the second in which Rose Acre has notched a victory.

The first trial ended in June 2018 as a jury agreed that Rose Acre had participated in a conspiracy to fix egg prices, but that it was not on the hook for any damages because the scheme hadn't resulted in any actual negative impact on trade.

While the first trial included claims brought on behalf of a class of direct purchasers including Walmart Stores Inc., the trial that ended on Thursday was pursued on behalf of companies that had opted out of the class action.

The retailers are represented by William Blechman, Richard Alan Arnold and Douglas Patton of Kenny Nachwalter PA, Bernard Marcus, Moira Cain-Mannix and Brian Hill of Marcus & Shapira LLP, Paul Slater, Joseph Vanek and David Germaine of Sperling & Slater PC and Patrick Ahern of Ahern & Associates PC.

Rose Acre is represented by James King, Donald Barnes, Jay Levine, Arlene Boruchowitz and Allen Carter of Porter Wright Morris & Arthur LLP.

United Egg and USEM are represented by Jan Levine, Alexander Harris and Robin Sumner of Pepper Hamilton LLP and Christopher Ondeck of Proskauer Rose LLP.

The case is In Re: Processed Egg Products Antitrust Litigation, case number 2:08-md-02002, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Jack Karp.

Update: This story has been updated to include further details about the case and comment from an egg producer's attorney.