

Chicken Price-Fixing Verdict Casts Doubt For Future Plaintiffs

By **Lauraann Wood**

Law360 (October 27, 2023, 8:25 PM EDT) -- Sanderson Farms' recent trial win in a sprawling chicken price-fixing case may be a sign of hurdles lying ahead for remaining plaintiffs looking to bring similar claims to either a jury or the negotiating table, experts told Law360.

In siding with Sanderson earlier this week, a Chicago federal jury rejected thousands of direct purchasers' claims that one of the nation's largest broiler chicken producers participated in a scheme to limit chicken supply in 2008 and 2011 for profits' sake. Before even reaching the question concerning Sanderson's alleged involvement, the jury found that the plaintiffs had failed to prove a price-fixing conspiracy existed between two or more chicken producers.

The verdict resolved just a portion of plaintiffs' claims in the massive consolidated civil case, as claims from two more classes, a second track of trials and several direct-action plaintiffs remain in the queue. But having already seen losses in the U.S. Department of Justice's efforts to secure price-fixing convictions against certain industry executives, seeing a loss on the civil side as well may lead those remaining plaintiffs to switch up their tactics to avoid a similar outcome in their case, experts told Law360.

"They have to study very carefully why that finding was made ... [and] go over that record very carefully to see how they would present it differently," said Carl Hittinger, BakerHostetler's national antitrust and competition practice leader.

Sanderson was accused of banding together with at least a dozen other broiler chicken producers, including Tyson Foods and Pilgrim's Pride, to inflate prices by limiting their supply. Sanderson's alleged co-conspirators were also defending the direct chicken buyers' allegations, but those companies either settled the buyers' claims or defeated them at summary judgment.

While it's not unusual to take one defendant to trial in an antitrust conspiracy case, the recent verdict for Sanderson may affect the remaining plaintiffs' willingness to take a similar approach when it's their turn for trial, Morgan Lewis & Bockius LLP partner J. Clayton Everett Jr. said.

"It's possible that this verdict ... may affect the dynamics about whether to take just a single defendant to trial, or to position the case differently for trial with multiple defendants," Everett said.

Sanderson's trial win may also lead to increased leverage and optimism for the case's other defendants, Everett said. That could affect not just their willingness to go to trial "but more specifically the amount

they might be willing to pay in settlement," he said.

Hittinger, however, cautioned that the remaining plaintiffs may not see increased defendants at trial because Sanderson's position may be a unique one in the case. The jury heard evidence that Sanderson had generally increased its production and facilities during the alleged conspiracy, and other producers may struggle to get jurors on their side with different details surrounding their chicken supply, he said.

"The fact that [Sanderson] had may not be a fact that the other defendants have," he said.

Whether settlements will be harder to come by remains to be seen. But Sanderson's trial win could lead other defendants to offer less at the negotiating table because of how the verdict may factor into their assessments of the remaining claims, Mayer Brown LLP partner Carmine Zarlenga told Law360.

"To me, it devalues them," said Zarlenga, who represents Foster Farms LLC, a chicken producer proceeding along the case's so-called track two, which includes bid-rigging claims alongside the plaintiffs' price-fixing allegations.

While the verdict provided valuable insight for both sides of the case, it was likely informative for the court as well, some attorneys said. For instance, although U.S. District Judge Thomas Durkin waited to resolve the judgment motion Sanderson launched following the plaintiffs' trial presentation, he may resolve that kind of motion sooner if the remaining plaintiffs present their evidence similarly, Hittinger said.

No one can ever know how a judge will resolve such a motion, but the chances of Judge Durkin handling one mid-trial "are higher now than they were then," Zarlenga said.

Everett, however, cautioned that while the likelihood of a mid-trial judgment may have increased, the chances may not have risen that significantly. That's particularly true if Judge Durkin had already sorted through the parties' evidence at summary judgment, since the standard at that stage "is effectively the same," and any appealing party would face a higher standard challenging a jury's decision, he said.

--Editing by Alex Hubbard.