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Fifth Circuit Reverses $25 Million Damages Award Against Pilgrim's Pride

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On August 27, 2013, the Court of Appeals for the Fifth Circuit reversed a district court damages award of more than $25 million against Pilgrim's Pride Corporation, a large producer of processed chicken. A group of chicken growers with whom Pilgrim's Pride contracted filed suit against the company alleging that the company violated the Packers and Stockyards Act (PSA) by engaging in a course of business for the purpose of "manipulating or controlling prices." The Eastern District of Texas held that Pilgrim's Pride's conduct of idling or selling its chicken processing plant reduced output to increase prices, and awarded damages over $25 million to plaintiffs.

On appeal, Pilgrim's Pride argued that the PSA section (7 U.S.C. § 192) that prohibits manipulation or control of prices is, in actuality, an antitrust statute. Therefore, the PSA section "is only violated by attempts to affect market prices which are anti-competitive, or 'injurious to competition.'" Pilgrim's Pride argued that because its output reductions were not anti-competitive, it did not violate the PSA. The plaintiffs argued that the PSA should be applied more broadly, not only to conduct that is anticompetitive.

The Fifth Circuit relied on a prior *en banc* decision addressing the same PSA provision, *Wheeler v. Pilgrim's Pride Corp*., 591 F.3d 355 (5th Cir. 2009) (*en banc*) to hold that there was little question that PSA § 192 "proscribes only anti-competitive conduct." The court also reasoned that the use of the terms "manipulation" and "control" meant that Congress intended to prohibit "deceptive, illegitimate, or unnatural—*i.e*., anti-competitive—attempts to influence prices."

After establishing that PSA § 192 prohibited only anticompetitive manipulation of prices, the court analyzed Pilgrim's Pride's conduct of idling or closing plants under the rule of reason. Quoting*Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993), the court stated that the "purpose of [antitrust law] is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. . . " The court also stated that a company's unilateral attempt to raise prices, standing alone, is not inherently anticompetitive. The court reasoned that Pilgrim's Pride had, on its own, produced more chicken than the market demanded and was causing damage to its own business. As a result, the company decided to stop flooding the market. The court found no evidence that the company's conduct was anything but a legitimate, rational response to market conditions. Therefore, the court concluded Pilgrim's Pride conduct was not anticompetitive, even though the conduct may have affected the price for chicken.

In a well-reasoned opinion, the Fifth Circuit relied on one of the fundamental tenants of antitrust law: that its purpose is to protect competition, not competitors. However, clients that wish to make price moves, or take other actions that would affect price, should consider whether those contemplated actions could be perceived as anticompetitive by customers or other market participants, and should take steps to document the legitimate business justification behind such moves. That applies even to regulated industries as illustrated by this case, which presents another example of the adoption of antitrust principles into the analysis of non-antitrust laws, such as intellectual property law and agriculture-related law.

The decision can be found at: *Agerton v. Pilgrim's Pride Corp*., 2013 U.S. App. LEXIS 17921 (5th Cir. Aug. 27, 2013).

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