

FEB 18 2022

In the Supreme Court of British Columbia

Between



Giang Bui

Plaintiff

and

Cargill, Incorporated, Cargill Meat Solutions Corporation, Cargill Limited, JBS USA Food Company, Swift Beef Company, JBS Packerland Inc., JBS Canada ULC, Tyson Foods, Inc., Tyson Fresh Meats, Inc., and National Beef Packing Company, LLC

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

THE NATURE OF THE ACTION

1. The Defendants are meatpacking operators who purchase cattle, slaughter them, and then process and sell the resulting edible portion of the carcass into meat intended for human consumption. This meat is defined herein as “**Beef**”.
2. This action arises from a conspiracy between the Defendants and their co-conspirators to fix, maintain, control, or lessen the production or supply of Beef and fix, raise, maintain, or stabilize the price of Beef sold to purchasers in Canada, starting at least as early as January 1, 2015 and continuing to the present (referred to herein as the “**Class Period**”).
3. During the Class Period, the Defendants and their co-conspirators engaged in various unlawful practices that effectively severed the economic relationship

between the price of cattle purchased by them for slaughter from the price of Beef sold in Canada. As a result, while the price the Defendants paid for cattle dropped, the supply of Beef was restricted and the price of Beef was fixed at an elevated, anti-competitive level, causing damages to the Plaintiff and Class Members, while increasing the profits of the Defendants and their co-conspirators.

THE PLAINTIFFS AND THE CLASS

4. The Plaintiff, Giang Bui, is a resident of Vancouver, British Columbia, who purchased Beef, for his own consumption and consumption by his family members, from various retail outlets in the Vancouver area during the Class Period.
5. The plaintiff seeks to represent a class consisting of:

All persons or entities in Canada who directly or indirectly purchased Beef, in Canada, either for resale or for their own consumption, between January 1, 2015 and the present ("**Class Members**").

THE DEFENDANTS

6. The Defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including any unnamed co-conspirators.
7. Where a particular entity within a corporate family of the Defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.
8. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the Defendants in the unlawful behaviour alleged herein and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

The Cargill Defendants

9. The Defendant Cargill, Incorporated (“**Cargill USA**”) is a privately held corporation organized under the laws of Delaware with its principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391. During the Class Period, Cargill USA and/or its predecessors produced, supplied, marketed, distributed and sold Beef to purchasers in Canada (including British Columbia) directly or through its subsidiaries, agents or affiliates.
10. Cargill Meat Solutions Corporation, also known as Cargill Protein (“**Cargill Protein**”) is a corporation organized under the laws of Delaware with its principal place of business at 825 East Douglas Avenue, Wichita, Kansas 6702. Cargill Protein is the principal operating entity within Cargill’s U.S. cattle and beef business and a wholly owned subsidiary of Cargill USA.
11. Cargill Protein owns and operates, directly, or indirectly through its subsidiaries, six meatpacking plants within the United States that process Beef. During the Class Period, Cargill Protein produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.
12. The Defendant Cargill Limited (“**Cargill Canada**”) is a privately held corporation organized under the laws of Canada with its principal place of business at 300 – 240 Graham Ave, Winnipeg, Manitoba, R3C 0J7. It is a wholly-owned subsidiary of Cargill USA.
13. Cargill Canada operates two meatpacking plants in Canada. These are located in High River, Alberta and Guelph, Ontario. The High River plant slaughters and processes approximately 4,500 cattle per day. The Guelph Ontario plant slaughters and processes approximately 1,500 cattle per day.
14. During the Class Period, Cargill Canada and/or its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries,

agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.

15. The businesses of each of Cargill USA, Cargill Protein and Cargill Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, supply, marketing, distribution and/or sale of Beef.
16. The Defendants Cargill USA, Cargill Protein and Cargill Canada are collectively referred to herein as “**Cargill**”.
17. Throughout the Class Period, Cargill produced, supplied, marketed, distributed and placed Beef into the stream of commerce with knowledge that it would be sold in Canada.

JBS Defendants

18. JBS USA Food Company (“**JBS USA**”) is a corporation organized under the laws of Delaware with its principal place of business at 1770 Promontory Circle, Greeley, Colorado 80634. It is a wholly-owned subsidiary of JBS S.A., a corporation organized under the laws of Brazil.
19. JBS USA acts as both an operating and holding company within JBS’s Beef business. It is the contracting entity for certain of JBS’s purchases of cattle in the USA. During the Class Period, JBS USA, and/or its predecessors processed, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.
20. Swift Beef Company (“**Swift**”) is a corporation organized under the laws of Delaware with a principal place of business located at 1770 Promontory Circle, Greeley, Colorado 80634.
21. Swift operates and owns directly, or indirectly through its subsidiaries, four of JBS’s meatpacking plants that process fed cattle and produce and supply Beef within the United States. It is also the contracting entity for the majority of fed cattle purchased for slaughtering at these plants. During the Class Period, Swift, and/or

its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.

22. JBS Packerland, Inc. ("**JBS Packerland**") is a corporation organized under the laws of Delaware with its principal place of business located at 1770 Promontory Circle, Greeley, Colorado 80634.
23. JBS Packerland owns directly, or indirectly through its subsidiaries, five of JBS's United States meatpacking plants that process fed and dairy cattle and produce and supply Beef. It is also the contracting entity for the majority of fed cattle slaughtered at these plants. During the Class Period, JBS Packerland and/or its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.
24. JBS Canada ULC ("**JBS Canada**") is an unlimited liability corporation organized under the laws of Alberta with its principal place of business at 5883 11 Street SE Calgary, Alberta, T2H 1M7. It is a wholly-owned subsidiary of JBS USA.
25. JBS Canada operates a meatpacking plant in Brooks, Alberta. This plant slaughters and processes approximately 4,200 cattle per day.
26. During the Class Period, JBS Canada and/or its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere.
27. The businesses of each of JBS USA, Swift, JBS Packerland and JBS Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the production, supply, marketing, distribution and/or sale of Beef.
28. The Defendants JBS USA, Swift, JBS Packerland and JBS Canada are collectively referred to herein as "**JBS**".

29. JBS produced, supplied, marketed, distributed and placed Beef into the stream of commerce with knowledge that it would be sold in Canada.

Tyson

30. Tyson Foods, Inc. ("**Tyson Foods**") is a corporation organized under the laws of Delaware with its principal place of business 2200 Don Tyson Parkway, Springdale, Arkansas 72762.
31. Tyson Fresh Meats, Inc. ("**Tyson Fresh**") is a wholly owned subsidiary of Tyson Foods. Tyson Fresh is a corporation organized under the laws of Delaware with its principal place of business at 800 Stevens Port Drive, Dakota Dunes, South Dakota 57049. Tyson Fresh owns and operates directly, or indirectly through its subsidiaries, cattle slaughter plants in Kansas, Nebraska, Texas, Illinois and Washington.
32. The businesses of each of Tyson Foods and Tyson Fresh are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the processing, marketing, distribution and/or sale of Beef.
33. The Defendants Tyson Foods and Tyson Fresh are collectively referred to herein as "**Tyson**".
34. Tyson, owns and operates directly, or indirectly through its subsidiaries, twelve meatpacking plants within the United States that process cattle and produce or supply Beef. These plants cumulatively process approximately 155,000 cattle per week.
35. During the Class Period, Tyson bought fed cattle produced by ranchers and feedlot operators in Canada for processing in the United States. Tyson processed these cattle into Beef at its meatpacking plants in the United States as part of the fully integrated North American meatpacking market.
36. During the Class Period, Tyson and/or its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or

affiliates to purchasers in Canada (including British Columbia) and elsewhere. Tyson produced, supplied, marketed, distributed and placed Beef into the stream of commerce with knowledge that it would be sold in Canada.

National Beef

37. National Beef Packing Company, LLC, ("**National Beef**") is a corporation organized under the laws of Delaware with its principal place of business at 12200 N. Ambassador Drive, Suite 500, Kansas City, MO 64163.
38. National Beef owns and operates, directly or indirectly through its subsidiaries three slaughterhouses in the United States that process Beef.
39. During the Class Period, National Beef bought fed cattle produced by ranchers and feedlot operators in Canada for processing in the United States. National Beef processed these cattle into Beef at its meatpacking plants in the United States as part of the fully integrated North American meatpacking market.
40. During the Class Period, National Beef and/or its predecessors produced, supplied, marketed, distributed and sold Beef directly or through its subsidiaries, agents or affiliates to purchasers in Canada (including British Columbia) and elsewhere. National Beef produced, supplied, marketed, distributed and placed Beef into the stream of commerce with knowledge that it would be sold in Canada.

FACTUAL BACKGROUND

The Beef Supply Chain

41. Beef is produced and supplied to consumers in Canada through a supply chain that operates both upstream and downstream of the Defendants and in both Canada and the United States.
42. Upstream of the Defendants are ranchers (breeders) of cattle, which are birthed and raised for slaughter. After being weaned, the cattle are generally raised on pasture for a number of months before being sold to feedlot operators.

43. Feedlot operators purchase cattle from ranchers and then raise their weights through intensive feeding and cattle management practices. Cattle that have been through this process are referred to as “fed cattle”.
44. Some cattle, such as most culled cows from dairy operations, do not go to feedlots and are instead sold by producers or dairy operators to meatpacking operators, such as the Defendants, through either auction or cash transactions.
45. Fed cattle are a perishable commodity. Feedlot operators and other producers therefore face significant pressure to sell fed cattle quickly once they reach slaughter weight.
46. Once fed cattle reach an appropriate weight for slaughter, they are sold by the feedlot operators to meatpacking operators, including the Defendants, through either supply contracts, auction or cash transactions.
47. Meatpacking operators, including the Defendants, negotiate directly with feedlot operators and other producers and their agents for quantities and prices of fed cattle.
48. Meatpacking operators, including the Defendants, slaughter the cattle then process the carcasses into various primal cuts and smaller sub-primal cuts that are then vacuum-packed and boxed for sale to direct purchasers. This Beef processed and sold by meatpacking operators is known as “boxed Beef”.
49. Instead of being sold as boxed Beef, some Beef is further processed by meatpacking operators before being sold. This Beef is known as “case ready” Beef. It is sold by meatpacking operators, including the Defendants, to retailers, restaurants and others at a premium over boxed Beef.
50. Downstream from the meatpacking operators are first-tier direct purchasers of boxed Beef. These purchasers are mainly manufacturers of frozen food, Beef wholesalers and grocery wholesalers.

51. Second-tier downstream purchasers purchase Beef from direct purchasers for eventual sale to retail purchasers. In Canada, these are mainly: (i) speciality food stores; (ii) mass-market grocery retailers; (iii) full-service restaurants; (iv) fast food restaurants; and (v) other food retailers, such as street vendors.
52. Retail purchasers purchase Beef for their own consumption from second-tier purchasers. These purchases include fresh and frozen cuts of Beef from a grocery store or butcher.

The North American Beef Meatpacking Market

53. The Defendants, who are competitors or potential competitors of each other, collectively dominate the North American market, including the Canadian market, for Beef.
54. In a competitive market, JBS, Cargill, Tyson and National Beef would compete with each other with respect to the supply and sale of Beef.
55. During the Class Period, the Defendants controlled approximately 85% of fed cattle processed and sold within Canada with similar market share in the Beef meatpacking market.
56. During the Class Period, the Defendants collectively controlled over 82% of fed cattle processed and sold within North America and held a similar market share in the Beef meatpacking market.
57. The North American cattle and beef industry is fully integrated. During the Class Period, under the former North American Free Trade Agreement (“**NAFTA**”) and the current United States-Mexico-Canada Agreement (“**USMCA**”), cattle and Beef are freely traded duty-free between Canada and the United States.
58. Due to trade and the ability to arbitrage prices, United States fed cattle prices are a significant driver of Canadian fed cattle prices. The potential for arbitrage prevents large price differences between fed cattle in Canada and fed cattle in the United States.

59. Canadian fed cattle prices are based on the price of live cattle futures contracts trading on the Chicago Mercantile Exchange, or on the cash market for fed cattle in the United States.
60. Prior to and throughout the Class Period, the price of fed cattle in Canada and the United States moved and continues to move in tandem.
61. The Defendants each procure the majority of their fed cattle through alternative marketing agreements, such as “formula” or “forward contracts”. Under these contracts, the producer agrees to deliver its cattle to a Defendant once they have reached slaughter-weight at or around the time of delivery.
62. The price formulas used by formula or forward contracts are typically based on the price paid for fed cattle in the cash market. As a result, the prices paid for fed cattle in the cash cattle trade determines the price of almost all fed cattle sold to the Defendants within North America, including Canada.
63. Fed cattle are a commodity product that are interchangeable among the Defendants and others. One fed cattle processed by one of the Defendants can be exchanged for another fed cattle processed by another Defendant.
64. Boxed Beef is a commodity product that is interchangeable among the Defendants and others. Boxed Beef of a similar primal cut type can be exchanged for other Boxed Beef of equivalent United States Drug Administration (“**USDA**”) or Canadian Food Inspection Agency (“**CFIA**”) quality and yield grades.
65. Because of their collective market power in the Beef meatpacking market in North America, the Defendants can control or influence both the price and volumes of fed cattle that they purchase from the upstream market in both Canada and the United States.
66. Similarly, because of their collective market power in the Beef meatpacking market in Canada, the Defendants can control or influence both the price and volume at which Beef is sold in Canada.

67. There are substantial barriers to entry that preclude, reduce, or make more difficulty, entry into the Beef meatpacking market. The construction or repurposing of a meatpacking plant requires significant financial investment and delays of multiple years to obtain the necessary permits and to plan, design and build.
68. New entrants to the Beef meatpacking market also face significant volumes of regulations and the need to recruit a large workforce and locate marketing outlets.
69. These barriers to entry, coupled with the Defendants' high market share and the commodity-like nature of fed cattle and Beef, meant that the Defendants intended and were able to fix, maintain, control, or lessen the production or supply of Beef, as well as fix, maintain and increase the price of all Beef sold directly or indirectly in Canada, including Beef processed by non-conspirators, to supra-competitive levels during the Class Period.

THE CONSPIRACY

70. The acts alleged under this heading are, collectively, the "**Conspiracy Acts**".
71. During the Class Period, the Defendants conspired and/or agreed with each other to fix, maintain, increase or control the price of Beef as well as fix, maintain, control, prevent or lessen the production or supply of Beef. The conspiracy was intended to, and did, affect the price and production or supply of Beef sold in Canada, including British Columbia.
72. The Defendants intended to agree to and perform the Conspiracy Acts and knew or ought to have known that the likely effect of the Conspiracy Acts would be to fix, maintain, increase or control the price for the supply of Beef as well as fix, maintain, control, prevent or lessen the production or supply of Beef in the North American market.
73. Starting in 2015 in response to pressure on Beef margins, and throughout the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications,

conversations, and attended meetings with each other at times and places, which are unknown to the Plaintiff (the "**Communications**").

74. During the Class Period, the Communications:
- (a) were conducted secretly, in person, by telephone, and by email, text and other forms of electronic communication;
 - (b) involved the exchange of private and competitively sensitive information regarding the supply of fed cattle and the production and sale of Beef;
 - (c) involved the exchange of information about the current and future operations of their meatpacking plants with each other;
 - (d) were conducted for the purpose of implementing, monitoring and enforcing adherence to the agreed upon prices of fed cattle and Beef, volumes of Beef produced or supplied and markets;
 - (e) permitted the Defendants and their unnamed co-conspirators to restrain the volume of fed cattle they processed and thus the Beef they produced or supplied, and to increase the prices they charged for Beef with the result of increasing their margins and profits.
75. As a result of the Communications, the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to reduce and manage their respective slaughter volumes, thereby fixing, maintaining, lessening and controlling the production or supply of Beef, while at the same time fixing, maintaining, increasing or controlling the price of Beef sold in Canada and elsewhere.
76. In particular, the Defendants fixed, maintained, lessened or controlled the supply or production of Beef through the following acts:
- (a) periodically agreeing to reduce the number of cattle slaughtered so as to reduce their production or supply of Beef;

- (b) agreeing to reduce slaughter capacity by closing or idling slaughter plants, running plants at reduced hours, operating plants at lower chain speeds and scheduling unnecessary and/or coordinated maintenance shutdowns;
 - (c) agreeing to restrain from expanding slaughter and Beef processing capacity;
 - (d) agreeing to control or reduce their purchases of cattle on the cash market; and
 - (e) coordinating the timing of purchases, bid amounts, and the regions and feedlots where they would bid for fed cattle, thus lowering the supply of fed cattle and the production or supply of Beef.
77. Because the price of fed cattle in the cash market strongly influences the price of fed cattle in the North American market generally, the Defendants and their co-conspirators successfully fixed, reduced or controlled the supply of fed cattle, and thus the production or supply of Beef, during the Class Period.
78. In furtherance of the conspiracy, the Defendants and their co-conspirators intended to, and in fact did, allocate sales, territories, customers or markets for the production or supply of Beef by limiting their respective affiliates' ability to purchase fed cattle in the North American market and to sell the Beef they produced into the North American market.
79. During the Class Period, the Defendants and their co-conspirators successfully manipulated the relationship between the prices of fed cattle and Beef in North America. As a result, while the price of fed cattle dropped, the Defendants' fixing of the price and restriction of supply or production of Beef caused Beef prices to rise to elevated, anti-competitive levels. Further, the Defendants' margins on the sale of Beef were inflated by the combination of supply side constraints and demand side price fixing.

80. The Defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Beef would be sold from the price that otherwise would be charged on a competitive basis. The defendants and their unnamed co-conspirators knew or should have known that their unlawful scheme and conspiracy would injure purchasers of Beef in Canada (including British Columbia) and elsewhere. The Defendants' conduct inflated the price paid by Class Members for Beef.
81. During the Class Period, senior executives and employees of Cargill USA and JBS USA, their subsidiaries or affiliates, were in the position to, and did, direct or influence the policies of Cargill Canada and JBS Canada respectively (the "**Canadian Subsidiaries**") from outside of Canada.
82. During the Class Period, the Canadian Subsidiaries participated in and furthered the objectives of those Conspiracy Acts entered into outside of Canada by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies or affiliates. The Canadian Subsidiaries acted as their agents in carrying out the conspiracy and are liable for such Conspiracy Acts.
83. The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and done by each Defendant's officers, directors, agents, employees, or representatives while engaged in the management direction, control or transaction of its business affairs.
84. Relying on the higher price umbrella set by the Defendants, the non-conspirator Beef meatpacking operators were able to, and did, maximize their profits by charging higher prices for Beef than they would have in a competitive market. The non-conspirator meatpacking operators' conduct in charging higher prices was a direct response to the higher prices for Beef caused by the Defendants' conspiratorial conduct and exercise of collective market power. But for the conspiracy, the Defendants would have charged lower, competitive prices for Beef,

and the non-cartel meatpacking operators would have needed to follow those lower prices or risk losing market share.

85. During the Class Period, Class Members who directly and indirectly purchased Beef processed by the Defendants suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that they would have obtained had there been a competitive market for Beef. The Defendants were aware and intended that the alleged conspiracy would cause Class Members to pay supra-competitive prices for Beef.
86. During the Class Period, Class Members who directly and indirectly purchased Beef processed by non-conspirator meatpacking operators (“**Umbrella Purchasers**”) suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that they would have obtained in a competitive market. The Defendants were aware and intended that the alleged conspiracy would result in Umbrella Purchasers paying supra-competitive prices for Beef during the Class Period.

REGULATORY INVESTIGATIONS AND OTHER SUITS

87. On May 22, 2020, the US Department of Justice’s Antitrust Division sent civil investigative demands to entities within each of the JBS, Cargill, Tyson and National Beef corporate families. The demands sought information related to, among other things, fed cattle, meatpacking plants and their pricing practices dating back to January, 2015 (the “**May 2020 Subpoenas**”).
88. The Defendants, other than Cargill Canada and JBS Canada, are named as defendants in one or more of three class action complaints filed in the United States District Court, District of Minnesota (Civil No. 19-cv-1222 (JRT/HB)) (the “**US Actions**”) that allege similar Conspiracy Acts.
89. On or about February 3, 2022, JBS announced that it had reached a settlement with the plaintiffs in one of the US Actions, whereby it agreed to pay (USD) \$52.5 million in settlement of the direct purchaser plaintiffs’ claims.

DISCOVERABILITY

90. Fed cattle and Beef are not exempt from competition regulation in Canada and thus, the Plaintiff and the Class Members reasonably considered the Beef meatpacking industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the Defendants' prices and supply or production of Beef.
91. Accordingly, the Plaintiffs and the Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy until the filing of this claim.
92. At its earliest, it was only after the May 2020 Subpoenas that the Plaintiff and other Class Members might have reasonably begun to discover the Defendants' participation in the Conspiracy Acts and that Class Members were paying anticompetitive prices for Beef during the Class Period.
93. The Defendants, actively, intentionally, and fraudulently, concealed the existence of their illegal conduct from the public, including the Plaintiff and Class Members.
94. The Defendants' Conspiracy Acts were carried out in a manner intended to preclude detection of their illegal nature.

DAMAGES

95. The conspiracy had the following effects, among others:
 - (a) the supply or production of Beef in Canada has been fixed, maintained, lessened or controlled at artificially low levels;
 - (b) the price of Beef sold directly or indirectly to the Plaintiff and other Class Members in Canada has been fixed, maintained, increased or controlled at artificially inflated levels; and
 - (c) The Plaintiff and other Class Members have been deprived of free and open competition for Beef and products containing Beef in Canada.

96. By reason of the wrongful conduct alleged herein, the Plaintiff and the Class Members have sustained losses by virtue of having paid higher prices for Beef than they would have paid in the absence of the illegal conduct of the Defendants and their unnamed co-conspirators. As a result, the Plaintiff and other Class Members have suffered loss and damage in an amount not yet known but to be determined (the “**Overcharge**”).
97. The Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the Class Members and the prices which would have been paid in the absence of the unlawful conspiracy. The Defendants and their co-conspirators are jointly and severally liable for the entire Overcharge.
98. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, RSBC 1996, c 50 (the “*Class Proceedings Act*”), or otherwise.

PART 2: RELIEF SOUGHT

99. The Plaintiff claims on his own behalf, and on behalf of the Class:
- (a) a declaration that the Defendants, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Beef during the Class Period, in violation of statute, common law and equity as alleged in this claim;
 - (b) a declaration that the Defendants, and each of them, conspired each with the other to fix, maintain, control, or lessen the supply or production of Beef during the Class Period, in violation of statute, common law and equity as alleged in this claim;
 - (c) an order certifying this action as a class proceeding against the Defendants and appointing the Plaintiff as the representative plaintiff in respect of the Class Members;

- (d) a declaration that the Defendants have been unjustly enriched by receipt of the Overcharge;
- (e) general damages for conspiracy and unlawful interference with economic interests in the amount of the Overcharge;
- (f) a declaration that the Defendants' conduct gives rise to extracontractual civil liability to the Quebec Subclass pursuant to article 1457 of the *Civil Code of Quebec*, CQLR c CCQ-1991;
- (g) judgment in the amount of the Overcharge;
- (h) general damages for conduct that is contrary to Part VI of the *Competition Act*, RSC 1985, c 16 (2nd Suppl.) (the "*Competition Act*");
- (i) aggravated, exemplary and punitive damages;
- (j) an injunction enjoining the Defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Beef;
- (k) an injunction enjoining the Defendants from conspiring or agreeing with each other, or others, to restrict, control or limit the supply of Beef;
- (l) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128 and similar provisions under the *Judgment Interest Act*, RSA 2000, c J-1, *Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2, *The Court of Queen's Bench Act*, CCSM c C280, *Courts of Justice Act*, R.S.O. 1990, c. C.43, *Civil Code of Québec*, CQLR c CCQ-1991 (including the additional indemnity provided for in article 1619), *Judicature Act*, RSNB 1973, c J-2, *Judicature Act*, RSNS 1989, c 240, *Judicature Act*, R.S.P.E.I. 1988 c. J-2.1, *Judgment Interest Act*, RSNL 1990, c. J-2, *Judicature Act*, R.S.Y. 2002, c. 128, *Judicature Act*, R.S.N.W.T.,

1988 c. J-1, *Rules of the Supreme Court of the Northwest Territories*, NWT Reg (Nu) 010-96;

- (n) costs for the administration of the plan of distribution for relief obtained in this action, including an aggregate damage award; and
- (o) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

100. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "CJPTA").

CAUSES OF ACTION

Breach of the Competition Act

101. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act*, caused injury to the Plaintiff and the Class Members, and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
102. JBS, Cargill, National Beef and Tyson are competitors or potential competitors in the Beef meatpacking market. During and throughout the Class Period, they conspired, agreed or arranged to fix, maintain, increase, or control the price for the supply of a product (Beef) and fix, maintain, control, prevent or lessen the production or supply of that product. Thus, the Defendants have breached section 45 of the *Competition Act*.
103. Further, or in the alternative, the Canadian Subsidiaries are in breach of section 46(1) of Part VI of the *Competition Act* and caused injury to the Plaintiff and the Class Members, which renders the Canadian Subsidiaries jointly and severally liable to pay damages and costs of the investigation pursuant to section 36 of the *Competition Act*.

104. The Canadian Subsidiaries carry on business in Canada and implemented, in whole or in part in Canada, directives, instructions, policies or other communications, from executives or senior employees of their American parent companies, their subsidiaries or affiliates, who were located outside of Canada. These communications were for the purpose of giving effect to those Conspiracy Acts that were entered into outside of Canada. If entered into in Canada, these Conspiracy Acts would have contravened section 45 of the *Competition Act*. Thus, the Canadian Subsidiaries have committed offences under section 46(1) of the *Competition Act*.

Civil Conspiracy

105. Further, and in the alternative, the Defendants are liable for the tort of civil conspiracy. The Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the Plaintiffs and the Class Members. The Defendants and their unknown co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the Plaintiffs and Class Members and, as such, the Defendants are jointly and severally liable for the tort of civil conspiracy.

106. The Plaintiff and Class Members suffered damages as a result of the Defendants' conspiracy.

Fraudulent Concealment

107. The Defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the conspiracy from the public, including the Plaintiff and the Class Members. The Defendants and their co-conspirators represented to purchasers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiff and the Class Members. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

108. The Defendants' anti-competitive conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.
109. Because the Defendants' agreements, understandings and conspiracies were kept secret, the Plaintiff and the Class Members were unaware of the Defendants' unlawful conduct until at least the May 2020 Subpoenas.

Unjust Enrichment

110. Further, and in the alternative, the Plaintiff and the Class Members are entitled to claim and recover based on equitable and restitutionary principles.
111. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiff and the Class Members have suffered a corresponding deprivation in the amount of the Overcharge.
112. Since the Overcharge that was received by the Defendants from the Plaintiff and the Class Members resulted from the Defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of the Overcharge. In particular, any contracts upon which the Defendants purport to rely on to receive the Overcharge are void because they are (1) prohibited by statute, entered into with the object of doing an act prohibited by statute, and/or require performance of an act prohibited by statute, (2) in contravention of common law principles, and/or (3) in contravention of public policy, in that they are, amongst other things, in restraint of trade.
113. The Defendants are required to make restitution to the Plaintiff and the Class Members for the entire Overcharge because, among other reasons:
 - (a) the Defendants were unjustly enriched by receipt of the Overcharge;
 - (b) the Class Members suffered a deprivation by paying the Overcharge;

- (c) the Defendants engaged in criminal conduct and committed wrongful acts by engaging in the Conspiracy Acts alleged in this claim;
 - (d) the Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
 - (e) justice and good conscience require restitution;
 - (f) the integrity of the marketplace would be undermined if the court did not order restitution; and
 - (g) there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.
114. Equity and good conscience require the Defendants to make restitution to the Plaintiff and the Class Members of the artificially-induced Overcharge from the sale of Beef, or alternatively to disgorge that amount to the Plaintiff and the Class Members.

Claims of the Quebec Subclass

115. In committing the Conspiracy Acts, the Defendants, and each of them, committed a fault related to their obligation not to cause injury to others.
116. The Defendants' conduct caused injury in Québec by artificially inflating the prices of Beef sold in Quebec during the Class Period.
117. Therefore, the Defendants' conduct gives rise to extracontractual civil liability under article 1457 of the *Civil Code of Quebec*.

Punitive Damages

118. The Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in contumelious disregard of the Plaintiff's rights and the rights of the Class Members. As such, the Defendants are liable to pay aggravated, exemplary, and punitive damages.

JURISDICTION

119. There is a real and substantial connection between British Columbia and Canada and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *CJPTA* in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and Canada and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

- (a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia and Canada;
- (b) concerns a tort committed in British Columbia and Canada;
- (c) concerns a business carried on in British Columbia and Canada.

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Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1p

Date: 18/02/2022



Signature of lawyer
for plaintiff

Re Reidar Mogerman, Q.C.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants, outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiff and Class Members plead and rely upon the *CJPTA* in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) of the *CJPTA* because this proceeding:

- (a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia and Canada;
- (b) concerns a tort committed in British Columbia and Canada;
- (c) concerns a business carried on in British Columbia and Canada.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy between the Defendants and their co-conspirators to fix, maintain, control, or lessen the production or supply of Beef and fix, raise, maintain, or stabilize the price of Beef sold to purchasers in Canada. During the Class Period, the Defendants and their co-conspirators participated in illegal and secretive meetings and made agreements relating to the prices and production of supply of Beef. The Plaintiff and the Class Members suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, RSBC, 1996 c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28