

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

*IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION*

This Document Relates to:

*CONSUMER INDIRECT PURCHASER  
PLAINTIFF ACTION*

No. 0:22-md-03031 (JRT/JFD)

**FURTHER DECLARATION OF  
SHANA E. SCARLETT IN SUPPORT  
OF CONSUMER INDIRECT  
PURCHASER PLAINTIFFS’ REPLY  
IN SUPPORT OF MOTION FOR  
CLASS CERTIFICATION**

I, Shana E. Scarlett, state under oath, as follows:

1. I am a partner at Hagens Berman Sobol Shapiro LLP. I am admitted to this Court *pro hac vice*, and am one of the Interim Co-Lead Counsel along with Lockridge Grindal Nauen P.L.L.P. for the Consumer Indirect Purchaser Plaintiffs appointed by the Court to represent the Consumer Indirect Class in this litigation. I submit this declaration in further support of the Consumer Indirect Purchaser Plaintiffs’ Motion for Class Certification (ECF No. 867) and in Opposition to Defendants’ *Daubert* Motion to Exclude Certain Portions of the Expert Report and Testimony of Dr. Russell W. Mangum (ECF No. 1146). Based on personal knowledge or discussions with counsel in my firm of the matters stated herein, if called upon, I could and would competently testify thereto.

2. Attached hereto are true and correct copies of the following exhibits:

<b>Exhibit Number</b>	<b>Description</b>	<b>Filed Under Seal</b>
104.	Excerpts of Certified Deposition Transcript of Lauren J. Stiroh, taken in the above-captioned action on March 19, 2025	X

<b>Exhibit Number</b>	<b>Description</b>	<b>Filed Under Seal</b>
105.	Excerpts of Certified Deposition Transcript of William McLaurin, taken in the above-captioned action on June 25, 2024	X
106.	Excerpts of Certified 30(b)(6) Deposition Transcript of Action Meat Distributors, Inc. by Lantz Howell, taken in the above-captioned action on April 5, 2024	X
107.	Excerpts of Certified 30(b)(6) Deposition Transcript of Alex Lee, Inc. and Related Entities by Don Underwood, taken in the above-captioned action on May 8, 2024	X
108.	Excerpts of Certified 30(b)(6) Deposition Transcript of Associated Grocers of the South, Inc. by Michael Hambright, taken in the above-captioned action on March 20, 2024	X
109.	Excerpts of Certified 30(b)(6) Deposition Transcript of Brookshire Brothers, Inc. by Randy Deal, taken in the above-captioned action on March 26, 2024	X
110.	Excerpts of Certified Deposition Transcript of Hy-Vee, Inc.'s 30(b)(6) Representative Jason Pride (Vol. 1), taken in the above-captioned action on July 31, 2024	X
111.	Excerpts from the Certified Deposition Transcript of Cindy Abernathy, taken in the above-captioned action on January 10, 2024	
112.	Excerpts from the Certified Deposition Transcript of Leigh Tiller, taken in the above-captioned action on December 6, 2024	
113.	Excerpts from the Certified Deposition Transcript of Karl Skold, taken in the above-captioned action on May 9, 2024	X
114.	Excerpts from the Certified Deposition Transcript of Donald Kieffer, taken in the above-captioned action on March 21, 2024	X
115.	Excerpts from the Certified Deposition Transcript of Jerry Holbrook, taken in the above-captioned action on March 13, 2024	X

Exhibit Number	Description	Filed Under Seal
116.	Excerpts from the Certified Deposition Transcript of Todd Nogelmeier, taken in the above-captioned action on June 28, 2024	X
117.	Document Bates-numbered TYSONBEEF02156223, produced in the above-captioned action	X
118.	Document Bates-numbered TYSONBEEF02438065, produced in the above-captioned action	X
119.	Excerpts from Document Bates-numbered JBS-0000409333-95, produced in the above-captioned action	X
120.	Document Bates-numbered CARGILL000836278-88, produced in the above-captioned action	X
121.	Excerpts from the Certified Deposition Transcript of Hal Sankey, taken in the above-captioned action on November 6, 2024	X
122.	Document Bates-numbered JBS-0000806473-78, produced in the above-captioned action	X
123.	Excerpts from the Certified Deposition Transcript of Steven Cohron, taken in the above-captioned action on January 7, 2024	X
124.	Document Bates-numbered CARGILL001341910-11, produced in the above-captioned action	X
125.	Document Bates-numbered NationalBeef-00558908-909, produced in the above-captioned action	X
126.	Document Bates-numbered TYSONBEEF00479028, produced in the above-captioned action	X
127.	Document Bates-numbered TYSONBEEF00414270, produced in the above-captioned action	X
128.	Document Bates-numbered TYSONBEEF00779844-47, produced in the above-captioned action	X
129.	Document Bates-numbered JBS-0000087380-81, produced in the above-captioned action	X

Exhibit Number	Description	Filed Under Seal
130.	Document Bates-numbered CARGILL001366712, produced in the above-captioned action	X
131.	Excerpts from the Certified Deposition Transcript of Al Byers, taken in the above-captioned action on June 26, 2024	X
132.	Document Bates-numbered NationalBeef-00616780-87, produced in the above-captioned action	X
133.	Excerpts from the Certified Deposition Transcript of Russell W. Mangum, III, Ph.D., taken in the above-captioned action on January 2, 2025	X
134.	Excerpts from publication: American Bar Association, <i>Proving Antitrust Damages, Legal and Economic Issues</i> (Third Ed. 2017)	

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: April 4, 2025

*s/ Shana E. Scarlett*  
SHANA E. SCARLETT

ECF No. 1265  
Unsealed by  
Agreement of the  
Parties

**EXHIBIT 104  
SUBMITTED  
UNDER SEAL**

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: CATTLE AND BEEF  
ANTITRUST LITIGATION

Civil No. 22-MD-03031

-----x

\*\*\* HIGHLY CONFIDENTIAL \*\*\*

Videotape Deposition of LAUREN  
J. STIROH, PH.D. taken on behalf of  
the Plaintiffs at the offices of  
Perkins Coie LLP, 1155 Avenue of the  
Americas, New York, New York on March  
19, 2025, beginning at 10:19 a.m.

REPORTED BY:

Erica Ruggieri, CSR, CCR, RPR

1 STIROH - HIGHLY CONFIDENTIAL

2 MR. STOJILKOVIC: I think you  
3 are harassing the witness. If you  
4 want to ask it a different way, I  
5 will let her answer. I just think  
6 that we can read the question back.  
7 I think a judge would not let that  
8 question be asked that way.

9 MR. ZAPALA: I think that the  
10 witness, Costa, should be directed  
11 to answer the question. It's a  
12 super simple question, and she's  
13 dodging the question because she  
14 knows what the answer is.

15 MR. STOJILKOVIC: No, it's --

16 MR. ZAPALA: So I'll ask it  
17 again.

18 Q. Is it your testimony, after  
19 having been employed and paid  
20 significant sums of money by a  
21 Defendant in the broiler's case, as  
22 an economic expert in that case, is  
23 it your testimony that you don't  
24 know one way or another whether  
25 there were negotiations between

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   direct purchaser customers and the  
3                   Defendants in the broiler industry,  
4                   is that your testimony?

5                   A.       Everything that you just  
6                   said is not my testimony.

7                   As I answered before, my  
8                   assignment in the broiler's case was  
9                   different. It wouldn't surprise me  
10                  if there were negotiations, but I am  
11                  not the person that can give you  
12                  that testimony here today because I  
13                  don't remember looking at any  
14                  individual pricing patterns the way  
15                  I did in this case.

16                  I'm sure there are other  
17                  experts that could answer that for  
18                  you. If you have my report or want  
19                  me to take a look at that, I could  
20                  refresh myself on what data I looked  
21                  at.

22                  I recall looking at production  
23                  decisions that Wayne Farms either  
24                  made and then the production output  
25                  that was different from the decision

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   because of factors relating to  
3                   disease or weather. But I just  
4                   don't remember offering testimony  
5                   about customer negotiations. But  
6                   again, it wouldn't surprise me if it  
7                   was there. I'm just not the person  
8                   who could affirm it for you.

9                   Q.       Yeah, But my question  
10                  wasn't whether you provided  
11                  testimony on it. My question was  
12                  whether you recall seeing evidence  
13                  of it. That's different, right?

14                 MR. STOJILKOVIC:  Objection,  
15                  asked and answered.

16                 A.       I hear the difference in  
17                  your words. But my answer is the  
18                  same. If I -- if I -- what I  
19                  provide the testimony on is also the  
20                  subject of things that I have  
21                  studied and taken into account and  
22                  might have a better recollection of.

23                 In this case, I've got charts  
24                  that show individual pricing patterns  
25                  by customer. I don't remember

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   having done something similar in the  
3                   work for broilers that might give me  
4                   a better recollection of what  
5                   individual outcomes were. It was  
6                   just not part of what my work was.

7                   And as far as I can tell you  
8                   sitting here today, I don't think I  
9                   can give you anymore than that.

10                  Q.     You submitted an expert  
11                  report in the turkey case too,  
12                  correct?

13                  A.     Yes.

14                  Q.     Can you recall seeing  
15                  evidence of negotiations between the  
16                  Defendants and their direct  
17                  purchasers customers in that case?

18                  A.     Yes.

19                  Q.     And the class was certified  
20                  in that case, correct?

21                  A.     Yes.

22                  Q.     All right. You submitted  
23                  an expert report in pork, correct?

24                  A.     I did.

25                  Q.     You recall seeing evidence

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   in that case of negotiations between  
3                   Defendant's and their direct  
4                   purchaser customers?

5                   A.     I think, unfortunately, I'd  
6                   have to go and look at what I did in  
7                   pork as well. My testimony was not  
8                   at the class certification stage. I  
9                   expect there were individual  
10                  negotiations. I don't remember  
11                  what, if any, role, it played in my  
12                  opinions or what role that had in  
13                  the class certification decision.

14                  Q.     And as you point out in the  
15                  pork case, the class, the direct  
16                  purchaser class, was certified,  
17                  correct?

18                  A.     I believe so, yes.

19                  Q.     And you submitted an expert  
20                  report in the HDD's case, correct?

21                  A.     I did, yes.

22                  Q.     And do you recall evidence  
23                  of negotiations between the  
24                  defendants and their direct  
25                  purchaser clients in the HDD's

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2 this case, are you?

3 A. I am not. It is my  
4 understanding based -- including on  
5 work that I, myself, have done, that  
6 when there are -- even when there  
7 are class actions, there may be  
8 individual parties that bring suits  
9 on their own and the methods and  
10 information that they use to  
11 establish impact and damages may  
12 differ from the methods and  
13 information that a class expert may  
14 use.

15 Q. Or they may be the same,  
16 right?

17 A. Potentially they would be  
18 the same. Except in a situation  
19 where the models put forward by a  
20 plaintiff's expert would not show  
21 damages to an individual DAP then  
22 they would not anticipate that they  
23 would bring that model.

24 Q. All right. Directing your  
25 attention to paragraph 80. Just

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2                   more than Greenfield entry. That  
3                   opinion, notwithstanding, it doesn't  
4                   impact the opinions that I have with  
5                   respect to the individual issues of  
6                   individual Plaintiffs.

7                   Q.     So the answer is no, that  
8                   at least at this stage of the case,  
9                   class certification, you do not have  
10                  an opinion on whether or not  
11                  barriers to entry exist for the beef  
12                  market?

13                  A.     I do not have an opinion  
14                  that -- I imagine I would if there  
15                  were such a thing as class  
16                  certification hearing in this  
17                  matter, that I would offer as part  
18                  of my direct testimony if I were to  
19                  have an opportunity to explain my  
20                  findings and the bases for them, I  
21                  don't think that would be something  
22                  I would talk about. I do have an  
23                  opinion on barriers to entry  
24                  generally and how they factor into  
25                  an antitrust case.

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2 And I noted that in this  
3 matter the three Plaintiffs' experts  
4 that I am addressing, when they talk  
5 about barriers to entry, they are  
6 talking about Greenfield entry and I  
7 have an opinion that that's not the  
8 relevant threshold in an antitrust  
9 case. What you care about is  
10 whether there are barriers to  
11 expansion or some ability of  
12 somebody outside of the alleged  
13 cartel to compete on price. And  
14 that doesn't -- isn't always a brand  
15 new entrant to the brand new entrant  
16 is not always relevant to that  
17 analysis, although, it's frequently  
18 part of the discussion.

19 Q. In the opinion that you've  
20 offered in this case at class  
21 certification, do you offer an  
22 opinion on what percent of the beef  
23 processing capacity is controlled by  
24 the defendant during the relevant  
25 time period?

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2 A. I do not. I have a  
3 recollection that I think it is  
4 Dr. Williams that says about 65 to  
5 70 percent of the capacity is under  
6 the control of the Defendants.  
7 There are other measures in other  
8 reports about the amount of sales.  
9 I am not offering a contradictory  
10 opinion.

11 I note that when there are  
12 sales outside of the -- of an  
13 alleged cartel group, that that can  
14 still have an influence on price and  
15 generates the possibility that  
16 Plaintiffs that purchased from  
17 defendants may still pay a  
18 competitive price if they have  
19 access to non-defendant supply and  
20 if there are non-defendants that can  
21 accommodate additional sales to  
22 additional purchasers.

23 Q. And on pass through, you  
24 don't calculate pass-through levels  
25 for any indirect purchaser; is that

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   pass through. I noted that that is  
3                   one of the things that they said. I  
4                   do not offer a different means of  
5                   calculating pass through in this  
6                   case.

7                   Q.     Now, your report uses the  
8                   phrase "single on varying  
9                   overcharge." Do you recall that?

10                  A.     I do.

11                  Q.     Where does that phrase come  
12                  from?

13                  A.     I don't know that it comes  
14                  from anything other than my -- what  
15                  I would call what Plaintiffs'  
16                  experts have done in their  
17                  overcharge regression where the  
18                  overcharge in 2015 is the same as in  
19                  2010 and every period in between --  
20                  sorry, I said that wrong. 2015 and  
21                  2020 and every period in between.

22                  Q.     Now, you recognize that  
23                  Dr. Mangum also looked at annual  
24                  effects as a sensitivity analysis,  
25                  correct?

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2 A. Yes.

3 Q. And do you address that  
4 anywhere in your report?

5 A. I don't have a specific  
6 analysis about his individual year  
7 affects. The critiques that I have  
8 about those averages applying to all  
9 customers still apply. He doesn't  
10 do a test to see where -- I think in  
11 2015 he gets his substantially lower  
12 overcharge than other years.

13 Whether all customers in 2015 paid  
14 an overcharge, it -- the discussion  
15 that I had earlier with the prior  
16 questioner about the timing of the  
17 conduct and the impact, that is not  
18 solved by Dr. Mangum's breaking up  
19 the overcharge by year. It's a  
20 mismatch between the theory and the  
21 model.

22 What he's doing demonstrates  
23 that the average doesn't apply to  
24 all purchasers and we know that  
25 there are purchasers that bought in

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   different periods, not all of the  
3                   class bought throughout the entirety  
4                   of the period.

5                   Q.     Other than your general  
6                   critiques, however, you don't  
7                   specifically address the sensitivity  
8                   test that Dr. Mangum did to look at  
9                   annual affects; is that right?

10                  A.     I don't propose a different  
11                  way of looking at annual affects.  
12                  Primarily I am focused on whether  
13                  they are given the models that they  
14                  have put forward, do their models  
15                  establish impact on all of the  
16                  members of their respective classes,  
17                  or for the overcharge model, all of  
18                  the direct purchasers in the -- that  
19                  are in the supply chain. And it is  
20                  my opinion that they do not, and  
21                  that opinion holds for the reasons  
22                  that I give in my report for the --  
23                  Dr. Mangum's sensitivity test.

24                  It's my understanding that  
25                  what he's putting forward as his

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2 regressions; is that correct?

3 A. It is.

4 Q. Column D is then your test  
5 of the customer specific  
6 interactions; is that right?

7 A. Correct.

8 Q. Now, anywhere in your  
9 report, do you report the number of  
10 DPP class members that pass one or  
11 the other of your tests?

12 A. I do not. I'm looking at  
13 the fact that either test reveals  
14 the presence of uninjured class  
15 members, and I do not look at a  
16 threshold of direct purchasers who  
17 are shown to have an overcharge in  
18 one -- at least one of the tests.  
19 It is my opinion that the models, as  
20 they stand, reveal the presence of  
21 uninjured class members and that the  
22 models, as they stand, have  
23 additional flaws such that what they  
24 are purporting to measure as an  
25 overcharge is not reliably

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   considered an overcharge even in the  
3                   framework that they are being  
4                   presented.

5                   Q.     So it's your opinion that  
6                   if a DPP class member shows a  
7                   statistically significant overcharge  
8                   under column C, your individual  
9                   customer regression, but not under  
10                  column D, your customer specific  
11                  interaction test, then that direct  
12                  purchaser class member is not  
13                  injured; is that right?

14                  A.     That is not quite right.  
15                  My -- if they are -- have a  
16                  statistically significant and  
17                  positive overcharge in one column  
18                  but not the other, all I can tell  
19                  you is that the model does not  
20                  reliably tell you there's an  
21                  overcharge for that customer. The  
22                  model -- the tests of -- both of the  
23                  tests reveal the presence of  
24                  uninjured class members even if the  
25                  model were correct.

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2 They -- as an economic matter, that  
3 wouldn't happen, they would choose  
4 to do something else.

5 Q. Dr. Stiroh, I'm interested  
6 in the underpinnings of your opinion  
7 in this case. Did you do any  
8 independent analysis in Figure 7.2  
9 regarding the underpayment rates to  
10 the cattle class?

11 A. My analysis in Figure 7.2,  
12 as you can see from the headings,  
13 incorporates the underpayment rates  
14 that Dr. Lamb opines, and it is  
15 within the section that combined the  
16 combined set of conduct based on the  
17 outcomes that I -- that are being  
18 put forward in various phases of the  
19 case are not economically rational  
20 from Defendant's point of view.  
21 That means they would -- you would  
22 not expect those to arrive -- arise  
23 in a market free of the conduct  
24 alleged.

25 Q. But you did no independent

1                   STIROH - HIGHLY CONFIDENTIAL  
2                   analysis other than borrow the  
3                   opinions of Dr. Lamb to come up with  
4                   Figure 7.2; is that correct?

5                   MR. STOJILKOVIC:   Objection to  
6                   the form.

7                   A.     I think it is not correct.  
8                   The independent analysis that I'm  
9                   doing is Figure 7.2.  The inputs of  
10                  it come from Plaintiffs' experts'  
11                  reports deliberately.  I am showing  
12                  that what Plaintiffs' experts have  
13                  put forward individually are not, as  
14                  a whole, economically rational.

15                  Q.     But you understand each of  
16                  the Plaintiffs are in separate  
17                  cases, correct?

18                  A.     I understand that there are  
19                  separate complaints.  That all of  
20                  the downstream complaints all have  
21                  some similarity in saying that the  
22                  challenged conduct suppressed cattle  
23                  prices.  That means but-for the  
24                  conduct, their theory would be  
25                  cattle prices would be higher.

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STATE OF NEW YORK                    )  
  ss. :  
COUNTY OF NEW YORK                )

I, ERICA L. RUGGIERI, RPR and a  
Notary Public within and for the State  
of New York, do hereby certify:

That I reported the proceedings  
in the within-entitled matter, and  
that the within transcript is a true  
record of such proceedings.

I further certify that I am not  
related by blood or marriage, to any  
of the parties in this matter and  
that I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 26th day of  
March, 2025.



ERICA L. RUGGIERI, RPR, CSR, CLR

# Exhibit 105

Filed Under Seal

# Exhibit 106

Filed Under Seal

# Exhibit 107

Filed Under Seal

# Exhibit 108

Filed Under Seal

# Exhibit 109

Filed Under Seal

# Exhibit 110

Filed Under Seal

# **EXHIBIT 111**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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IN RE: CATTLE AND BEEF )  
ANTITRUST LITIGATION ) Case No. :  
 ) 22-md-3031 (JRT/JFD)  
This Document Relates To: )  
Consumer Indirect Purchaser )  
Plaintiff Actions )  
\_\_\_\_\_ )

REMOTE 30(b)(1) DEPOSITION OF CINDY ABERNATHY

Taken via Zoom  
On Wednesday, January 10, 2024  
At 10:01 a.m.

Reported by: Emily A. Gibb, RPR, CSR, CCR  
Certified: Utah, Nevada, California, Idaho Washington

1 of receipts for beef purchases, and I just wanted to  
2 ask if you had any other receipts for beef purchases  
3 from before June of 2020 that you hadn't provided to  
4 your legal counsel.

5 A. I believe I've provided everything I could.  
6 A lot of times when they asked me if I wanted a  
7 receipt at the farmers' market, I said no and didn't  
8 get one. So that's why only a couple of those were  
9 turned in.

10 MR. STRATFORD: Okay. No other questions  
11 from me.

12 MS. WOLF: Okay. We have a couple  
13 questions.

14

15 EXAMINATION

16 BY MS. WOLF:

17 Q. Ms. Abernathy, thanks very much for your  
18 time today.

19 You testified earlier that you had a  
20 preference for organic, grass-fed, and humanely  
21 raised beef; is that right?

22 A. Yes.

23 Q. Even though those are your preferences, do  
24 you occasionally buy conventionally raised beef?

25 A. Yes.

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REPORTER'S CERTIFICATE

I, the undersigned Certified Shorthand Reporter, holding a valid and current license issued by the State of Utah, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed under my direction and supervision.

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's certificate null and void.

IN WITNESS WHEREOF, I have subscribed my name on this date: January 16, 2024.



Emily A. Gibb

Certified Shorthand Reporter

# **EXHIBIT 112**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA  
IN RE CATTLE AND BEEF )  
ANTITRUST LITIGATION ) Case No.  
) No. 22-md-3031 (JRT/JFD)  
)  
This Document Relates )  
To: )  
Consumer Indirect )  
Purchaser Plaintiff )  
Actions. )  
-----)

FRIDAY, DECEMBER 6, 2024

- - -

Remote Deposition of LEIGH TILLER, beginning at  
9:08 a.m., before Nancy J. Martin, a Registered Merit  
Reporter, Certified Shorthand Reporter. All parties  
appeared remotely.

REPORTED BY NANCY J. MARTIN  
CSR. NO. 9504, RMR, RPR  
PAGES 1 - 59

1 Ashton Place.

2 Q. Are you familiar with grades of beef set by  
3 the USDA?

4 A. Vaguely, yes.

5 Q. Like prime, choice, select, does that ring a  
6 bell?

7 A. Yes.

8 Q. Do you ever make beef purchases based on  
9 those grades?

10 A. I have, yes.

11 Q. Can you tell me more about that.

12 A. Usually the steaks I buy are -- have a little  
13 sticker that says "Choice" or "Prime." Those are the  
14 two words that I recall, choice or prime. They have  
15 little stickers on the packages that indicate that  
16 they're a prime cut.

17 Q. Of the steaks that you purchase at Kroger,  
18 how often are they labeled as prime?

19 A. Almost always actually.

20 Q. So do --

21 A. Unless I had them cut for me. Quantify  
22 that -- qualify that.

23 Q. Okay. In which case it doesn't have a label?

24 A. No. They just cut them and wrap them up for  
25 me and just give them to me, the weight.

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C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.



Nancy J. Martin, RMR, CSR

Dated: December 13, 2024

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

# Exhibit 113

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# Exhibit 118

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# Exhibit 120

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# Exhibit 121

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# Exhibit 123

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# Exhibit 126

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# Exhibit 127

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# Exhibit 128

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# Exhibit 129

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# Exhibit 130

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# Exhibit 131

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# Exhibit 132

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ECF No. 1265-27  
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Version

**EXHIBIT 133  
SUBMITTED  
UNDER SEAL**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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IN RE CATTLE AND BEEF ) No. 22-md-3031 (JRT/JFD)  
ANTITRUST LITIGATION, )  
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\*\*\* CONFIDENTIAL \*\*\*

VIDEOTAPED DEPOSITION OF  
RUSSELL W. MANGUM, III, PH.D.

Taken on behalf of Defendants at  
611 Anton Boulevard, Costa Mesa, California,  
9:48 a.m. to 7:22 p.m.  
Thursday, January 2, 2025  
Volume I

Stenographically Reported By:  
Melissa M. Villagran, RPR  
CSR No. 12543  
Job No. 7085628  
PAGES 1 - 405

CONFIDENTIAL

1 Q Do you have the same level of confidence with  
2 respect to the individual one year analyses that you  
3 did?

4 A If forced to come up with a model that does  
5 demand more parameter estimates to give something 02:19:38  
6 per year. Out of my desire to do that, I say I can  
7 make this change and run this model this way. And  
8 if somebody wants to know, I would make sure to  
9 communicate, but we're requiring more of the model,  
10 we're asking for more parameter estimates, they both 02:19:54  
11 can be used with regression. But I don't have the  
12 feeling that arbitrarily breaking up by year is  
13 driven economically. It -- it's got a basis that  
14 motivates doing that.

15 Q Is your opinion that each direct purchaser 02:20:10  
16 overpaid [REDACTED] percent for each of their individual  
17 beef purchases during the class period?

18 MR. POZAN: Objection to form, asked and  
19 answered and mischaracterizes prior testimony.

20 THE DEPONENT: My opinion is the [REDACTED] percent 02:20:21  
21 is the proper measure for coming up with a -- a  
22 measured effect during the class period that can,  
23 yes, then be applied to every -- would -- could be  
24 applied to every direct purchaser during that time  
25 period for every purchase. 02:20:37

CONFIDENTIAL

1 BY MR. CHIAPPETTA:

2 Q Well, let's say, for example, that there was  
3 a conspiracy in the upstream market to try to drive  
4 down the price of cattle.

5 A Uh-huh.

06:42:02

6 Q And that was executed and it drove down the  
7 price of cattle, which is the number one input cost  
8 for all of the packers and the non-defendant  
9 packers.

10 A Uh-huh.

11 Q And as a result of that -- and let's assume  
12 there's no conspiracy downstream.

13 A Uh-huh.

14 Q And as a result of the reduction in the price  
15 of cattle and competition, that leads to a reduction  
16 in the price of beef.

06:42:19

17 A Okay.

18 MR. POZAN: I'll just object really quickly.  
19 Incomplete hypothetical.

20 THE DEPONENT: Your hypothetical is that  
21 there was a conspiracy, that its effects are limited  
22 to dropping the -- getting a decrease in the price  
23 of cattle. But because of the price of cattle  
24 decrease, that brought prices down.

06:42:31

25 I don't see how that's rational or logical.

06:42:51

CONFIDENTIAL

1           Because if the idea was to coordinate in a  
2           conspiracy to bring your input prices down, and  
3           then, once they went down, you compete vigorously  
4           such that you got nothing out of it, I would say,  
5           "What kind of conspiracy are we talking about?"           06:43:04

6           BY MR. CHIAPPETTA:

7           Q    Well, you don't necessarily get nothing out  
8           of it, though, right?

9           I mean, to the extent that they drive down  
10          costs by 20 percent and they, you know, pass through   06:43:13  
11          some of that cost reduction, you increase --  
12          increase your margins.

13          Unless you pass it all through so --

14          A    So I see.   So --

15          Q    -- you don't you increase your margins.           06:43:21

16          A    -- maybe you -- you keep some but you --

17          Q    Yeah.

18          A    -- drop some down.   I suppose that's  
19          feasible.   I just -- I'm not aware that it -- being  
20          applicable to this case, but...                           06:43:32

21          But it's different than what I thought you  
22          meant earlier about a conspiracy.

23          You're talking about a -- a different  
24          marketplace, let's say, or something.   A conspiracy  
25          in a different market, for example, cattle prices,       06:43:43

CONFIDENTIAL

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, Registered  
3 Professional Reporter, Certified Live Note Reporter,  
4 do hereby certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth;  
7 that any witnesses in the foregoing proceedings,  
8 prior to testifying, were duly sworn; that a record  
9 of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; that the foregoing transcript is a true  
12 record of the testimony given.

13 Further, that if the foregoing pertains to  
14 the original transcript of a deposition in a Federal  
15 Case, before completion of the proceedings, review  
16 of the transcript [x] was [ ] was not requested.  
17 I further certify I am neither financially  
18 interested in the action nor a relative or employee  
19 of any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date  
21 subscribed my name.

22  
23 Dated: January 6 2025  
24



25 MELISSA M. VILLAGRAN

CSR No. 12543 RPR

CONFIDENTIAL

1 KYLE POZAN

2 Kjpozan@locklaw.com

3 January 6, 2025

4 RE: IN RE CATTLE AND BEEF ANTITRUST LITIGATION

5 1/2/2025, RUSSELL W. MANGUM, III, PH.D. (#7085628)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 Calendar-PNW@Veritext.com

16  
17 Return completed errata within 30 days from  
18 receipt of testimony.

19 If the witness fails to do so within the time  
20 allotted, the transcript may be used as if signed.

21

22 Yours,

23 Veritext Legal Solutions

24

25

### Beef Class Certification Deposition Errata

Case Name: In Re: Beef Antitrust Litigation  
 Date of Deposition: January 2, 2025  
 Witness Name: Russell Mangum

Pg.	Original Text	Corrected Text	Explanation
34:25	cattle as one of the end points.	cattle as one of the <b>inputs</b> .	Typo / text correction
36:25	relates to the issue of rather and to what extent	relates to the issue of <b>whether</b> and to what extent	Typo / text correction
72:17	multiple episodics.	multiple <b>episodes</b> .	Typo / text correction
75:21	about Napa	about <b>Nampa</b>	Typo / text correction
86:19	allegations is the supply is effected because of the	allegations is the supply is <b>affected</b> because of the	Typo / text correction
102:16	I mean, it's not possible to do something	I mean, it's not <b>impossible</b> to do something	Typo / text correction
125:17 - 19	do we drop our prices, cattle prices, if cattle costs go low	do we drop our prices, <b>beef</b> prices, if cattle costs go low	Clarification
147:10 - 12	Documents that refer to them, like -- like Excel was mentioned as some purchases that JBL made, for example, in acquiring the Nampa plant.	Documents that refer to them, like -- like <b>XL Foods</b> was mentioned as some purchases that <b>JBS</b> made, for example, in acquiring the Nampa plant.	Typo / text correction
158:1	at the box and the cattle prices dropping.	<b>up</b> the box and the cattle prices dropping.	Typo / text correction
181:19 - 21	I talk about understanding how collusion -- collusion can work, how it ask raise prices, things like that.	I talk about understanding how collusion -- collusion can work, how it <b>can</b> raise prices, things like that.	Typo / text correction
185:5	in it, so it's not explicitly terministic, but it	in it, so it's not explicitly <b>deterministic</b> , but it	Typo / text correction
197:13 - 14	It -- it's got a basis that motivates doing that	It -- it's got <b>no</b> basis that motivates doing that	Clarification
198:24	There's various types that are pulled on, things	There's various types that are pulled <b>out</b> , things	Clarification
210:10 - 12	We have overcharges. There's a low of one seven, I think, the last year.	We have overcharges. There's a low of <b>1.7 percent</b> , I think, the last year.	Clarification
212:4 - 6	But I think it has to do with, if your somebody who isn't alleged to have done something wrong in this case, let's say a	But I think it has to do with, if you're somebody who isn't alleged to have done something wrong in this case, let's say a	Typo / text correction
249:16	so I -- I would defor	so I -- I would <b>defer</b>	Typo / text correction
280:14 - 16	Yes, it was part of a larger purchase from Excel foods of multiple locations and Nampa was one of them.	Yes, it was part of a larger purchase from <b>XL Foods</b> of multiple locations and Nampa was one of them.	Typo / text correction
281:17 - 18	buying it from Jay Bell	buying it from <b>JBS</b>	Typo / text correction

On this 5th day of February 2025, I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746)



Russell W. Mangum, Ph. D.

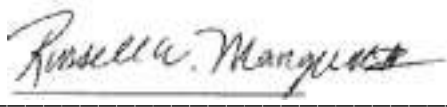
CONFIDENTIAL

1 IN RE CATTLE AND BEEF ANTITRUST LITIGATION

2 RUSSELL W. MANGUM, III, PH.D.(#7085628)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, RUSSELL W. MANGUM, III, PH.D., do hereby declare that I  
5 have read the foregoing transcript, I have made any  
6 corrections, additions, or changes I deemed necessary as  
7 noted above to be appended hereto, and that the same is  
8 a true, correct and complete transcript of the testimony  
9 given by me.

10 

11 Feb 5, 2025

12 RUSSELL W. MANGUM, III, PH.D.

Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

18 \_\_\_\_\_  
19 NOTARY PUBLIC

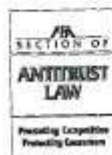
# **EXHIBIT 134**



# Proving Antitrust Damages

Legal and  
Economic Issues

Third Edition



Cover design by ABA Design.

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caused the same harms through lawful means; what matters is what they did and likely would have done.<sup>24</sup> For instance, if the violation is cartel behavior and the claimed harm artificially inflated prices, it is not relevant that a member of the cartel could theoretically have raised prices acting alone absent the cartel, unless it could be shown that such a cartelist would have done so regardless.

### C. Methods for Quantifying Damages

Plaintiffs may rely on one or more of a number of methodologies to quantify the damages arising from anticompetitive conduct. In every case, however, courts require that the economic model used must isolate the effect of the anticompetitive conduct.<sup>25</sup> The process of separating out effects of the challenged conduct from other unrelated factors is typically accomplished by comparing the experience in the actual world and the experience the plaintiff likely would have had in a but-for world free of the challenged anticompetitive conduct, holding all other factors the same.

A variety of models can be used to re-construct the but-for world, including “Before-During-After” models, “Yardstick” models, Projection-based models, and Cournot or Bertrand simulation models. These are described in more detail in later chapters, but an overview is provided here.

*Before-During-After Models.* These models seek to isolate harm flowing from the challenged anticompetitive conduct by comparing the plaintiff’s experience in the same market before, or after, the misconduct

- 
24. *See, e.g.,* *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555 (1931). In *Story Parchment*, the plaintiff was permitted to seek damages based on the entire difference between prevailing prices before and after the alleged predation, despite defendants’ claim that they could have lowered prices anyway by independent (and hence lawful) means. *See id.* at 561-62. So long as “the old prices were reasonable, and that they would not have changed by reason of any economic condition, but would have been maintained except for the unlawful acts” of the defendants, the jury might base damages on the difference between the old price and the new one. *Id.* *See also* *H.J., Inc. v. ITT Corp.*, 867 F.2d 1531, 1550 (8th Cir. 1989) (defendant may not challenge damage model’s assumption of prices at levels before defendant’s predatory price cutting by asserting that defendant could have competed with lower but non-predatory prices).
25. *See, e.g.,* *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013); *see also infra* n.45 (“a defendant whose wrongful conduct has rendered difficult the ascertainment of the precise damages suffered by the plaintiff, is not entitled to complain that they cannot be measured with the same exactness and precision as would otherwise be possible”).

*Quantifying Damages*

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with its experience during the time the conduct was ongoing, which is sometimes referred to as the “damages period.” The “Before-During” model acknowledges the likelihood that for a plaintiff who participated in the *same* market before or after the damages period, its actual experience in the time period before the violation may serve as a proxy for the plaintiff’s but-for experience during the damages period.<sup>26</sup> A similar logic applies to the “During-After” model, where, the plaintiff’s actual experience after the damages period may serve as a proxy.<sup>27</sup>

*Yardstick Models.* These models seek to isolate harm flowing from the challenged anticompetitive conduct by comparing the experience of the plaintiff in a market subject to anticompetitive conduct to the experience of the plaintiff, or another firm, in a comparable market unaffected by the defendant’s violation.<sup>28</sup> The yardstick employed must be comparable to the industry and firm in question.<sup>29</sup> The yardstick method is particularly useful where the before-during-after approach is inappropriate, for example where the plaintiff is a start-up that never began operations in the

- 
26. *See, e.g.,* *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 259-64 (1946) (comparison of plaintiff’s profits before the conspiracy to its profits during the conspiracy); *Story Parchment*, 282 U.S. at 561-62 (comparison of plaintiff’s prices before a predatory pricing conspiracy to prices during the conspiracy); *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359, 376-79 (1927) (comparison of plaintiff’s profits before its unlawful termination to profits after the termination); *In re Mushroom Direct Purchaser Antitrust Litig.*, No. 06-0620, 2015 WL 5767415, at \*7 (E.D. Pa. July 29, 2015) (“The purpose of separating conduct free periods and conduct periods is to create a benchmark conduct free period as an evidentiary foundation for inferring what the prices would have been in the [conduct] period[s] but for the [alleged] illegal activity.”) (internal quotes omitted).
27. *See, e.g.,* *Independence Tube Corp. v. Copperweld Corp.*, 691 F.2d 310, 330-31 (7th Cir. 1982), *rev’d on other grounds*, 467 U.S. 752 (1984).
28. *See, e.g.,* *Bigelow*, 327 U.S. at 251-52 (comparison of plaintiff’s profits during the conspiracy to those of a comparable competitor not affected by the conspiracy). *See also* *LePage’s*, 324 F.3d at 165 (“an expert may construct a reasonable offense-free world as a yardstick for measuring what, hypothetically, would have happened ‘but for’ the defendant’s unlawful activities.”); *Conwood Co. v. U.S. Tobacco Co.*, 290 F.3d 768, 793 (6th Cir. 2002) (yardstick is among “generally accepted methods for proving antitrust damages”).
29. *Eleven Line v. N. Tex. State Soccer Ass’n.*, 213 F.3d 198, 208 (5th Cir. 2000) (“An antitrust plaintiff who uses a yardstick method of determining lost profit bears the burden to demonstrate the reasonable similarity of the business whose earning experience he would borrow.”).

affected market,<sup>30</sup> or where data for the market free of the antitrust violation are not available. The yardstick approach often requires data about the proxy market participant's sales and profits, or prices paid. These data serve as a proxy to reflect what the plaintiff's experience would have been but for the illegal conduct and, as such, when compared to the plaintiff's actual experience can provide a means to measure the damages suffered.

In either the before-during-after approach or the yardstick approach issues of comparability may arise. In the former, changes in market conditions during the damages period may raise doubts about the direct comparability of the damages period prices or profits to prices and profits before or after. With respect to a yardstick approach, differences in the yardstick and the market subject to anticompetitive conduct may raise questions about their comparability. However, a perfect comparator is not required, and adjustments may be used to account for differences.<sup>31</sup> Thus, while in some cases the proxy may be so lacking in comparability that the court will reject it,<sup>32</sup> whether the proxy is reasonably comparable is usually a question for the trier of fact.<sup>33</sup> This is because only a reasonable

- 
30. *See, e.g.,* *Lehrman v. Gulf Oil Corp.*, 500 F.2d 659, 667 (5th Cir. 1974) (yardstick method available to plaintiff “who is driven out of business before he is able to compile an earnings record”).
31. *See, e.g.,* *Blue Cross & Blue Shield United v. Marshfield Clinic*, 152 F.3d 588, 592-94 (7th Cir. 1998). A lack of comparability may cut either way: the proxy may understate the success the plaintiff would have achieved but for the violation, making the damages estimate conservative, or may overstate the plaintiff's but-for success, inflating the damages. Defendants will naturally focus on the latter possibility to the exclusion of the former. Because a proxy methodology is a necessarily imprecise way to isolate the effects of an antitrust violation, its sufficiency, at least as an initial matter, should rest on a standard of overall reasonableness, subject to more detailed rebuttal. *See, e.g.,* *National Farmers' Org. v. Assoc. Milk Producers*, 850 F.2d 1286, 1294-97 (8th Cir. 1988), *amended*, 878 F.2d 1118 (8th Cir. 1989).
32. *See, e.g.,* *Eleven Line v. N. Tex. State Soccer Ass'n*, 213 F.3d 198, 206-09 (5th Cir. 2000) (average of plaintiff's experience in other markets not shown to be comparable is insufficient).
33. *See, e.g.,* *Image Tech. Servs. v. Eastman Kodak Co.*, 125 F.3d 1195, 1221 (9th Cir. 1997); *In re Prograf Antitrust Litig.*, No. 11-2242, 2014 WL 7641156, at \*3 (D. Mass. Dec. 23, 2014) (“[i]t was for the jury to consider [plaintiff's] arguments about the [differences between the yardstick and the but-for world] on the validity of comparison and to adjust its damage award accordingly”) (internal quotes and citation omitted; alterations in original).

approximation is necessary for damages, so a proxy can be applied even if it does not fully correspond to the plaintiffs' situation.<sup>34</sup>

Because the before-during-after approach looks outside the damages period in the same market, and the yardstick approach looks to a different market, one may need to examine changes in economic conditions over time or across markets, the plaintiff's circumstances, or other variables which could affect prices, sales, and profits. One tool widely used by economists to account for such changes in economic conditions is a statistical technique known as multiple regression analysis.<sup>35</sup> In the context of antitrust damages, multiple regression analysis is useful because it allows an expert to control for variables *other* than the anticompetitive conduct that may change between the damages period, or the market in question, and the benchmark or yardstick used to model the but-for world. Regression analyses are discussed in greater detail in Chapter 6.

*Projection-Based Models.* Courts have also accepted internal business projections by market actors of expected prices, sales, or profits for the damages period, formulated before the violation was known or anticipated, as the basis for but-for predictions.<sup>36</sup> As one court has noted:

[I]nternal projections for future growth often serve as legitimate bases for expert opinions. Businesses are generally well-informed about the industries in which they operate, and have incentives to develop accurate projections. As such, experts frequently use a plaintiff's business plan to estimate the plaintiff's expected profits in the absence of the defendant's misconduct.<sup>37</sup>

- 
34. See, e.g., *National Farmers' Org.*, 850 F.2d at 1295 (affirming use of yardsticks despite "many defects" and although they may not be "perfect").
  35. See, e.g., *Conwood Co. v. U.S. Tobacco Co.*, 290 F.3d at 768, 793-95 (6th Cir. 2002); *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 566 (11th Cir. 1998) (regression analysis is among "well-established and reliable methodologies" for proving antitrust damages); *In re High Pressure Laminates Antitrust Litig.*, No. 00 MDL 1368 (CLB), 2006 WL 931692, at \*1 (S.D.N.Y. Apr. 7, 2006) (refusing to exclude regression damages model).
  36. See, e.g., *H.J., Inc. v. ITT Corp.*, 867 F.2d 1531, 1549-50 (8th Cir. 1989); *MCI Commc'ns Corp. v. AT&T*, 708 F.2d 1081, 1099, 1160-66 (7th Cir. 1983); *Autowest, Inc. v. Peugeot, Inc.*, 434 F.2d 556, 563-67 (2d Cir. 1970).
  37. *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 292 (3d Cir. 2012) (internal quotes and citations omitted). See also *LePage's Inc. v. 3M*, 324 F.3d 141, 165 (3d Cir. 2003) (affirming damage award that used, inter alia, projections as basis for computing extent of injuries); *Autowest*, 434 F.2d

However, if a defendant shows that actual events and conditions during the damages period (unrelated to the violation) departed substantially from the assumptions underlying the projections, an inference that the plaintiff failed to achieve its projected performance solely because of the violation may be undermined or weakened.<sup>38</sup>

*Cournot and Bertrand Models.* Cournot and Bertrand models provide another means to predict the prices that would have prevailed in the but-for market, and hence damages in private antitrust actions. They can be particularly useful in cases where before-during-after models and yardsticks may be unavailable or difficult to derive. The Cournot and Bertrand models are structure-based models with assumptions made regarding non-cooperative strategic interaction among the firms absent conspiratorial behavior. The Cournot model assumes that interaction among firms sets quantities and their customers pay the prices determined by the total output.<sup>39</sup> The Bertrand model assumes that interaction among firms sets prices and their customers choose quantities at the prices set.<sup>40</sup> In the Bertrand and Cournot approaches to quantifying damages, but-for prices are simulated based on the theoretical relationship between price and factors such as market-concentration, demand elasticity, and marginal cost.<sup>41</sup>

The Department of Justice and the Federal Trade Commission use Cournot and Bertrand models routinely in evaluating prospective mergers

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566 (holding that damages testimony was admissible because the financial projections on which the testimony was based “were the product of deliberation by experienced businessmen charting their future course”). *Cf. In re Nifedipine Antitrust Litig.*, 246 F.R.D. 365, 371 (D.D.C. 2007) (defendants’ projections that prices would have been lower for purchasers in but for world were among “powerful and compelling” proof of plaintiffs’ injuries).

38. *See, e.g.*, *ILC Peripherals Leasing Corp. v. IBM*, 458 F. Supp. 423, 434-36 (N.D. Cal. 1978) (failure to “adjust these forecasts to reflect the results of actual experience” rendered damages evidence speculative), *aff’d per curiam sub nom. Memorex Corp. v. IBM*, 636 F.2d 1188 (9th Cir. 1980). *See also ZF Meritor*, 696 F.3d at 292 (affirming exclusion of damage model based on projection due to lack of information of circumstances under which projection was created and the assumptions it relied upon).
39. *See* Dennis W. Carlton and Jeffrey M. Perloff, *Modern Industrial Organization* 161-70 (4th ed. 2005).
40. *Id.* at 171-76.
41. *See* James A. Brander and Thomas W. Ross, *Estimating Damages from Price-Fixing*, in *LITIGATING CONSPIRACY* 349-351 (Stephen Pitel, ed. 2006).

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to predict what prices would exist if two firms merged.<sup>42</sup> These agencies rely on these techniques because, as the agencies are attempting to forecast the implications of merger that has not been consummated and whose price effects are as yet unknown, data are not available to construct a before-during-after model. Bertrand and Cournot models can similarly be used to predict but-for prices in private antitrust actions where before-during-after methods are not available.<sup>43</sup> As with other types of predictive constructs, Bertrand and Cournot models must be rooted in the facts of the case.<sup>44</sup> Indeed, because Bertrand and Cournot models are frequently based on data which is specific to the market which is subject to the misconduct, they may have an advantage over yardstick models that rely on entirely different markets.<sup>45</sup>

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The use of any of the above models is not required, and the plaintiff may instead build its but-for world based on other relevant data and

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42. See Andrew R. Dick, *Merger Policy Twenty-Five Years Later: Unilateral Effects Move to the Forefront*, ANTITRUST 25 (Fall 2012), at 26-27.
43. See, e.g., *Castro v. Sanofi Pasteur Inc.*, No. 11-7178, 2015 WL 5770381, at \*11 (D.N.J. Sept. 30, 2015) (allowing use of Bertrand model in computing damages); *Ticketmaster Corp. v. Tickets.com, Inc.*, No. 99-7654, 2003 WL 25781900, \*3 (C.D. Cal. Jan. 27, 2003) (refusing to exclude Cournot model of private antitrust damages).
44. See, e.g., *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000). In *Concord Boat*, the district court had upheld “the soundness of the Cournot model as a fundamental, time-tested economic tool that has been widely accepted for years by reputable economists,” and noted that “the Cournot model provides the theoretical underpinnings for the Department of Justice’s Horizontal Merger Guidelines and the widely used Herfindahl-Hirschman Index (the ‘HHI’).” *Concord Boat Corp. v. Brunswick Corp.* 21 F. Supp.2d 923, 934 (E.D. Ark. 1998). The Court of Appeals did not take issue with the acceptability of Cournot models generally, but found that the specific model offered by the plaintiffs was “not grounded in the economic reality” of the market because it assumed competitors were identical and would have each have 50 percent share in hypothetical market, but ignored that competitors were not symmetric and that defendant’s share exceeded 50 percent even before it began engaging in the alleged anticompetitive conduct. *Concord Boat*, 207 F.3d at 1056-57.
45. See, e.g., *Castro*, 2015 WL 5770381, at \*12 (discussing ways in which Bertrand model may be superior to other damage models).