

THE
AM LAW LITIGATION DAILY

Litigators of the Week: Proskauer Scores a Defense Win for Last Defendant Standing in Broiler Chicken Antitrust Suit

By Ross Todd

November 3, 2023

Staring down \$7 billion in potential damages can be intimidating for anyone sitting at the defense counsel table in a price-fixing case.

That intimidation factor gets ramped up even higher when your client is the last defendant left standing at trial in a case that targeted virtually an entire industry.

That was the task that faced **Chris Ondeck**, **Kyle Casazza** and **Colin Cabral** and their team at **Proskauer Rose** as they defended Sanderson Farm at trial in a private antitrust suit claiming the company conspired to fix prices for broiler chickens. After a month-long trial, federal jurors in Chicago deliberated for just nine hours before delivering a defense verdict last week for Sanderson Farms.

Lit Daily: Who was your client and what was at stake?

Ondeck: Proskauer represented Sanderson Farms, one of the United States' largest broiler chicken producers, in a blockbuster broiler chicken antitrust conspiracy case. There were 50 individual plaintiffs, including some of the nation's largest retailers, as well as a class of direct purchaser plaintiffs representing more than 3,000 grocery chains, wholesalers and other chicken buyers. Combined, the plaintiffs sought approximately \$7 billion in damages, which would have been trebled under the antitrust laws. Our client trusted us to vindicate them in one of the largest antitrust trials this year and one of the



Courtesy photos

L-R: Christopher Ondeck, Kyle Casazza and Colin Cabral of Proskauer Rose.

largest-ever antitrust trials involving the agriculture industry.

Who was on your team and how did you divide the work at trial?

Ondeck: Colin Cabral, Kyle Casazza, **Shawn Ledingham** and I led a talented team of lawyers from nearly all of the firm's U.S. offices. We have built a world-class trial practice at Proskauer and that enabled us to deploy a ready-built team for an enormous trial on barely six months' notice. Plus, we handle multiple major trials per year, and we were able to use strategies and techniques we have refined over many

successful wins. We divided the work going into trial by making sure we had a dedicated team for each phase of pre-trial and trial (including opening statements, deposition designations, exhibits, and jury instructions/verdict form), as well as a dedicated team to work on each witness. In addition, as a key to our strategy, we focused on the cross-examinations of the plaintiffs' primary liability experts, and Colin Cabral and Kyle Casazza led subteams focused on those, and handled those cross-exams. We view cross-examination as one of our specialties. Once those individual tasks wrapped up, the whole team shifted to working on the closing argument.

Casazza: In addition, we had a seamless team of inside counsel from the client and Proskauer lawyers. We had several lawyers from our client embedded with us throughout the trial. They were also highly experienced litigators and trial lawyers, and they all know the facts and the business at a unique level. We find this type of flawless integration is a best practice and helps deliver results like this one.

Why was Sanderson determined to try this case as the last company in the industry left standing?

Ondeck: Of the 14 alleged co-conspirators remaining in the case at the time of trial, Sanderson Farms was the only defendant that did not settle. The client was unwavering in its position that it did not conspire to produce less chicken, and the evidence showed that Sanderson Farms built more plants than the rest of the industry combined and grew more than any of its competitors before, during and after the period of the plaintiffs' alleged supply reduction conspiracy. The facts were clear, and our client's management had the courage of their convictions to stand up against the accusations being made against them. Sanderson put a lot of thought and analysis into the decision to push back and go to trial.

You went beyond saying that Sanderson was not part of any conspiracy to tell jurors that you'd show there was no conspiracy. Why? On its face, that would seem like a big promise to make when the burden in the case was squarely on the plaintiffs.

Ondeck: Our client was steadfast in its position that its conduct had always been lawful and that there was no conspiracy in this industry. For that reason, we had the full support from Sanderson

to make the case in court to show that there was no conspiracy, not merely that Sanderson alone was not liable. We knew we could show what really happened; that the industry went through an industry-wide crisis during the Great Recession and simultaneously faced record costs.

Casazza: The largest company in the industry—as well as several others—went bankrupt. We focused on proving that the plaintiffs' case ignored fundamental truths about Sanderson Farms and the business realities of the chicken industry. We knew this was a bigger undertaking at trial, but we had confidence in our strategy and opted to advocate for the entire win—that there was no conspiracy—not merely that Sanderson was not part of an alleged conspiracy.

This case was so long that you had the opportunity to make interim statements to the jury. How did you use that time? And did you worry at all that what you said there might help the plaintiffs alter their course and address issues you talked about?

Cabral: We were given 15 minutes each week to address the jury in these mini closings. Early in the case, we used the time to discredit the plaintiffs' opening statement and general theory of the case. Over time, we used the interim statements to preview concepts that we intended to develop more fully during our closing argument. We used the interims to highlight our themes to the jury, using a variety of our team members, including myself, Chris, Kyle and **Simona Weil**. We knew the plaintiffs listened carefully to what we said. But we never showed all our cards. Based on the results, it worked well.

What is Topco? And how important were the documents you got from Topco to making the case that what happened in the market was the result of a crisis among the suppliers rather than a conspiracy?

Cabral: Topco was one of the 50 individual plaintiffs, that includes grocery retailers, wholesalers, and food service companies. Topco leverages its size to purchase chicken and other products on behalf of its members. Some of Topco's members were also individual plaintiffs in this litigation and members of the direct purchaser class.

Topco had its own in-house economist, who during the alleged conspiracy period predicted that chicken companies would make supply cuts in response to historically bad market conditions. He shared those predictions with Topco members, including other plaintiffs. Being able to cross-examine a live witness from Topco gave us the opportunity to show that the jury did not need to rely on expert witnesses to explain what happened or how bad the situation was for the chicken industry. The Topco documents provided a written record in real-time demonstrating that supply cuts were the result of record-high corn prices and a severe economic downturn, rather than a conspiracy.

Chris, your closing argument started in the afternoon of one day and continued into the next morning. How did that affect your approach? Did it offer you any opportunities to do things differently than you would have in one go?

Ondeck: We knew going into closing arguments that we wanted to focus on Sanderson's growth story first and reinforce the message that there was no supply reduction conspiracy. By splitting the closing arguments into two days, it gave us the opportunity to address specific points presented by opposing counsel and disprove the arguments plaintiffs made to the jury. We then were able to use Day 2 to "blast" the plaintiffs' arguments, to quote some of the descriptions of that day.

What can other companies in Sanderson's position take from this outcome?

Ondeck: When the facts are on their side, companies should strongly consider fighting accusations made against them, including at trial. Part of that includes the close teaming relationship we have with Sanderson; they backed us to the hilt. We were able to deploy a full trial team that could go it alone against 19 plaintiffs' firms. The lesson is twofold: sticking to your convictions, and also doing the

advance planning and strategizing on the right trial team to deploy for such a big case.

What will you remember most about this matter?

Ondeck: I have been an antitrust litigator for almost 30 years, and I will remember this as the matter where a client had the most on the line, and still went the distance and earned a well-deserved vindication. From the superb General Counsel **Jeremy Kilburn** through every level of the client's leadership, they were invested in working toward that result; without that commitment, it's difficult to see how it could happen. That stands out in my mind and is one of the main reasons we were proud to deliver this result.

Cabral: I'll remember our exceptional team, an extraordinary client that deserved to win, and the most positive jury feedback I've ever heard. It was rewarding to know that the jury got our client's message loud and clear.

Casazza: I'll remember the thrill of being the last defendant left at the table going into trial. I'm forever grateful that we had a client who trusted Proskauer to take this to verdict and couldn't be prouder of our whole team for delivering the result we did. I'll never forget the excitement of spending eight weeks working in a single room with my colleagues. For our workspace, we converted the largest conference room in Proskauer's Chicago office into a massive bullpen in which every attorney on the case—junior and senior—worked alongside each other. The team thrived in the setup, and I think lots of lifetime friendships were forged.

Ledingham: A benefit of a trial this long is that the client had an opportunity to get to know—and develop trust in—the entire team of lawyers on the case. Sanderson Farms shared our confidence in the depth of our bench and had lawyers teaming with us in the trial war room throughout the trial. That builds a unique and successful relationship.

