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Farmer Groups Push High Court To Review Tyson Case

By **Jacqueline Bell**

A coalition of farmer groups has asked the U.S. Supreme Court to take another look at a fight between a poultry farmer and Tyson Farms Inc., arguing that a recent decision by the U.S. Court of Appeals for the Sixth Circuit improperly treated the Packers and Stockyards Act as just another antitrust law.

The brief filed with the U.S. Supreme Court Wednesday on behalf of 55 farming, ranching and consumer groups argues that the Sixth Circuit's May ruling ignored the plain language and intent of the nearly 90-year-old Packers and Stockyards Act by requiring farmers bringing claims under the statute to also show that competition has been harmed.

Rather than serving the same purpose as other U.S. antitrust laws, the act is specifically aimed at preventing a range of abuses in agricultural markets, the brief argues.

The case is rooted in allegations made by Alton T. Terry, a Tennessee poultry farmer, connected to a contract he had with Tyson Farms to raise chickens.

Terry claimed that Tyson retaliated against him because of his leadership role in a new regional growers' association and filed suit under the Packers and Stockyards Act, alleging that Tyson had engaged in unfair, discriminatory and deceptive practices.

The district court dismissed Terry's claims under the statute, finding that the act is essentially an antitrust law requiring plaintiffs to show injury to competition and ruling that Terry had not adequately done so.

On appeal, the Sixth Circuit said it was joining seven of its "sister circuits" by also requiring

proof of anti-competitive harm for claims brought under the Packers and Stockyards Act.

Terry has asked the Supreme Court to take up the case, and the amicus brief filed Wednesday in support of Terry's bid argues that the lower courts, including the Sixth Circuit, have unreasonably required plaintiffs to prove harm to competition and ignored the plain language of the act itself.

The Packers and Stockyards Act was designed to be far broader than other U.S. antitrust laws like the Sherman Act or the Clayton Act, crafted to protect farmers in agricultural markets dominated by limited buyers, the brief argues.

"Harms from buyer power extend beyond direct effects on 'upstream' or 'downstream' competition as traditionally understood in antitrust law. Buyers in a highly concentrated market have great discretionary power in markets where there are many sellers and few buyers," the brief said.

The U.S. Department of Agriculture, concerned over the increasing consolidation in the meat industry over the past 15 years, has long argued that proof of anti-competitive harm is not necessary under the Packers and Stockyards Act. The agency did weigh in with the Sixth Circuit in the Terry case, filing a brief urging the appeals court to consider its point of view.

A representative for Tyson was not immediately available to comment Thursday.

The amicus brief is signed by attorney David Balto of the Law Offices of David A. Balto and David G. Velde, General Counsel of the National Farmers Union.

The case is Alton T. Terry v. Tyson Farms Inc., Case No. 10-542, in the U.S. Supreme Court.

The appeals court case is Terry v. Tyson Farms Inc., case no. 08-5577, in the U.S. Court of Appeals for the Sixth Circuit.

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