IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA et al., *Plaintiffs,* v. JBS S.A. and NATIONAL BEEF PACKING COMPANY, LLC *Defendants.*	Civil Action No. 08-CV-5992 Honorable Elaine E. Bucklo

PLAINTIFFS' CONSENT TO DEFENDANTS' MOTION TO STAY LITIGATION

Plaintiff United States and the seventeen Plaintiff States (the "Plaintiffs") agree to Defendants' motion to stay this antitrust action to block JBS S.A.'s proposed acquisition of National Beef Packing Company, LLC. A stay will enable the parties to devote the time necessary to explore a possibility of settlement that arose within the past few days. In view of the fast track on which this litigation is scheduled [Docket No. 68], a stay is the only practical means by which Plaintiffs can devote the time necessary to thoroughly review any proposed settlement to determine whether it would adequately remedy the antitrust violation alleged in the Complaint. A stay will also enable the parties and non-parties that are in the process of responding to Rule 45 document subpoenas to avoid incurring further substantial litigation expenses that would ultimately prove unnecessary if a settlement were reached. If the parties were to agree on a proposed settlement, the Court will have the opportunity to review it pursuant to the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16(b)-(h), and determine

whether the proposed settlement is in the public interest.

Plaintiffs will need to investigate any serious settlement proposal to determine whether it would adequately restore the competition that would be lost if JBS S.A. acquires National Beef. Plaintiffs must ensure that any divestiture proposal includes all of the assets necessary for a purchaser to be an effective, independent, long-term competitor, including the tangible and intangible assets necessary for purchasing, production, distribution, and sales. A stay will enable the Plaintiffs to bring the necessary scrutiny to this critical inquiry without the demands of simultaneously pursuing the litigation.

A stay will also enable the parties and non-parties to avoid incurring litigation costs that would become unnecessary if the parties were to reach a proposed settlement. The parties have each served fairly extensive discovery on the opposing side, and the United States has issued document subpoenas to 17 non-parties. One deposition of a non-party is scheduled for December 18, and other depositions are likely to be scheduled in the coming weeks. Subpoena compliance and depositions can involve the expenditure of substantial time and money, and could engender disputes that might require resolution by the Court. A stay may avoid these costs and also the Court's expenditure of unnecessary time and resources on this matter.

Should the parties reach a settlement, the Court will have the opportunity to evaluate any proposed settlement under the APPA, which applies to civil antitrust cases brought and settled by the United States. The APPA requires the Court to determine that entry of any proposed judgment is in the public interest and sets forth certain procedures to guarantee public notice and opportunity to comment.

If the parties do not reach a settlement, the stay sought by the Defendants will not

compromise the Plaintiffs' prosecution of this action. As set forth in the Defendants' motion and proposed Order, if settlement talks fail and the stay is lifted, the parties will have an amount of time to conduct discovery and prepare for trial similar to that currently provided in the Agreed Scheduling and Case-Management Order [Docket no. 68]. All applicable dates will simply be pushed forward by the number of days that this matter was stayed, plus two weeks to accommodate re-starting discovery with parties and non-parties.

Respectfully Submitted,

s/

Claude F. Scott, Jr., Esq.
Counsel for the United States
U.S. Department of Justice
450 Fifth Street, NW
Suite 4100
Washington, DC 20530
TEL: (202) 353-0378
claude.scott@usdoj.gov

Dated: December 16, 2008

CERTIFICATE OF SERVICE

Claude F. Scott, Jr., an attorney, hereby certifies that on December 16, 2008, he caused true and correct copies of the foregoing "Plaintiffs' Consent to Defendants' Motion to Stay Litigation" to be served via the Court's ECF system on the following counsel of record in this matter:

Joe Sims
Leslie Overton
Hugh M. Hollman
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113

Paula Render
Jones Day
77 West Wacker
Chicago, Illinois 60601-1692

Neal Stoll
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036

Steven Sunshine
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Andrew Fuchs
Matthew Kipp
William Rohner
Amanda S. Williamson
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Dr.
Chicago, Illinois 60606

J. Thomas Prud'homme
Lead Counsel for Plaintiff States
300 W. 15th St.
Austin, TX 78701

s/
Claude F. Scott, Jr.