

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

UNITED STATES OF AMERICA

V.

CRIMINAL NO.

PAUL B. CLARK

15 U.S.C. § 1

**The Grand Jury charges:**

DESCRIPTION OF THE OFFENSE

1. Paul B. Clark is hereby indicted and made a defendant on the charge stated below.

2. Beginning at least as early as 1977 and continuing thereafter at least through August 1988, the exact dates being unknown to the Grand Jury, the defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by rigging bids submitted for the award and performance of contracts to supply dairy products to certain public schools and other institutions in eastern Mississippi. The combination and conspiracy, engaged in by the defendant and co-conspirators in unreasonable restraint of interstate trade and commerce, violated Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were:

- (a) to allocate among the corporate conspirators contracts with certain public schools and other institutions in eastern Mississippi for the supply of dairy products to those public schools and other institutions;
- (b) to submit collusive, noncompetitive, and rigged bids, and to refrain from submitting bids to certain public schools and other institutions in eastern Mississippi for the supply of dairy products to those public schools and other institutions; and
- (c) to permit the corporate conspirators to supply dairy products to certain public schools and other institutions in eastern Mississippi and receive payments therefor pursuant to contracts awarded on the basis of collusive, noncompetitive, and rigged bids.

MEANS AND METHODS OF THE CONSPIRACY

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) discussing among themselves the submission of prospective bids to certain public schools in eastern Mississippi;
- (b) agreeing upon and designating which corporate

conspirator would be the low, responsive bidder for contracts to supply dairy products to certain public schools in eastern Mississippi;

- (c) agreeing upon bid prices or approximate bid prices for contracts to supply dairy products to certain public schools in eastern Mississippi;
- (d) having each corporate conspirator submit bids, or refrain from submitting bids, for contracts to supply dairy products to certain public schools in eastern Mississippi in accordance with the collusive and noncompetitive agreement;
- (e) accepting the award of contracts to supply dairy products to certain public schools in eastern Mississippi pursuant to collusive, noncompetitive, and rigged bids;
- (f) supplying dairy products to certain public schools in eastern Mississippi pursuant to contracts awarded on the basis of collusive, noncompetitive, and rigged bids; and
- (g) accepting payment for the supply of dairy products to certain public schools in eastern Mississippi pursuant to contracts awarded on the basis of collusive, noncompetitive, and rigged bids.

5. In addition, for the purpose of forming and carrying out the charged combination and conspiracy, some of the conspirators,

not including the defendant, agreed upon which corporate conspirator would be the low, responsive bidder and agreed upon the bid prices or approximate bid prices for contracts to supply dairy products to certain other institutions in eastern Mississippi, such as hospitals, and submitted bids to, and entered into contracts with, those other institutions in accordance with the collusive and noncompetitive agreement.

DEFENDANT AND CO-CONSPIRATORS

6. Defendant Paul B. Clark, during all or part of the period covered by this indictment, was a Division Sales Manager, Zone Sales Manager, and Area Manager of Flav-O-Rich, Inc. in Hammond, Louisiana and was engaged in the dairy products industry in the Southern District of Mississippi. During all or part of the period covered by this indictment, Paul B. Clark and Flav-O-Rich, Inc. were engaged in the sale and distribution of dairy products in various locations in Mississippi, including the submission of bids to certain public schools and other institutions in eastern Mississippi for contracts to supply dairy products to those institutions.

7. Various corporations and individuals, not made defendants in this indictment, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

8. Whenever in this indictment reference is made to any act, deed, or transaction of any corporation, the allegation

means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

#### TRADE AND COMMERCE

9. As used in this indictment, the term "dairy products" includes any or all of the following products: whole white milk; low fat white milk; chocolate milk; low fat chocolate milk; fruit juices; and other products derived in whole or in part from milk. Public school districts in eastern Mississippi typically purchase half-pint cartons of whole white milk, low fat white milk, chocolate milk, low fat chocolate milk, and other dairy products from dairies in connection with the provision of meals to the public school students of eastern Mississippi. In the spring or summer of each year, eastern Mississippi public school districts send bid solicitations to the dairies requesting competitive bids for contracts to supply dairy products to the public schools in the districts during the next school year. Dairies that participate in the bidding generally submit the bids in sealed envelopes to the school district by a specified date and time. Federal funds partially reimburse or subsidize the public school districts in eastern Mississippi for their purchases of food items, including dairy products, used in providing meals to the public school students of eastern Mississippi. These

reimbursements or subsidies result in the transfer of a substantial amount of federal funds from outside Mississippi into Mississippi.

10. During the period covered by this indictment, substantial quantities of dairy products were shipped from points of origin outside Mississippi to the conspirator companies in Mississippi and delivered by the conspirator companies to customers located in Mississippi, in a continuous and uninterrupted flow of interstate commerce, including substantial quantities of dairy products delivered to certain public schools and other institutions in eastern Mississippi in connection with the conspiracy charged in this indictment.

11. During the period covered by this indictment, substantial quantities of essential raw materials, supplies, and equipment, needed by the conspirator companies to process, package, and deliver dairy products within Mississippi, including dairy products delivered to certain public schools and other institutions in eastern Mississippi in connection with the conspiracy charged in this indictment, were shipped into Mississippi from points of origin outside Mississippi. In addition, money, contracts, bills, and other forms of business communications were transmitted between locations in Mississippi and locations outside Mississippi, in connection with the purchase and sale of substantial quantities of dairy products and other essential raw materials, supplies, and equipment needed by

the conspirator companies to process, package, and deliver dairy products within Mississippi, including dairy products delivered to certain public schools and other institutions in eastern Mississippi in connection with the conspiracy charged in this indictment.

12. The business activities of the defendant and co-conspirators that are the subject of this indictment were within the flow of, and substantially affected, interstate trade and commerce.

JURISDICTION AND VENUE

13. The combination and conspiracy charged in this indictment was carried out, in part, in Lauderdale County in the Eastern Division of the Southern District of Mississippi within the five years preceding the return of this indictment.

A TRUE BILL:

DATED:

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FOREPERSON OF THE GRAND JURY

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