IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)
Plaintiff,	)
vs.	)4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,	)
Defendants.	)

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THE VIDEOTAPED DEPOSITION OF

ROBERT TAYLOR, PhD, produced as a witness on behalf of the Defendants in the above styled and numbered cause, taken on the 15th day of July, 2008, in the City of Tulsa, County of Tulsa, State of Oklahoma, before me, Lisa A. Steinmeyer, a Certified Shorthand Reporter, duly certified under and by virtue of the laws of the State of Oklahoma.

Exhibit 21

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three times as opposed to directly hauling from the house to the ultimate end user?

A In the Carreira study -- I want to refer to it as Goodwin. The Carreira study, you know, they have cost in for loading and unloading and cleaning and storage in a hoop building and unload litter to a spreader and application and disking and all of that. It seems to be a very thorough study. 09:23AM

Q Just refer to the page of your report that you're looking at. 09:23AM

A It's Table 2, Page 36.

Q So Table 2 on Page 36 is lifted from the Carreira Goodwin study and placed in your report; is that true?

A That is correct. 09:23AM

Q Is it also true that you don't know whether any of the integrator defendants in this case utilize that model in transporting litter out of the IRW?

A I don't see the connection with this model and litter transporting. 09:24AM

Q I thought that's what we were talking about. My question to you is this --

A Ask again, please.

Q Okay. It is true that you don't know whether 09:24AM

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integrator even though the, quote, contracts, end quote, are written for a shorter period of time?
A It may indicate they're happy, or it may indicate that the grower feels he or she has no way out. So I just mean that to me, as an economist, 10:25AM that is a striking feature.
Q And have you spoken to any growers who grow for any of the companies who are defendants in this case?
A As far as I know, I have not talked to any 10:25AM growers in the IRW.
Q Then it would be true that you don't know whether there is a feeling on the part of any grower who grows with any of the defendants in this case that they feel like there's no way out? 10:26AM
A No, and I wouldn't know how to uncover their true thoughts on that.
Q In the last sentence of Paragraph 22 you state, quote, even though there are several integrators in the IRW, the defendant integrators 10:26AM maintain monopsony or oligopsony power over their contract growers extending to waste and dead bird disposal, period, end quote.
A Yes.
Q Tell me what you mean by that. 10:26AM

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A I mean that simply because the grower has such an investment in houses and equipment, that generally if the integrator chooses not to deliver birds except for the first flock, they don't have to and if the integrator decides to put a new contract 10:27AM feature in, whatever it may be, can apply waste and dead bird disposal, then the grower has little viable economic option other than to accept it or go bankrupt.

Q But per your previous testimony, Dr. Taylor, 10:27AM you're unable to provide the court or jury in this case the name of any contract grower who one of the integrator defendants has denied birds?

A I have simply not analyzed that. I don't have the data to analyze it. 10:28AM

Q Let's talk about dead bird disposal for a second. How are dead birds disposed of? Tell me the ways.

A Well, there's --

Q In the IRW. 10:28AM

A I do not know now. You know, there have been different technologies through time. Going back in time, some of them were thrown out, and that's probably why disposal of dead bird requirements are in some of the early contracts. They've gone to 10:29AM

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I had just scanned those, and there was nothing fundamentally different from other contracts I had seen. So I went back and took a more careful look at those, addressing issues you raised with the -- with one of the Peterson contracts and also 12:34PM
addressing kind of the evolution of those contracts and how waste management -- how or when waste management appeared.

Q Okay. What were the issues with the Peterson contract that you referred to? 12:34PM

A That the growers owned the litter.

Q The Peterson contracts state that the grower owns the litter?

A Let me go back and make sure.

Q I believe that's correct. 12:34PM

A Too many contracts for me to remember. All poultry waste produced by the birds covered by this contract shall be the exclusive property of the contract farmer, and it goes on from there.

Q Okay. So the Peterson contract says the 12:34PM
grower owns the poultry litter?

A It is the only contract I've seen that states the defendant -- that the waste is the exclusive property of the grower.

Q Okay, and it's my understanding from your 12:35PM

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1 prior testimony this morning that you believe that
2 these contract provisions that you've cited manifest
3 the integrators' attempt to shift risk to the
4 grower; is that correct?
5 A Yes. 12:35PM
6 Q Explain to me how that risk is being shifted
7 in the context of this Peterson contract where the
8 Peterson grower owns the litter.
9 A Well, in the -- I don't think I have -- wait.
10 '79 and '86 contracts make no mention of 12:35PM
11 responsibility for disposal or ownership, and then
12 the '04 contract comes in and says it's the
13 exclusive property of the contract farmer. Then it
14 goes on to state how they can use their exclusive
15 property, which -- 12:36PM
16 Q How does it state they can use their property?
17 A It says the grower shall be responsible for
18 and receive all of the economic benefits from the
19 use and disposal of said litter. Doesn't mention
20 cost or net benefit, and it goes on to specify -- 12:36PM
21 I'm reading my own. Goes on to specify exactly how
22 the grower is to dispose of litter and waste he or
23 she presumably owns and, as I recall, there's a list
24 of what they're supposed to do with their exclusive
25 property. 12:36PM

Q Okay, and you're referring to the BMPs that are contained within the contract?
A Right.
Q So those were BMPs. Do you know whether the Oklahoma poultry laws and regulations contain any BMPs? 12:37PM
A I think they do, yes.
Q And would those BMPs contain in Oklahoma and Arkansas laws determine how a grower could use its litter? 12:37PM
A It's just strange to me, as an economist, that the contract says it's the grower's exclusive property but then you go on to tell them what they can do with it or can't do.
Q That wasn't my question. I'm saying, wouldn't the litter laws in Oklahoma and Arkansas, which you've stated contain BMPs determine how that grower can use his litter? 12:37PM
A Yes.
Q Okay, and that's going to be independent of anything that's contained in the contract; is that correct? 12:37PM
A As I understand it.
Q Okay, and I believe you previously testified, I believe it was at the preliminary injunction 12:38PM

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1 process.
2 Q Okay. So if we take that opinion, litter is
3 outside poultry production, we take its absence in
4 the lists that are contained in Paragraph 8 and we
5 compare that with the provision in the Peterson 12:47PM
6 contract that the growers own poultry litter, that's
7 all consistent; would you agree with that?
8 A Yes.
9 Q Let's talk about the second part of your
10 opinion, the litter transport issues for a minute. 12:47PM
11 Your prior affidavit you had some calculations, as I
12 recall, transporting litter 100 miles outside the
13 watershed.
14 A That was a calculation pulled from a
15 University of Arkansas report. 12:48PM
16 Q Okay. Is the opinion that was in that
17 affidavit, is that still your opinion today; are you
18 relying on that opinion; is that some opinion that
19 we're going to see at trial?
20 A That has been replaced by this much more 12:48PM
21 detailed than Ellis' based on the Carreira study and
22 going each year and not just that one little
23 snapshot in time. So I do not plan to rely on what
24 was the little snippet that was in the affidavit.
25 Q Okay. So correct me if I'm wrong, but you're 12:48PM

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no longer -- the opinion that was in your affidavit has been replaced with the opinion that's in your May 15th report?

A That one little snippet on transportation cost has been replaced by a much more detailed and up-to-date analysis. 12:48PM

Q Okay. It's been expanded?

A Greatly, yes.

Q Okay. Is the purpose of the calculation that you made in your prior affidavit, is the purpose of that calculation the same purpose of the calculation contained in your May 15th report; are you measuring the same thing, in other words? 12:49PM

A All I looked at in the affidavit was just a perspective on the cost of hauling the litter out. That's it. There was nothing there about unjust enrichment or in current terms the possibility of making money by selling it outside the watershed. 12:49PM

Q Okay. So what's the difference -- explain to me the differences between your prior opinion and your current opinion, how that progressed. 12:49PM

A My --

Q What was considered in the new opinion that wasn't considered in your prior opinion?

A The detailed cost breakdown, the hauling it 12:50PM

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1 off, the hauling of litter to delta cropland and
2 using it there and how much would be applied and
3 then supplementing that with commercial fertilizer.
4 Then I've done it by year using annual fertilizer
5 prices while the affidavit had just a one-year 12:50PM
6 snapshot for '03 or something like that, and then
7 I've calculated the cost avoided by not transporting
8 poultry waste out of the IRW for different amounts
9 and by year.
10 Q Okay. In your prior deposition we had a 12:50PM
11 discussion about proper economic accounting. Do you
12 recall that discussion?
13 A Yes, I do.
14 Q Can you just refresh our memories as to what
15 proper economic accounting is? 12:51PM
16 A Well, to do a full-blown economic analysis of
17 this issue, one part of it would be what I've done
18 here, but another part would be determining how much
19 litter should be transported out, and that's
20 something I was not asked to do and so did not do 12:51PM
21 it, and I've not been asked to look at the external
22 cost associated with litter in the IRW.
23 Q Okay. What would an example of external cost
24 be?
25 A Pollution cost or adverse health consequences. 12:51PM

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'08.
Q Okay. Your Table 5 in your May 15th report, I don't think I've asked this, but all of these calculations are 2008 dollars again; is that correct? 01:48PM
A I'm getting things out of order. Oh, here it is. These numbers, yes, in Table 5 are in '08 dollars, and I did not mention that.
Q Okay.
A Oh, down at the bottom I did, cumulative in 2008 dollars without interest. 01:48PM
Q Okay. So if we went down any one of these columns, the 1988 number would be less in 1988 dollars than it is in 2008 dollars; is that correct?
A Well, generally, yes. You know, zero won't be but -- 01:49PM
Q Right, and the zeros in these, what do they represent in Table 5?
A Labeled Table 5 cost avoided, the zeros are because there would be a profit that year, and I do have those numbers but I zeroed it out. 01:49PM
Q So you amended those profit numbers from your unjust enrichment calculation?
A Yes.
Q Okay. The calculations that are contained in 01:49PM

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