



FROM THE **PRESIDENT** By Don Stull

No industry is going to allow itself to be brought in to any place in order to make a better future for that place's children. It will come in only if it sees in that place (and its children) a better future for its executives and shareholders.

[The farmer] does not control any part of his economy. He has no more influence over the markets on which he buys and sells than he has over the weather. . . . In the entire food industry he will be dependably the most at risk, the least valued, and the lowest paid, except, of course, for the migrant laborers he may at times be constrained to hire. – Wendell Berry *The Art of Loading Brush: New Agrarian Writings, 2017*

When I am troubled, I often turn to the writings of my fellow Kentuckian, Wendell Berry, award-winning essayist, novelist, poet-and farmer. Like so many others, Covid-19 has kept me close to home and given

me plenty of time to read and think. The truth of Mr. Berry's words are clearly evident in recent machinations of meat and poultry companies.

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STULL (continued from page 1)

According to the National Farmers Union, the cost of food at the grocery store rose by 5.6 percent last year—the biggest jump in a decade. Beef prices were a whopping 25 percent higher than they were in 2019. It will come as no surprise to the readers of this newsletter that farmers and ranchers did not share in those increases. In fact, the prices paid to farmers averaged 4.8 percent less than last year. And livestock prices in May were down 17 percent from a year earlier. Unless farmers and ranchers receive additional federal aid, farm income is projected to fall by 12 percent this year.

The Covid-19 pandemic has shouldered much of the blame for higher prices at the grocery and lower prices on the farm, as Americans were forced to stay—and eat—at home. Sharp declines in restaurant and institutional demand for farm products played a role in declines in prices paid to farmers and ranchers. So did plant closures: one-third, or 370, of the nation’s meat and poultry plants experienced Covid-19 outbreaks, and many of them closed for several days or weeks. Increased absenteeism forced many to slow production. Production at beef plants ran 25 percent below average, while pork production was 40 percent below average.

Last fall, OCM raised the alarm about packers’ role in the record spread between live cattle and boxed beef prices following the August 2019 fire at Tyson’s Finney County, Kansas, beef plant. Closures of meat plants in the wake of Covid-19 offered packers new opportunities to manipulate prices. Continued

complaints by producers led USDA’s Agricultural Marketing Service (AMS) to investigate whether packers engaged in “manipulation, collusion, restrictions of competition, or other unfair practices.” The investigation is ongoing, but an update of its report is available from AMS.

It should be noted that in April, when Tyson Foods CEO John Tyson raised the alarm that the coronavirus pandemic was breaking the American food-supply chain, pork exports were up 22.3 percent and broiler exports were up 7.6 percent. Although beef exports overall were down 3.4 percent for the month, exports to China were up 95 percent. And pork exports to China in April jumped an eye-popping 365 percent. Broiler exports to China rose sharply as well. Higher prices for meat and poultry coupled with shortages in American grocery stores, even as exports soared. A better future for meat and poultry industry executives and shareholders, indeed. All at the expense of America’s farmers, ranchers, and eaters.

With this letter, I bid the readers of this newsletter farewell. I have served on OCM’s Board of Directors for nine years, and as its president for the last two years. It is time for me to step down and give others a chance to help guide and direct this organization. I wish the Organization for Competitive Markets, its directors, staff, and members success in their continued efforts to achieve “transparent, fair, and truly competitive agricultural and food markets.” - Don Stull

Unless farmers and ranchers receive additional federal aid, farm income is projected to fall by 12 percent this year.



USDA Releases Beef Price Spread Report, but Investigation Continues

By Ben Gotschall

Since April, when the United States Department of Agriculture (USDA) announced a Packers and Stockyards Division (PSD) [investigation](#) of increasing price spreads between live cattle and boxed beef, beef producers, journalists, lawmakers and advocates have been awaiting the release of any information related to the investigation. The anticipation was heightened in June when the Department of Justice [subpoenaed](#) Cargill, JBS, National Beef and Tyson, who together control over 85% of the beef market.

Meanwhile, the price spread between prices paid for cattle and wholesale prices continued to grow, and in the July price spread [report](#), the price paid to farmers and ranchers amounted to just over 30% of the retail price for beef. Finally, on July 22, Agriculture Marketing Service (AMS), the agency where the PSD is now [captured](#), released its much-anticipated [report](#). After reading the review, the long and short of it is that the report is long on coverage of current events and short on solutions. Most of the 20-page document reads like a summary of the cattle market reports of the past four months, with little mention of the actual investigation or its findings relative to Packers and Stockyards Act (PSA) violations.

Of course, the meatpacking industry and its apologists in the National Cattlemen's Beef Association (NCBA) and North American Meat Institute (NAMI) were quick to pat themselves on the back¹ and broadcast the announcement that the report "found no wrongdoing" by of the meatpackers,² when in fact the report itself acknowledges that "it does not examine po-

tential violations of the Packers and Stockyards Act. The investigation into potential violations is ongoing, and therefore, AMS has limited ability to publicly report the full scope and status of the investigation."³

This manipulation of the narrative by NCBA and NAMI is yet another example of their willful misleading of the public. The report "found no wrongdoing," essentially, because there are no findings actually reported. Overall, the report was a major disappointment for anyone wanting to learn anything of substance that hadn't already been publicly available for months to anyone with access to the internet and time to do a quick Google search.

As for solutions, AMS suggested that producers needed more education in risk management, paid lip service to the need for more small- and mid-sized processors, and offered the possibility of developing a beef contract library similar to the swine

contract library USDA already maintains. The report also suggested that USDA needed more "investigative and enforcement tools," as if the Packers and Stockyards Act and the ability to unilaterally enforce it through the PSD, isn't enough to get the job done already.

OCM will continue to fight for meaningful reform and enforcement of the Packers and Stockyards Act, as it was intended, to protect producers from the harmful effects of noncompetitive practices in the meat industry. We will await the findings of the PSD investigation of the meatpacking industry and will demand USDA take any enforcement action necessary in order to uphold agricultural antitrust laws.

To view the AMS "Boxed Beef & Fed Cattle Price Spread Investigation Report," visit: <https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf>

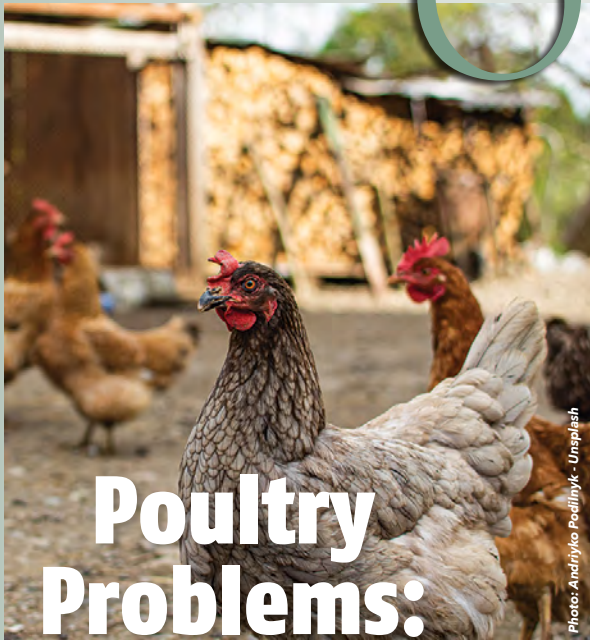


Photo: Etienne Girardet - Unsplash

¹National Cattlemen's Beef Association. "NCBA Responds to USDA Report on Cattle Markets." 22 July 2020. Available: <https://www.ncba.org/newsreleases.aspx?NewsID=7300>

²"NAMI issues statement on USDA investigation into beef markets following extreme events." *The Fence Post*. 22 July 2020. Available: <https://www.thefencepost.com/news/nami-issues-statement-on-usda-investigation-into-beef-markets-following-extreme-events/>

³United States Department of Agriculture, Agricultural Marketing Service. "'Boxed Beef & Fed Cattle Price Spread Investigation Report," p.2. 22 July 2020. Available: <https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf>



Poultry Problems:

Price fixing Charges, Lawsuits and More Plague Major Players

By Ben Gotschall



On June 3, 2020, a federal grand jury in the U.S. District Court in Denver, Colorado, indicted four major poultry company executives for their role in a price-fixing and bid-rigging conspiracy.

The one-count indictment alleges that during a five-year period between 2012 and 2017, Jayson Penn, CEO of Pilgrim's Pride, Roger Austin, Vice President of Pilgrim's Pride, Mikell Fries, President of Claxton Poultry, and Scott Brady, Vice President of Claxton Poultry, participated in rigging bids and fixing prices for broiler chickens.¹

Penn's trial is scheduled for February 16, 2021. No trial dates have been announced regarding the other executives

named in the indictment. Although the criminal investigation is ongoing, and the four poultry executives are the only individuals to be charged so far, other major players in the poultry industry were likely involved, as their actions following the indictment announcement would suggest.

Tyson Turns

A week after the DOJ indictment of the four executives of Pilgrim's and Claxton, Tyson Foods, the largest U.S. poultry company, announced that it was cooperating with the DOJ in the price-fixing investigation. In exchange, Tyson is seeking a formal grant of leniency, which would mean that neither the company nor its executives would face jail time or criminal fines.²

According to a [statement](#) by Tyson, the Antitrust Division of the DOJ had served it with a grand jury subpoena in April of

2019. Tyson then reported information it had discovered to the DOJ. After "taking appropriate actions to address the internal issues," Tyson claims, it "has been fully cooperating with the DOJ as part of its application for leniency under the DOJ's Corporate Leniency Program."³

There is no honor among thieves, and although Tyson's actions are indicative of its involvement in the price-fixing scheme, the poultry giant will no doubt attempt to downplay that involvement and instead focus on cultivating a "good neighbor" image to the public. Like a child caught with his hand in the cookie jar, Tyson will gladly point the finger at anyone but itself in order to maintain shareholder profits and avoid changing its business practices that harm its suppliers.

This have-it-both-ways double life is one led by other top poultry companies, which has been made more apparent by problems caused by the Covid-19 outbreak.

Passing the Buck on Worker Deaths

In July, Pilgrim's Pride, after being sued by the family of Maria Hernandez, one of its plant workers who died from Covid-19, argued that President Trump was the reason the plant had remained open despite the dangers to workers due to a lack of basic safety measures, such as informing employees that their co-workers were infected. Pilgrim's Pride pointed at Trump's April 28 executive order invoking the Defense Production Act to compel meatpacking plants across the country to remain open despite widespread infections from the coronavirus pandemic.⁴

Pilgrim's Pride also argued that the lawsuit, which was filed in a Texas state court-house, should be transferred to federal court. This move would benefit the poultry

¹ Department of Justice press release, "Senior Executives at Major Chicken Producers Indicted on Antitrust Charges." 3 June 2020. Available: <https://www.justice.gov/opa/pr/senior-executives-major-chicken-producers-indicted-antitrust-charges>

² Durbin, Dee-Ann, "Tyson cooperating with feds in price-fixing investigation." ABC News, 11 June 2020. Available: <https://abcnews.go.com/Business/wireStory/tyson-cooperating-feds-price-fixing-investigation-71195678>

³ Tyson Foods, "Tyson Foods' Statement on Department of Justice Indictment in Broiler Chicken Investigation." 10 June 2020. Available: <https://www.tysonfoods.com/news/news-releases/2020/6/tyson-foods-statement-department-justice-indictment-broiler-chicken#:~:text=On%20April%202026%2C%202019%2C%20Tyson,self%2Dreported%20to%20the%20DOJ.>

⁴ Hussein, Fatima. "Sued Over Covid-19, Companies Scramble for Federal Court Shelter." *Bloomberg Law*. 20 July 2020. Available: <https://news.bloomberglaw.com/daily-labor-report/sued-over-covid-19-companies-scramble-for-federal-court-shelter>



company, due to more strict federal court discovery rules, as well as placing the plaintiff's claims in opposition to a federal mandate. Tyson Foods, also faced with a wrongful-death lawsuit from the family of Jose Chavez, who died in April, filed a motion to dismiss the claims, citing insufficient evidence. Pilgrim's Pride filed a similar motion in the Hernandez family case, also citing insufficient evidence and arguing that the claims made by the Hernandez family are preempted by federal law.⁵

These avoidances of responsibility are not new to the meatpacking industry, which notoriously pushes the limits of worker safety, such as increasing plant line speeds, to maximize output volume and profit at the expense of employee safety. However, the age of Covid has ushered in a new threat, with two of the largest poultry companies, Tyson and Pilgrim's Pride, recording a combined total of 10,950 confirmed infections and 37 deaths among their workers.⁶ It is uncertain if these wrongful-death lawsuits will result in any enforcement actions against these large poultry companies, but they are not the only litigation faced by Big Chicken.

Shareholders and Customers File Suit

On July 6, a chapter of the United Food and Commercial Workers (UFCW) International Union filed a lawsuit in the US District Court of Colorado against Pilgrim's Pride, alleging that the company failed to disclose its knowledge of an illegal price-fixing conspiracy, for which the company's CEO Jayson Penn was indicted. The lawsuit claims that Pilgrim's Pride, in making certain forward-looking information available to its shareholders, had committed fraud, since company officials, due to their knowledge of potential wrongdoing, had "acted in reckless disregard of the true information known to them at the time."⁷ Anticompetitive practices such as price fixing can positively manipulate a company's stock price, and when a company predicts an upturn in its stock value, as Pilgrim's Pride did, such forward-looking information can be deemed fraudulent, since the knowledge of illegal activity used to obtain that information is not disclosed to the

company's shareholders. UFCW is asking the court to grant the suit class-action status, thereby enabling anyone owning stock in Pilgrim's Pride purchased after February of 2017 standing to join the case, and providing compensation for the loss in stock value.⁸

UFCW has also sued the United States Department of Agriculture over the line speeds at poultry plants, alleging that line speed waivers granted to poultry companies by USDA since 2018, due to USDA's failure to notify the public or allow public comment, are in violation of the Administrative Procedure Act. Faster line speeds, which make it virtually impossible to provide adequate worker distancing, places workers at an increased risk during the Covid-19 pandemic. Regulations implemented in 2014 set a speed limit of 140 birds per minute, but USDA has approved an increased speed of up to 175 birds per minute in 53 of 124 poultry processing plants, according to UFCW.⁹ If successful, the lawsuit would eliminate the waiver, which has been a subject of controversy among many worker- and food-safety advocacy groups since its adoption.

Workers and shareholders are not alone in suing the major poultry companies. In June, Boston Market, a restaurant chain known for its rotisserie chicken, sued over 20 of the top U.S. poultry companies, including Pilgrim's Pride, Tyson, and Claxton Poultry. The suit alleges that the poultry companies conspired "to restrain production, manipulate price indices, fix prices and rig bids, the purpose and effect of

which was to fix, raise, stabilize and maintain prices of chicken meat throughout the United States."¹⁰

With all of these lawsuits and investigations happening, the number of people alleging abuses and wrongdoing by major players in the poultry industry is staggering. In fact, the sheer number of victims is almost too much to manage. There are literally thousands of victims of the poultry price-fixing case against Pilgrim's Pride and Claxton—so many, in fact, that it is impossible to process them in the usual way. For example, the DOJ is expected to introduce over 12 million documents during the pre-trial discovery period, which ends on December 28, 2020. Individual notification of each victim is impossible, and now the DOJ is seeking alternatives to the usual procedures outlined by the Crime Victims' Rights Act.¹¹

In all reality, we are all the victims of these corporate abuses in one way or another. The damage to public health and safety, the erosion of public trust in the food system, and the very real damage to the food and agriculture economy is widespread. It is clear through observing the actions of these major poultry companies that workers, farmers, and consumers are not prioritized in any way above company profits, at almost any cost to food safety, worker safety, the environment, and the economy. OCM will continue to report on these investigations and lawsuits as they develop, and will continue to fight for fair and competitive markets in the American food and agricultural system.

⁵ Owens, Nathan. "Tyson Foods, Pilgrim's Pride ask judges to dismiss worker-death claims." *Northwest Arkansas Democrat Gazette*. 5 August 2020. Available: <https://www.nwaonline.com/news/2020/aug/05/meat-firms-fight-worker-death-claims/>

⁶ Douglas, Leah. "Mapping Covid-19 outbreaks in the food system." 6 August 2020. Available: <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

⁷ McCarthy, Ryan. "UFCW sues Pilgrim's pride alongside price-fixing case." *Meat & Poultry*. 9 July 2020. Available: <https://www.meatpoultry.com/articles/23433-ufcw-sues-pilgrims-pride-alongside-price-fixing-case>

⁸ Mika, Dan. "Union sues Pilgrim's Pride in connection to ongoing price-fixing case." *Greeley Tribune*. 7 July 2020. Available: <https://www.greeleytribune.com/2020/07/07/union-sues-pilgrims-pride-in-connection-to-ongoing-price-fixing-case/>

⁹ Pitt, David. "USDA Sued by Union Over Poultry Factory Production Speeds." *Food Manufacturing*. 28 July 2020. Available: <https://www.foodmanufacturing.com/safety/news/21141557/usda-sued-over-poultry-production-speeds>

¹⁰ McCarthy, Ryan. "Boston Market sues poultry companies over price fixing." *Meat & Poultry*. 22 July 2020. Available: <https://www.meatpoultry.com/articles/23505-boston-market-sues-poultry-companies-over-price-fixing>

¹¹ Flynn, Dan. "Thousands of poultry price-fixing victims are a challenge for the court." *Food Safety News*. 17 July 2020. Available: <https://www.foodsafetynews.com/2020/07/thousands-of-poultry-price-fixing-victims-are-a-challenge-for-the-court/>



OCM BLOG POST

[BREAKING: Department of Justice Files Amicus Brief in Dairy Farmers of America Lawsuit](#)

On July 27th, 2020, the United States Department of Justice (DOJ) filed an amicus brief in a lawsuit against Dairy Farmers of America, the United States' largest dairy cooperative. The lawsuit, filed in Vermont U.S. District Court, [alleges](#) that DFA and other cooperatives agreed not to compete for each other's farmer-members, conspired to share payment information in order to discourage competition and depress prices, and maintained those low prices market-wide by entering into supply agreements with Dean Foods and other dairy processors.

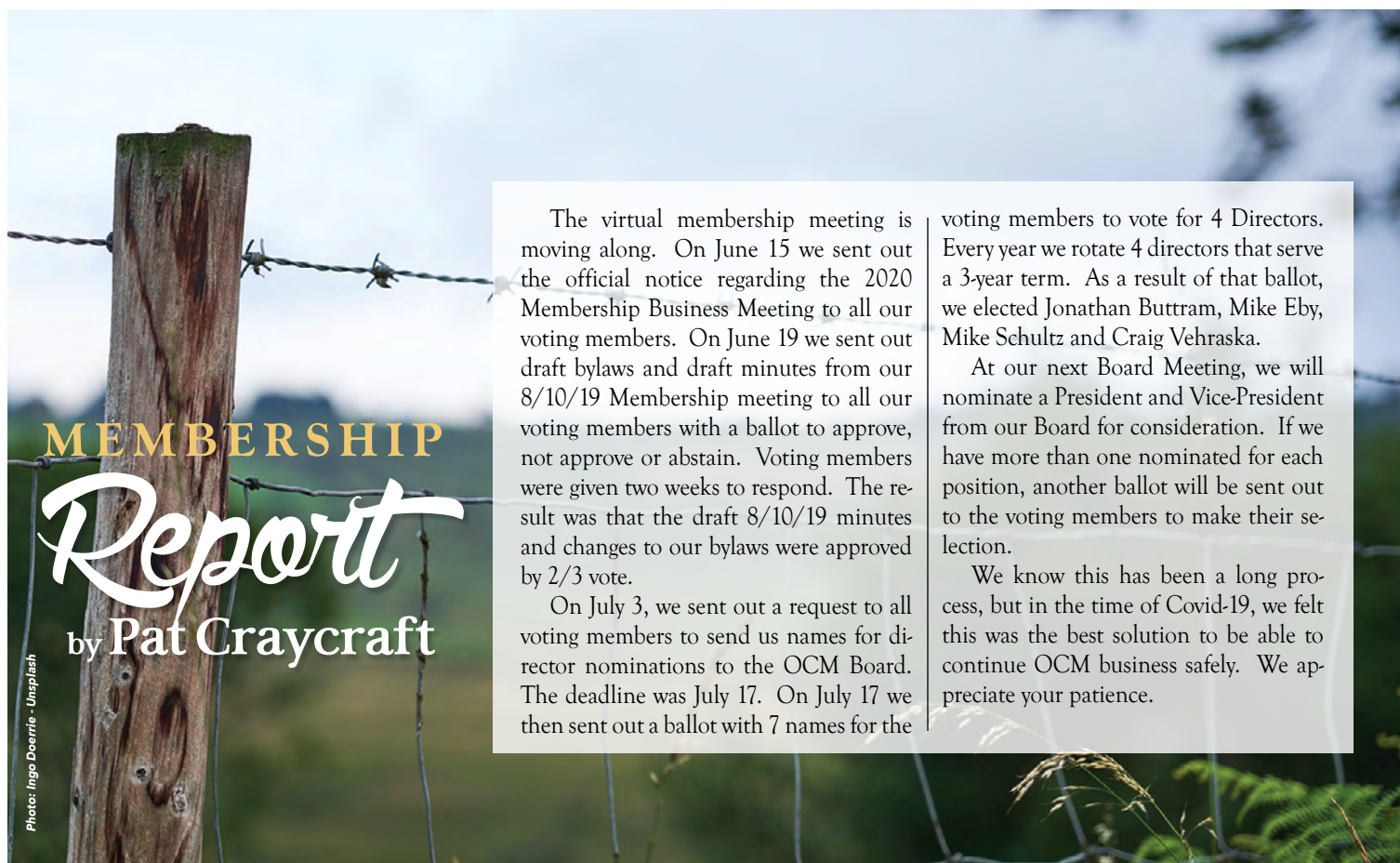
READ MORE: <https://competitivemarkets.com/breaking-department-of-justice-files-amicus-brief-in-dfa-lawsuit/>

OCM PRESS RELEASE

[OCM Calls for Department of Justice to Halt JBS Purchase of Mountain States Cooperative](#)

On July 31, the Organization for Competitive Markets (OCM) sent a [letter](#) to Assistant Attorney General Makan Delrahim of the Antitrust Division of the United States Department of Justice (DOJ), calling for the DOJ to stop the purchase of Mountain States-Rosen (MSR), a Greeley, Colorado-based lamb processing cooperative made up of 150 independent producers, by Brazilian company JBS, the world's largest meatpacker. OCM joins over a dozen [United States Senators](#) in calling for a DOJ investigation into the acquisition, which has been opposed by [sheep ranchers](#) and other agriculture [groups](#).

READ MORE: <https://competitivemarkets.com/ocm-calls-for-department-of-justice-to-halt-jbs-purchase/>



MEMBERSHIP

Report

by Pat Craycraft

The virtual membership meeting is moving along. On June 15 we sent out the official notice regarding the 2020 Membership Business Meeting to all our voting members. On June 19 we sent out draft bylaws and draft minutes from our 8/10/19 Membership meeting to all our voting members with a ballot to approve, not approve or abstain. Voting members were given two weeks to respond. The result was that the draft 8/10/19 minutes and changes to our bylaws were approved by 2/3 vote.

On July 3, we sent out a request to all voting members to send us names for director nominations to the OCM Board. The deadline was July 17. On July 17 we then sent out a ballot with 7 names for the

voting members to vote for 4 Directors. Every year we rotate 4 directors that serve a 3-year term. As a result of that ballot, we elected Jonathan Buttram, Mike Eby, Mike Schultz and Craig Vehraska.

At our next Board Meeting, we will nominate a President and Vice-President from our Board for consideration. If we have more than one nominated for each position, another ballot will be sent out to the voting members to make their selection.

We know this has been a long process, but in the time of Covid-19, we felt this was the best solution to be able to continue OCM business safely. We appreciate your patience.

MAKING A DIFFERENCE?

Individual Membership

- \$50 Member: Receives bimonthly newsletter, regular conference calls with national anti-monopoly leaders, and weekly news roundup
- \$125 Voting Member: Same benefits as \$50 level, plus voting rights
- \$500 Sustaining Member: Same benefits as \$125 level, and one-on-one strategy and progress updates
- Other Donation: Amount \$_____

Associate Organization Membership

- \$200: Organization receives bimonthly newsletter, regular conference calls with national anti-monopoly leaders, and weekly news roundup
- \$500: Same benefits as \$200 level, plus OCM staff availability and two conference registrations
- \$1,000: Same benefits as \$500 level, plus a booth and recognition at annual conference

All members will receive the bi-monthly newsletter electronically, unless you mark this line for a mailed copy: _____

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