

## THE BRISTOL BAY PRICE FIXING CASE

“It was déjà vu all over again.” Yogi Berra

By

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On May 23, 2003, an Anchorage, Alaska jury returned a unanimous verdict for the defendants in the Bristol Bay price fixing case, *Alakayak v. All Alaskan Seafoods, Inc., et al.* The jury had deliberated less than five hours after hearing nearly four months of testimony. The plaintiffs in the class action suit were 4500 salmon fishermen who sold fish to processors during the 1989 to 1995 seasons. The defendants were fish processing companies and Japanese companies who bought processed salmon. The plaintiffs contended that the processors had entered into a conspiracy to depress grounds prices and that some of the processors’ customers, Japanese-based importers, had joined the conspiracy. The plaintiffs’ lawyers claimed the fishermen had been underpaid a total of \$382 million and argued that the damages should be trebled under Alaska Anti-Trust laws to over \$1 billion. The verdict marked the culmination of an eight year legal battle that grew out of falling salmon prices, which the fishermen blamed on conspiracy and the processors and importers contended were the result of world market conditions. Initially, the plaintiffs’ lawyers had sued 22 processing companies and 12 Japanese importers. Many of these defendants had settled – some for token amounts, some for millions – by the time the trial started with 12 remaining defendants. Among the principal defendants left at trial were Wards Cove Packing Company, Peter Pan Seafoods, Trident Seafoods and Icicle Seafoods.

The events which led to this case involved a fundamental misunderstanding of the economic forces at work and a disbelief by many fishermen that fish prices could not fall so rapidly without collusion.

This was not the first such case. In 1981, a jury in Federal Court in Seattle, Washington had returned a defense verdict in favor of Wards Cove, Nelbro and Bumble Bee Seafoods in a case which involved identical allegations of price fixing against processors. The 1981 case was also a class action on behalf of fishermen claiming a conspiracy to fix grounds prices during the 1971-1974 Bristol Bay seasons and also involved four months of trial before one day of deliberations leading to a complete rejection of the fishermen’s claims. That case, however, did not involve any allegations against Japanese importers; in fact, there were no Japanese importers of salmon in the early 1970s.

A page of history is helpful to understand these cases. Bristol Bay is the largest wild sockeye salmon fishery in the world, generating 80% of the world’s sockeye production. However, the run is both intense and unpredictable; almost all the fish arrive within a 10 day period and the forecasts have only a 50% accuracy rate. Moreover, the runs fluctuate considerably both for the entire Bay and for the individual river systems. The Kvichak River, long the largest producer, has diminished significantly in recent years while the Egegik run has become dominant.

Bristol Bay remains the most expensive and the most risky major fishery area for a processor to operate. Even though the size of the run is large in good years, the total volume of fish through a

cannery is less than most other areas in Alaska, which makes the cost per pound of processing higher per pound than other Alaska salmon fisheries. Finally, Bristol Bay is remote; there are no roads to outside supplies. Everything, labor, food, cans, fuel, and all necessities for fishing or processing must arrive by sea or aircraft.

These factors of nature created a boom or bust character to Bristol Bay. The fishery commenced in 1883 and its history has been marked by more failure than success of processors. Before the turn of the century, the Alaska Packers Association cartel was formed to consolidate operations. By 1901, 18 canneries were in operation, and all fishermen were employees of the canneries and negotiated their fish prices through union/employer collective bargaining. The employee fishermen gradually phased out after 1952 in favor of independent fishermen, who owned their own boats and formed marketing associations to negotiate fish prices. By 1973, all fishermen were independent and the marketing associations negotiated Bay-wide contracts with identical prices with all the major processors. While Alaska Packers was still operating one cannery (NN), and several other competitors had entered the Bay, diminishing fish runs were closing many other operations. By 1973, there were only eight canneries still in operation surrounded by the ruins of 11 abandoned canneries and five canneries shut down and used as fish camps or support bases for fishermen. Of those eight operating plants, Alaska Packers, New England Fish Company, Whitney Fidalgo, and Bumble Bee were soon to leave. The following year, Alaska passed its limited entry law giving the existing fishermen the exclusive right to fish in Bristol Bay. A market for the permits created by this law was established which set a value on the fishing rights.

Fishermen, disgruntled by the disparity in sockeye prices between Cook Inlet and Bristol Bay, filed a class action lawsuit on behalf of all Alaska resident permit holders against the processors in 1975. The case claimed that industry practices, such as verification of existing prices by competing processors, and custom canning and joint tender operations were circumstantial evidence of a price fixing conspiracy. The first named plaintiff in that case, *Nielsen v. Alaska Packers Association*, was a South Naknek fisherman and Bristol Bay Native Corporation director named Donald Nielsen. Nielsen later withdrew from the case before trial, stating it was ill-founded. Seven of the major processors were named as defendants, including Wards Cove, Bumble Bee, and Nelbro. Whitney, Peter Pan, and Alaska Packers settled. New England Fish Company declared bankruptcy. Ultimately, in December 1981, a federal jury exonerated Wards Cove and the other remaining defendants after a four-month trial.

Other events were taking place to change the fishery in a major way. The Magnuson Stevens Act of 1976 forced the Japanese fishing companies to cease Alaska sockeye interception on the high seas and Japanese importers to turn to Bristol Bay for purchasing frozen reds. As this market developed, the Japanese importers began to bid up the price of fish in 1979 leading to new entry into the Bay of many new processors. These included significant companies like Icicle, All Alaskan, Yardarm Knot and Trident. The surviving shore-based canneries were forced to add freezing operators in order to compete in this new market. At the same time, the size of the fish runs, though fluctuating, increased substantially from their 1972-1973 record lows. Over the next decade, 1978-1988, competition for both processed fish and raw fish increased, driving prices at both levels to record highs. Alec Brindle of Wards Cove Packing Company described how one Japanese buyer showed up in the Bay during the 1988 season with a suitcase full of cash. It was a "buyers' frenzy." Grounds prices went up so fast that they were bid up above the contract prices negotiated by the marketing associations. Thereafter, there would be no fish prices negotiated by the marketing associations. Post-season adjustments were added to the grounds prices and fishermen demanded that their processors match the competition. Eventually the final price, the price that matters, sometimes went through two or more adjustments.

Then, the crash. Like the 1929 stock market, the players in the industry were not prepared for what nature and the market had in store for them. The inventory of frozen salmon in Japan was at record high levels in 1989 when the size of the Bristol Bay run more than doubled. The yen devalued, making American fish more expensive in the Japanese market and the Japanese economy started a downward trend, making the less expensive Hokkaido chums more in line with

Japanese household budgets. In addition, farmed salmon, though still produced at modest levels, was gradually impacting the world market. Like a hurricane just over the edge of the horizon, showing early warning mare's tails, the changes to be created by farm fish were anticipated by few.

Prices began falling at all levels in the market and fishermen's prices fell also. By late 1990, some importing companies like Mitsui were urging processors to keep grounds prices low as the Japanese wholesale market and the FOB prices received by processors were going to be lower than in years past. Mitsui suggested a 1991 grounds price of 50¢ per pound – down from a high of \$2.25 in 1988. Processors were cautious as the 1991 season commenced, and the opening prices by ISA and Big Creek were in the range of 40¢-47¢. Ocean Beauty Seafoods and Icicle were able to buy fish at 65¢, but Wards Cove and other major processors were not.

Attorney Bruce Stanford, then ex-governor Jay Hammond's son-in-law and president of the Bristol Bay Setnetters Association, wrote a letter supporting a fishermen's strike. The majority of fishermen did strike and prices were eventually settled at a Bay-wide price of 70¢ after extensive negotiations and intercession by the governor. The strike also resurrected complaints of price fixing and led to investigations by the federal General Accounting Office and the State Attorney General. The GAO concluded there was no collusion, but an Assistant Attorney General, James Forbes, released a draft report, stating that, based on "informed conjecture" there might be. On the other hand, two University of Alaska professors of economics, Mark Herrmann and Joshua Greenberg, published several reports stating the fall in prices in 1971 was caused solely by market forces.

Catches in Bristol Bay progressed to record highs in the early 1990's, the supply of farmed salmon continued to increase on the Japanese market and grounds prices continued to remain at low levels. By the end of the 1990s it was apparent that the halcyon years of 1986-1988 were over. In addition to falling world market prices for salmon, the Bristol Bay runs dropped markedly below predictions. No less than 42 companies abandoned their operations after 1988. This included many of the major fish buyers such as Wards Cove, Kemp, Nelbro, Unisea, All Alaskan, Queen, Inlet, Farwest, Pan Pacific, Big Creek and Dragnet. Snopac and Yardarm Knot had ceased bringing their floaters north by 2001 and were buying fish for custom processing only. Wards Cove sold its three Bristol Bay plants to Yardarm Knot in 2003 for pennies on the dollar, and Trident had closed its cannery at South Naknek. At the beginning of the 2003 season, the number of players had returned to the level of the early 1970s.

However, the conspiracy theory remained alive. In June 1995, attorney Stanford filed a class action complaint in Alaska Superior Court charging 22 processing companies and several importers with conspiracy. The complaint was largely copied from the allegations of the prior complaint in the *Nielsen* case. Attorney Stanford was joined by fellow Alaskan attorney, Phillip Weidner. Neither Stanford nor Weidner felt they had sufficient experience in anti-trust matters, so they associated attorney Steve Susman and his law firm from Houston, Texas. Susman was a very successful anti-trust lawyer and regarded by many as one of the best trial lawyers in the United States. Susman brought a wealth of experience with his firm and the financial ability to carry the formidable expenses of such a case.

In due course, the class of 4500 fishermen was certified and discovery proceeded. A number of defendants settled early and cheaply in the \$10,000 to \$50,000 range to avoid the cost of defense which was to cost millions for those that went to trial. As discovery proceeded, over 3 million documents were produced and 175 depositions were taken, mostly by videotape. Settlements became more expensive, Norquest paid \$2 million and Mitsui paid \$6 million to be released. Whether those defendants settled because of fear of an adverse verdict or because of the mounting costs of litigation was not clear, but by the spring of 1999, as the case was readied for trial, the costs of defense for the remaining defendants had reached \$22 million.

However, on July 1, 1999, Superior Court Judge Peter Michalski, much to the surprise and consternation of plaintiffs' attorneys, granted a motion for summary judgment and dismissed the case as to all defendants on the ground that there was insufficient evidence for a reasonable jury to find a conspiracy. He entered a lengthy opinion pointing out that, at most, plaintiffs could establish only a series of disconnected anecdotes of discussions about prices from which an inference of an overall conspiracy could not be drawn. Plaintiffs appealed to the Alaska Supreme Court and the Anchorage press reported Stanford as saying the defendants would eventually have "to face an Alaskan jury."

After a year of considering the arguments on appeal, the Alaska Supreme Court, in May 2003, reversed Judge Michalski's decision. The court stated that although there was no direct evidence, there was sufficient circumstantial evidence from which a conspiracy could be inferred and that the case should proceed to decision by a jury. The case was remanded to the Superior Court and at a hearing in September 11, 2002, the plaintiffs asked for a trial date at the earliest opportunity. Judge Michalski set the case for trial to commence February 2, 2003 and to last three months. After the hearing, attorney Susman was reported in the Anchorage press as saying, "Now we are going to kick ass."

During the months preceding trial, plaintiffs and some defendants separately retained jury consultants to analyze the claims and defenses and attempt to predict the outcome. The reports received by defendants' consultants were very discouraging. Those conclusions were that an Anchorage jury would have an inherent bias against Japanese importers and Seattle headquartered processors and a trial would almost assuredly result in a substantial plaintiff verdict. According to these surveys, potential jurors could easily assess \$300-\$400 million in damages. The results of plaintiffs' jury analysis were not shared with the defense, but plaintiffs' lawyers seemed elated, and the defendants concluded the results must have been similar. On the eve of trial, defendants Marubeni Corporation and its wholly-owned subsidiary North Pacific Processors settled for \$25 million while denying the conspiracy charge.

Jury selection commenced on schedule on February 2, 2003, from a pool of 195 persons, and two days later, Steve Susman and his partner, Parker Folse, presented a powerful opening argument. Susman contended that a conspiracy had been "hatched" in Japan in 1989 and that, although the fishermen's price had admittedly declined because of market forces, the "fishermen's share" calculated as a percentage of the actual value of fish as reflected on the Japanese wholesale market should not have declined in the absence of collusion.

Plaintiffs then proceeded to introduce evidence in support of their claims. They demonstrated that the processors paid essentially parallel prices, that processors exchanged information on posted prices and introduced documents from several Japanese importers speculating about existing or future grounds prices. Susman also relied on evidence that the principal officers of defendant processors belonged to numerous trade organizations, such as National Cannery Association, the Fisheries Research Institute, and the Pacific Seafood Processors Association, and that certain executives had vacationed together and developed in his words a "cozy relationship," so that there was plenty of opportunity to conspire. Plaintiffs introduced evidence of custom canning agreements and joint tender operations in Bristol Bay among processors. Susman also relied on more remote practices such as a processor's cooperative offal dumping operation in Kodiak and a joint warehouse in Portland to hold canned product.

To tie this evidence together, plaintiffs brought forward four expert witnesses. They were Ph.D. economists: Drs. Greenberg and Herrmann from the University of Alaska at Fairbanks and Drs. Gordon Rausser from Berkeley and Jeffrey Leitzinger from Los Angeles. Greenberg and Herrmann had been retained by plaintiffs after their published papers, which attributed the decline in Alaska grounds prices to market factors, and it was with some difficulty that they attempted to distance themselves from these reports. Nevertheless, Greenberg testified that Bristol Bay was concentrated (not many competitors) and because of the market structure, it was prone to collusion. Herrmann explained that although the Japanese wholesale market had dropped, the

Japanese retail market for salmon had remained relatively stable and that, in his opinion, farmed coho and trout were not perceived as substitutes for sockeye. Because of this lack of substitution he stated that farmed salmon had no impact on Alaska sockeye prices.

Drs. Rausser and Leitzinger took a more aggressive role in the presentation of plaintiffs' case. They testified that the communications by Japanese importers speculating about grounds prices, the market conditions, and the actions of the processors in verifying prices were indicators of collusion. They even construed documents – suggesting that topics such as grounds price discussions were contained in documents that did not mention grounds prices; they suggested that processors must have talked about future prices during conversations about existing prices; they testified that the processors sold frozen salmon at discounted prices to the Japanese importers so that the Japanese could share the spoils of the conspiracy. Rausser stated that even if all of the Japanese importers were not involved in the conspiracy, all 81 of those companies must have gone along with it for the conspiracy to work. In short, Rausser and Leitzinger were used to tie the fragmentary evidence together and spin a conspiracy theory. Although the court did not permit them to testify as conspiracyologists, namely, that a conspiracy actually existed, they were permitted to testify that the actions of the processors and importers were consistent with a conspiracy and inconsistent with competition.

Dr. Leitzinger then explained his theory of damages. He took the period from 1986 to 1988, which was the highest period in Bristol Bay history for fish prices, and used that as a benchmark because, he said, it was, in his opinion, the only known competitive period. He then took the average grounds price percentage of the wholesale price for salmon on the Tokyo market for those years and said that the fishermen should have received the same percentage of that value for their fish during the 1989-1995 case period. This amounted to an average of 41¢ per pound and totaled \$382 million. When asked on cross-examination how this could have possibly been paid when that amount would have bankrupted the processors, Leitzinger suggested the processors could have sold their fish for more money to the Japanese importers in the absence of a conspiracy. Plaintiffs also relied on complaints by smaller or medium size processors. Woodbine's Virginia Ferrari complained that in 1990, Mitsui ordered her to reduce her fish prices at a time when Woodbine was selling fish to Mitsui on a cost plus agreement. She also had heard from Mitsui that a Wards Cove salesman had complained about Woodbine. Baypack, a new entrant into the processing business in 1995, blamed its failure on Nelbro's alleged lack of promised help with fish grading. Drs. Rausser and Leitzinger described these incidents as efforts by major processors to eliminate competition.

After Susman rested his case on March 7, 2003, the defendants presented their evidence. Trident's Chuck Bundrant was the first processor to take the stand and vehemently deny the conspiracy charge. Each processor and importer did so in turn, including Wards Cove's Alec Brindle, Icicle's Don Giles, Peter Pan's Barry Collier, Ocean Beauty's Bill Terher and Unisea's Terry Shaff. Don Neilsen testified for the defense stating that he had always been treated fairly by Peter Pan. Alec Brindle described how difficult it was to operate in the Bay and how a long series of losses culminated in a decision by Wards Cove's lender to terminate the company's line of credit in 2002, necessitating the company's decision to close its salmon business after 75 years of operations. When asked why the company continued to operate in the Bay when its other salmon operations had been generally positive, Brindle responded that the Bay was the most exciting of the Alaska fisheries and there was always hope it would get better.

Since they were in a position of having to prove a negative, the processors and importers then introduced a substantial amount of expert testimony which supported the idea that market factors alone drove prices down. Peter Max, a forensic economist, who had studied the Bristol Bay market since the early 1970's and who had testified in the 1981 case, gave a detailed explanation of the impacts of nature, that is, the variation and unpredictability of the runs and how the processors' margins in Bristol Bay were among the lowest in Alaska. This tended to demonstrate that if a conspiracy were at work, it was not very effective. Max also showed that movements in fish prices in Bristol Bay tracked very closely with salmon prices throughout Alaska, indicating

they were impacted by the same market forces. Max expressed the opinion, contrary to Dr. Greenberg, that Bristol Bay was actually very unconcentrated under Department of Justice Guidelines and that collusion would be difficult among the 30 or so processors. Max also showed how the Leitzinger damage theory did not seem credible since all processors would have lost huge amounts if they had paid Leitzinger's suggested prices.

Max was followed by Dr. Greg Leonard, an economist trained in statistical analysis at MIT. Leonard said that sockeye prices throughout Alaska, Canada and Washington could be used to predict Bristol Bay prices and that his statistical regression analysis showed that the actual Bristol Bay prices were predictable to a 90% level. He explained further that, based on other salmon markets, the chances of the Leitzinger prices being paid were 1000 to one.

Dr. Trond Bjorndal from Norway and one of the world's experts on farmed salmon, explained how salmon prices worldwide tracked the falling prices in Bristol Bay and how the Norwegian government had unsuccessfully attempted to influence salmon prices by taking large amounts off the market to increase prices. Continued growth in world production had defeated this effort at price manipulation.

Dr. Yuko Kusakabe, a fisheries economist, described how farmed salmon had increased to 40% of the salmon imports into Japan by the end of the case period, and how Hokkaido chum production equaled all other salmon imports combined, making the total salmon supply on the Japanese market a huge number during the case period.

Finally, Dr. Gunnar Knapp of the University of Alaska testified for the defense. Knapp, who had studied the Bristol Bay and Japanese salmon markets more intensively than anyone, described how he had initially considered the possibility of a conspiracy when he saw prices fall after the price spike of 1988 and had kept an open mind on this issue for several years until he had completed his analysis and concluded that market forces alone accounted for the decline. Knapp told how he had initially refused to act as an expert witness in the case until he saw the Leitzinger analysis, which he felt was "nonsense."

The approach of the Susman team on cross-examination of defense witnesses was an obvious effort to elicit bias: Kusakabe and Leonard were shown to have testified for Exxon and "against fishermen", Icicle had bought and sold farmed fish, and fish farming was illegal in Alaska, and farm fish had parasites in them. The Brindles' had Japanese partners in Alyeska Seafoods and although Wards Cove had never declared a dividend, it was suggested the Brindles had chartered their privately owned boats to the company at exorbitant rates. The Japanese importers belonged to Kereitsus, trade organizations with sinister names, which offered an opportunity to conspire. The processors were described as the "Seattle Seven," which was a reference to their unpopular settlement with Exxon. The processors sold salmon through offshore subsidiary companies, an insinuation that they thereby avoided income taxes. An attempt was made to show that Wards Cove and other processors operated like "company stores" and the fishermen owed their souls to them. The plaintiffs' lawyers argued that, like Enron, the processors had cooked their books only this time to show losses instead of profits.

There were a number of aspects to the plaintiffs' conspiracy theory which did not make sense and which remained unexplained at the close of evidence. If the processors had formed a conspiracy, why would they let the importers in the deal, as the importers had nothing to offer them? There was no apparent motive for the processors to sell at a discount to the importers and no evidence of it. The amount of competition in Bristol Bay actually increased during the alleged conspiracy period. Not only would it be hard to get 20-30 or more processors to agree on fish prices, but it seemed nonsensical to get 80 Japanese importing firms to go along with it. The only explanation plaintiffs had for prices throughout Alaska tracking Bristol Bay prices was a suggestion that, since some processors did business in these other areas, there might be an Alaska-wide conspiracy. This did not, however, explain why Washington and Canadian prices were also tracking Bristol Bay. If Dr. Leitzinger's prices had been paid, all processors would have gone bankrupt in their

salmon operations and Bristol Bay sockeye prices would have been among the highest in Alaska for the only time in history. Finally, if there was a conspiracy, why would processors pay post-season adjustments in varying amounts at different times and when some had already lost money? The conspiracy theory did not fit the facts.

Closing arguments took three days and Judge Michalski then gave the jury their instructions on the law. He told them that plaintiffs had the burden of proving three essential elements: that some of the defendants had formed an agreement to depress prices, that the agreement was formed intentionally and that the agreement had caused harm to the fishermen.

The case then went to the jury at 11:15 a.m. on May 23, 2003 and the call that a verdict had been reached came at 4:30 p.m. In a packed courtroom, Judge Michalski read the verdict – in answer to the first question, “Did some of the defendants form a conspiracy,” the answer was “No.” The jury was polled and their verdict was 12-0. The jury was excused and the court recessed amid the jubilation and relief of the defense. The Anchorage press reported that the Susman team had checked out of their entire floor of the Captain Cook Hotel within an hour of the verdict and headed to the airport in a stretch limousine with unopened bottles of Champagne.

In subsequent interviews, jurors stated that the plaintiffs never got a single vote because the jury simply could not find evidence of conspiracy. Two jurors said the lack of evidence was “appalling,” another said the defendants should be awarded punitive damages. The Japanese witnesses were well received as honest and believable and there was no trace of bias against them. Jurors thought that the practice of price verification was normal and the parallel prices existed because fishermen wanted the same prices as those their competitor fishermen were receiving. The jury had read all 71 of the Mitsui telexes and found plaintiffs' arguments about them were taken out of context. In short, none of the dire predictions of the defendants' jury consultants had proven accurate. The verdict showed that this jury had analyzed the evidence in an entirely unbiased way.

In hindsight, one could say that the jury system worked well a second time to reject a meritless case. Yet, at the beginning of the trial, the stakes were enormous. In the application of antitrust law, each conspirator is responsible for the entire damage caused by the conspiracy as a whole. Moreover, the jury is never told that a damage award is subject to trebling. As a result, a company like Icicle, which had about five percent of the market, was exposed to an award of 100% of any damages caused by a conspiracy, and that number could be trebled to 300%. The plaintiffs' lawyers were highly skilled professionals with an enormous capacity for work. They made the most out of a difficult case, but the jury did not accept their experts' spin on the evidence. Each processor who stood trial and who had not settled had bet the company on the result. Chuck Bundrant said, “This case is not about money, it is about integrity.”

The similarities between the *Nielsen* and *Alakayak* cases were striking. Peter Max described it as the only lawsuit he had been involved with that was tried twice, in two different courts, in two different states, before two different juries to a single outcome.

From the time of the 1981 verdict in the *Nielsen* case to the time that allegations of conspiracy were again raised during the 1991 Bristol Bay season, only 10 years had passed. When the *Alakayak* jury rendered its verdict, another 12 years had passed. The cost to the industry to defend the *Alakayak* claims had been enormous, perhaps \$40 million. There would be an upcoming major legal struggle as to whether the defendant companies would recover their costs and a portion of their attorney fees from the plaintiffs' settlement fund. An appeal over these issues seems a certainty. Yet, the jury verdicts in the two cases, like the allegations of the complaints, were identical. The fatal flaw in both cases was the reliance on circumstantial evidence of parallel pricing and price verification practices. Depending on one's point of view, these facts show competition in action perhaps more easily than an inference of conspiracy. Bristol Bay prices are public and remain one of the hottest topics of discussion on the radio, the press and to all concerned with the industry. Moreover, in the twenty-year period between the

cases, no expert economist could show a reliable benchmark. Just as the Cook Inlet sockeye prices could not be used as a measure of Bristol Bay prices in the *Nielsen* case, the price spike of 1986-1988 was patently unreasonable as a benchmark in the *Alakayak* case. Without a benchmark and with Alaska, Canadian and Washington sockeye prices all tracking in response to the same market factors, there was no evidence fishermen had been harmed; and, in fact, this was a strongly compelling inference that no conspiracy existed. Bristol Bay fishing permits had remained the highest valued in Alaska and the fishermen had actually made their highest earnings during the alleged conspiracy period because of the large volume of fish.

The *Alakayak* case, like its predecessor, the *Nielsen* case was born due to fishermen's frustration with the results of the market forces which are beyond industry control. The companies that settled early, like Yardarm Knot, Snopac, Queen, Dragnet and Pan Pacific, all for less than \$60,000, each, no doubt, made very wise business decisions, even though the plaintiffs' case later proved to be meritless. The price of defeating the conspiracy charges was high. Those that refused to settle paid enormous sums of \$2-\$5 million each in defense costs. The total impact of these costs on the industry will, ironically, lower the amounts which the surviving processors can pay for fish. And, although the plaintiffs' lawyers did extract a fund of \$40 million from the defendants who lacked the resolution to withstand trial, by the time the fund is distributed after payment of fees and costs, the expected return to the class will be minimal. Perhaps it is poetic justice that the settlement payments will be the target for the successful defendants' claim to recover their attorneys' fees and costs.