

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

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3	RURAL COMMUNITY WORKERS)	Case No. 5:20-CV-6063-DGK
	ALLIANCE, ET AL.)	
4)	
	Plaintiffs,)	
5)	
	VS.)	
6)	
	SMITHFIELD FOODS, INC., ET AL.))	
7)	April 30, 2020
	Defendants.)	Kansas City, Missouri
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 TRANSCRIPT OF VIDEOCONFERENCE OF
 PRELIMINARY INJUNCTION HEARING
 BEFORE GREG KAYS
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

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1 Honor. Look at their brief, page 7 to 8. They say that
2 they're operating in the alternative, that they believe they
3 can pick and choose the CDC guidelines to follow. You know,
4 they can use Plexiglass dividers or six feet spacing. That's
5 not what the CDC says. If you look at their submission of the
6 CDC guidelines at page 3.

7 Similarly, if you look at their photos of their
8 break room -- so this is docket number 32-1 in Exhibit 6,
9 their photos of their break rooms show chairs closer than six
10 feet apart with only small, flimsy, Plexiglass dividers in
11 between them.

12 You know, and Smithfield has not submitted any
13 photos of its work area, which is where these workers spend
14 the majority of their day. And that's notable. But you
15 don't -- again, you can trust them on what they're saying,
16 which is that they are not spacing. And I will tell you, we
17 heard from Mr. Fuentes this morning that a worker called him
18 last night and that in Smithfield's kill floor side where they
19 take the innards out of the animals, there is both not spacing
20 and not Plexiglass dividers. There is neither of the things
21 that Smithfield says it is doing -- it is doing.

22 So that's one area.

23 The second area is that Smithfield could tell
24 workers and change its sick leave policy such that workers who
25 are experiencing symptoms can stay home with leave without any

1 things that were told to her were incorrect. And we don't
2 know the other things that were told to her. But in any
3 event, there is no Smithfield specific opinion that
4 Smithfield, based on the policies and practices that it
5 actually is instituting in the Milan plant, is not in
6 compliance or performing consistent to the interim guidance
7 for meat and poultry processing facilities. That's it.
8 That's the evidence that has been presented to this Court.

9 Smithfield's -- sorry, Your Honor. Did you want me
10 to stop?

11 THE COURT: Yeah. I have a question. I have some
12 questions. And then -- so Mr. Muraskin touched on this. And
13 I note in your filing last night the OSHA response. I think
14 it was -- there's less hogs being slaughtered or something
15 like that, some phrase like that, which equates to line speed,
16 right? How --

17 MS. CUNNINGHAM: It does in a sense, yes.

18 THE COURT: Less hogs -- okay.

19 MS. CUNNINGHAM: Not --

20 THE COURT: Has the line speed -- okay.

21 Has the line speed changed under the COVID-19
22 regulations or guidance now that the CDC and OSHA have got
23 involved in this?

24 MS. CUNNINGHAM: The line speed, Your Honor --

25 THE COURT: Has that affected line speed?

1 MS. CUNNINGHAM: The line speed has not changed,
2 Your Honor. The line speed has not changed.

3 THE COURT: Okay.

4 MS. CUNNINGHAM: We are now -- it is true we are, in
5 fact, processing less hogs at this point. That is so that we
6 can better facilitate social distancing. What that does is
7 get the production line workers off the line so that there is
8 less overlap within the facility during periods of time. And
9 so that is a measure that was taken specifically to address
10 the social distancing issue within the facility, to make sure
11 that the cafeterias and the break rooms, the restrooms are not
12 as crowded.

13 This is a process of continuous improvement that not
14 only Smithfield but every company that's operating in this
15 country is going through. It's a process of continuing
16 improvement for the government, for the CDC, for everyone.

17 I -- I can -- Your Honor, I can respond to you. We
18 have responses. Obviously, we just got the supplemental
19 affidavits yesterday. But I know that was one of the new
20 things that anonymous declarant had raised in her affidavit.
21 We have -- we have responses for the rest of those that,
22 obviously, we could supplement. We haven't had time since
23 this morning --

24 THE COURT: Sure.

25 MS. CUNNINGHAM: -- but that we can supplement with.

1 we're here about today. We're asking for opportunity -- for
2 this Court to order Smithfield to come into compliance based
3 on what it's saying it is not doing.

4 THE COURT: Okay. Thank you, Mr. Muraskin.

5 Okay. Let's hear from the defendant. I'll give you
6 10 minutes.

7 MS. CUNNINGHAM: All right, Your Honor. To address
8 a few points. First, on the statement of enforcement policy,
9 that's -- that the plaintiff referred you to and the statement
10 regarding litigation. Your Honor, that statement is referring
11 to exposure litigation. What that statement is saying is that
12 if an employee sues their employer for exposure to COVID in
13 the workplace for an injury, DOL is providing support to
14 employers that they will come in and talk about your
15 compliance. And that is because in this circumstance, we are
16 being told by the federal government that we are a critical
17 infrastructure, and we need to stay open. We don't have a
18 choice. They're offering support in this situation. And then
19 they were offering employees support in the same way. If you
20 are injured in this situation, we will come in. They're not
21 suggesting in any way that -- that private litigants can go
22 around the country and try to enforce their standards, and
23 OSHA will come into the court and help you.

24 I feel pretty confident we could get a statement
25 from OSHA that's not the case if the Court is inclined to

1 interpret it that way. But between the USDA, OSHA, and state
2 and local government, those are the entities that are tasked
3 with both monitoring occupational safety and health, making
4 sure with respect to the USDA that we can keep food supply
5 chains open and state and public health protecting the public
6 health in their various states.

7 There are three agencies that have oversight -- or
8 three current regimes that have oversight over this. The
9 federal government has ultimate control as a result of the
10 executive order. That wasn't the case before Wednesday.
11 Before Wednesday, the federal government had -- every state
12 had different shutdown shelter orders, all of those things.
13 With respect to meat processing, it is different as of
14 Wednesday.

15 Moving, Your Honor, to some of the other things that
16 were said with respect to -- to sick leave specifically. In
17 fact, employees at Smithfield are paid if they have symptoms
18 as well. The Messman affidavit is correct. It does say
19 quarantine. But, in fact, they are paid if they have symptoms
20 as well. I have learned that -- I don't know the exact date
21 of the new CDC, when they added the additional symptoms, it
22 was sometime last week. We -- I have learned sitting here
23 today that the Milan plant has, in fact, updated its policies
24 and procedures. The one that we had received in preparation
25 for this litigation was an older version of that.

1 THE COURT: How about that?

2 MR. MURASKIN: That's perfect.

3 THE COURT: All right. I think that concludes our
4 hearing. Thank you all for your work on this. And I
5 appreciate it. And I will wait for your filings and render a
6 decision expeditiously. Thank you all. And have a good day.

7 MR. BRADSHAW: Thanks, Judge.

8 MS. CUNNINGHAM: Thank you.

9 (Proceedings concluded at 11:33 a.m.)

10 C E R T I F I C A T E

11 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
12 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

13

14 /s/Regina A. Lambrecht April 30, 2020
15 REGINA A. LAMBRECHT, RDR, CRR DATE
16 Official Court Reporter

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