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MESSAGE FROM THE CHAIR

Our section has been spreading the news about antitrust and trade regulation laws to eager law students. On March 4, March 11 and April 6, we gave presentations at Thomas M. Cooley Law School, University of Michigan Law School and the University of Detroit School of Law. The students' interest level and desire to learn more about antitrust and trade regulation laws is encouraging.

We are scheduled to have our Council meetings on April 22, June 3, July 22, and September 16. Additionally, we will most likely have meetings during November and December.

In July, we anticipate hosting a presentation designed to assist in-house counsel with e-Discovery matters.

Cheers,
 Andrew J. Morganti, J.D., LL.M.
 SUTTS, STROSBURG LLP
 T. 519.561.6251: F. 519.561.6203
 M. 248.787.6078
andrew@strosbergco.com

SECTION NEWS**Now Accepting Submissions**

If you have an antitrust, franchising, or trade regulation article that you would like to submit to be considered for publication in an upcoming e-Newsletter, please submit your work to the Section's Publications Editor, [Justin Hakala](#).

Missed the Last E-Newsletter?

If you missed the last e-Newsletter, be sure to check out the archives at the State Bar of Michigan's website, accessible [here](#).

MICHIGAN NEWS**Sixth Circuit Affirms FTC in Multiple Listing Service Case, No. 09-4596 (6th Cir.)**

April 6, 2011

The Sixth Circuit affirmed the Commission's decision in *Realcomp II*, holding that substantial evidence supported the Commission's findings that the Realcomp's Multiple Listing Service practices of prohibiting various nontraditional real estate listings from its database were anticompetitive, had anticompetitive effects, and were without procompetitive justification. The case was originally dismissed by the Administrative Law Judge before the Commission reversed, finding alternatively that Realcomp II's actions were inherently suspect and presumptively unlawful under a 'quick-look' analysis, or that under a full rule of reason analysis the procompetitive benefits did not justify the anticompetitive effects. On appeal, the Sixth Circuit applied its version of a 'full' rule of reason without directly addressing the Commission's alternate conclusion that the practices were inherently suspect. [Opinion](#); [FTC Press Release](#).

In This Issue:

Message From the Chair	1
Section News	1
Michigan News	1
Deal Log	3
National News	4
Enforcement Actions	5

Packaged Ice Antitrust Litigation, MDL No. 1952 (E.D. Mich.)

March 11, 2011

Motion practice, another attorney general, and multi-million dollar settlements!

On February 22, the E.D. Mich. granted final approval of the Defendant Home City Ice Holdings \$13 million settlement resolving the class action antitrust claims lodged by direct purchasers of packaged ice. On March 31, Defendant Arctic Glacier Income Fund announced that it has reached an agreement to settle a class action filed by direct purchasers of packaged ice against Arctic Glacier International Inc. for \$12.5 million.

On March 8, the Attorney General of Illinois joined the party by lodging antitrust claims against Home City Ice Co. and co-packers of packaged ice. *See, The State of Illinois v. Home City Ice Co., et al.*, 11-CH-08702 (Cir. Ct. of Cook County, IL).

On March 11, the E.D. Mich. published its opinion and order granting in part and denying in part defendants' motion to dismiss the indirect purchaser complaint. The action is going forward, however the court did indicate the necessity of having a representative plaintiff from each state at the time of filing rather than deferring until class certification. The court also allowed the federal injunctive relief claim to go forward.

Polyurethane Foam Antitrust Investigations, MDL No. 2196 (Consolidated – N.D. Ohio)

February 28, 2011

We previously reported that the European Commission's antitrust division carried out unannounced inspections (a/k/a, Dawn Raid) at the premises of companies active in the polyurethane foam sector in several Member States. The dawn raids relate to an alleged price-fixing cartel. Within the United States, including most of the Midwestern states, the FBI executed search warrants on the offices of leading polyurethane foam manufacturers.

On February 28, the plaintiff direct purchasers of polyurethane foam filed their consolidated amended complaint alleging that the price-fixing conspirators include some of North America's largest flexible polyurethane foam manufacturers, most of which have offices in the Detroit metropolitan area. Vitafoam Inc., with headquarters in North Carolina and Ontario, and Rectical S.A., with headquarters in Brussels and a plant in Auburn Hills, have reported that they were accepted into the regulators' Corporate Leniency Program.

Auto Components Antitrust Investigations

February 8, 2011

This past summer we reported that on June 1, 2010, the United Kingdom's Office of Fair Trading arrested a British-based employee of Yazaki after receiving a tip-off from Sumitomo Electric Wiring Systems, which has an office in Novi, Michigan, about antitrust activities within the electrical wiring industry. On February 2010, the FBI raided the U.S. offices of Denso Corp., Yazaki North America, Tokai Rika Group North America, Lear Corp., and Tram Inc. On February 8, 2011, it was reported that the FBI also raided TK Holdings Inc. in Auburn Hills. The company is the North American subsidiary of Takata Corporation. Takata manufactures airbags and seatbelts for the transportation industry. Takata's domestic customers include General Motors Company, Chrysler Group LLC, and Ford Motor Co.

DEAL LOG:

Hancock Holding Company
&

Whitney Holding Corporation

April 1, 2011

The DOJ will not challenge the merger between Hancock Holding Company, headquartered in Gulfport, Mississippi, and Whitney Holding Corporation, headquartered in New Orleans, Louisiana, after the agreed upon divestiture of eight bank branches located in Mississippi and Louisiana. The merger will make Hancock Holding Company the 32nd largest in the nation with approximately \$20 billion in assets and \$16 billion in deposits. The eight branches to be divested have a total of approximately \$202 million in deposits. A list of the branches to be divested can be found in the DOJ press release. [DOJ Press Release](#).

ProMedica Health System, Inc.
&

St. Luke's Hospital

March 29, 2011

Judge Katz, of the U.S. District Court for the Northern District of Ohio Western Division, has issued a preliminary injunction against ProMedica's acquisition of St. Luke's Hospital. The FTC alleges that ProMedica's acquisition of St. Luke's Hospital would result in harm to competition in two relevant service markets in Lucas County, Ohio, the market for general acute-care inpatient hospital services and the market for inpatient obstetrical services. The acquisition would leave ProMedica facing only two other competitors in the acute-care services

Tokai Rika Group North America and TK Holdings Inc. are competitors in the market for seatbelts and steering wheels with airbags.

***In re Prandin Antitrust Litigation*, 2010-cv-12141 (E.D. Mich.)**

Novo Nordisk manufactures a diabetes drug called repaglinide, which it sells under the brand name Prandin. The plaintiffs in this antitrust class action are drug wholesalers who maintain that Novo has unlawfully monopolized the repaglinide market and prevented the introduction of lower-cost generic repaglinide. On October 29, 2010, Novo filed two motions to dismiss: one based on a purported failure to plead exclusionary conduct, and another based on a purported failure to plead antitrust injury. As of January 10, 2011, those motions were fully briefed and remain pending. In addition, Novo's only remaining patent concerning repaglinide was held invalid, following trial, on January 19, 2011. *Novo Nordisk A/S v. Caraco Pharmaceutical Laboratories, Ltd.*, No. 05-40188, 2011 WL 163996 (E.D. Mich. Jan. 19, 2011). Novo has appealed that ruling to the United States Court of Appeals for the Federal Circuit.

***In re Detroit Association of Realtors*, 2010-cv-14046 (E.D. Mich.)**

This antitrust class action complaint follows the United States Federal Trade Commission's antitrust investigations of Realcomp II, Ltd. (Docket No. 9320) and recently decided Sixth Circuit appeal (Case No. 09-4596). The Sixth Circuit affirmed the Commission's decision that Realcomp II's multilisting practices were proscribed under the rule of reason.

On January 7, defendants served their motion to dismiss based upon a failing of plaintiffs to plead sufficient facts to state a claim; the standard "*Twombly* motion." In the alternative, defendants also argue that, as a matter of law, a defendant could not have conspired with its shareholders in adopting the challenged conduct. The hearing date for defendants' motion to dismiss is schedule for May 10, before Judge Stephen J. Murphy III.

The consumers are represented by Barris Sott Denn & Driker, PLLC, Goldman Scarlato & Karon (Cleveland, OH), Freed Kanner London & Millen LLC (Chicago, IL), and Reinhardt Wendorf & Blanchfield (St. Paul, MN).

***GMA Cover Corp. v. Saab Barracuda, LLC*, 2010-cv-12060 (E.D. Mich.)**

This attempted monopolization claim was filed during mid-2010. On January 24, Saab Barracuda filed a motion to dismiss, and on March 9, 2011, plaintiff filed an amended complaint. Plaintiff alleges that there are only two authorized manufacturers of specialized camouflage netting for the United States Army and that defendant engaged in predatory pricing in an attempt to monopolize the relevant market. More specifically, the complaint alleges that over the past couple of years defendant has sold the relevant product below its average variable cost or, in the alternative, below defendant's average total cost.

Plaintiff is represented by Fletcher Fealko Soudy & Francis, P.C. Howard Iwrey, Dykema Gossett, PLLC, represents Saab Barracuda LLC.

***In re Blue Cross Blue Shield of Michigan*, (E.D. Mich.)**

We previously reported that the US Department of Justice and the State of Michigan filed

market and with a 60 percent market share. Post-acquisition ProMedica would have an 80 percent share of the inpatient obstetrical services market and would face only one other competitor. [FTC Press Release.](#)

**Laboratory Corporation of
America
&
Westcliff Medical Laboratories,
Inc.**

March 24, 2011

By a 4-1 vote, the FTC decided to withdraw its appeal of a court order denying preliminary injunction against LabCorp's integration with Westcliff Medical Laboratories while administrative adjudication was pending. Commissioner Julie Brill dissented. In a 5-0 vote, however, the FTC voted to remove the case from administrative adjudication. The FTC had alleged that the acquisition of Westcliff Medical Laboratories, completed June 16, 2010, would leave only two significant competitors in the Southern California market for diagnostic lab services offered to physician groups. The remaining competitors, Universal Health and Quest Diagnostics Incorporated, would have 89 percent of the transactions in the market. Westcliff, "an upstart competitor," has priced some of its testing services lower than LabCorp and Quest, increasing its share of physician groups and in some cases, preventing LabCorp from raising prices for the service. [FTC Press Release.](#)

[Have We Missed Something?](#)

a civil antitrust lawsuit against Blue Cross Blue Shield of Michigan (BCBSM) alleging that provisions of its agreement with hospitals result in artificially high prices for various medical procedures and services as well as preventing other insurers from entering the market. The DOJ has focused on the most favored nation (MFN) clauses incorporated into the contracts between BCBSM and certain Michigan healthcare facilities. In March, the DOJ's investigation of BCBSM expanded into Kansas, Missouri, Ohio, West Virginia, North Carolina, South Carolina and the District of Columbia.

BCBSM argues in its motion that the DOJ's complaint should be dismissed pursuant to the state action doctrine and that it fails to allege relevant product and geographic markets. On April 19, the E.D. Mich. heard oral arguments relating to the motion to dismiss.

Class actions have also been filed against BCBSM. On April 19, the E.D. Mich. is hosting a case management conference for the appointment of interim class and liaison counsel. Plaintiffs are represented by various counsel including Cohen Milstein Sellers & Toll, PLLC (Washington, D.C.), Berger Montague (Philadelphia, PA), Fink + Associates (Bloomfield Hills), Sommers Schwartz P.C. (Southfield), with co-counsel also filed a class action complaint.

[In re ADM File No. 2008-18-Proposed Amendments to Rule 3.501 of the Michigan Court Rules](#)

The Michigan Supreme Court was considering whether to amend Rule 3.501 of the Michigan Court Rules, which governs class actions. The two alternative proposed amendments included (A) requiring a plaintiff to file a supplemental motion for certification of a class within 21 days of the date when the party knew or should have known of the changed circumstances; or (B) a plaintiff is entitled to file one and only one motion for class certification. After receiving public commentary from practitioners, the State Bar of Michigan revised its public policy position on ADM File No. 2008-18 to support the alternative recommendation that a supplemental motion for certification must be filed within a reasonable time, as opposed to 21-days, of the date when the party knew or should have known of the changed circumstances. Special thanks to Patrick Cafferty, Cafferty Faucher LLP (Ann Arbor), Lance Young, Law Office of Lance C. Young (Canton), and Andrew Morganti, Morganti Legal P.C. (Northville) for providing the public commentary.

NATIONAL NEWS

[DOJ Antitrust Division Annual Newsletter Issued](#)

April 1, 2011

The Antitrust Division published on its website the annual newsletter chronicling the Division's recent activities and case filings. The newsletter also features articles on various topics such as the revised Horizontal Merger Guidelines. The newsletter can be found [here](#). [DOJ Press Release.](#)

[DOJ and FTC Seek Public Comment on Antitrust Enforcement Regarding ACOs](#)

March 31, 2011

The DOJ and the FTC issued a joint statement regarding proposed antitrust enforcement against Accountable Care Organizations (ACOs) and are accepting public comments

Do you know of a recent case that you don't see in the newsletter? Please [email](#) the editor with recently resolved or newly pending cases that we have missed

through May 31, 2011. ACOs consist of groups of health care providers that will collaborate to reduce the costs of health care under the Affordable Care Act of 2010.

According to the DOJ press release, the proposed statement describes "the ACOs to which it will apply; when the department and the FTC will apply particular antitrust analysis to those ACOs; an antitrust safety zone for certain ACOs; an expedited CMS-mandated antitrust review process for other ACOs; and options for ACOs to gain additional antitrust clarity if they fall outside the safety zone but below the CMS-mandated antitrust review trigger," as well as describing five types of conduct that are likely to raise antitrust concerns. In a joint effort, the DOJ and the FTC will establish the ACO Working Group which will oversee antitrust review of ACOs. [DOJ Press Release](#). [FTC Press Release](#). [Proposed Policy Statement](#). [Submit an Electronic Comment](#).

DOJ and FTC Announce Cooperation Agreement with Chilean Antitrust Agency

March 31, 2011

The DOJ, the FTC and the Chilean antitrust enforcement agency signed a cooperation agreement to improve collaboration in enforcement actions and to enhance confidentiality protections as well as provide for the sharing of information between the agencies. This U.S. has similar agreements with antitrust enforcement agencies in Brazil, Canada, the EU, Israel, Japan and Mexico. [DOJ Press Release](#). [FTC Press Release](#).

FTC Issues FY 2010 Premerger Notification Report

February 15, 2011

The FTC issued the 2010 report on review of mergers under the Hart-Scott-Rodino Premerger Notification Program. The report provides a summary and statistical data for enforcement activity during fiscal year 2010. The report shows an increase of 63% in the number of transactions reported to the FTC and DOJ. [FTC Press Release](#). [FY 2010 HSR Report](#).

FTC Names New Chief Litigation Counsel for its Bureau of Competition

February 14, 2011

Edward D. (Ted) Hassi was appointed as the FTC Bureau of Competition's new Chief Litigation Counsel. Hassi is a former partner at O'Melveny & Myers LLP where he was a member of the Securities Litigation and Antitrust/Competition practice groups. He replaces J. Robert Robertson who returned to private practice in 2010. [FTC Press Release](#).

ENFORCEMENT ACTIONS

Municipal Bonds Bid-Rigging Conspiracy

March 30, 2011

Yet another bank employee pled guilty for his participation in the bid-rigging conspiracy in the municipal bonds derivatives market. Brian Scott Zwerner, a former manager of the Municipal Derivatives Trading Desk of a North Carolina-based bank, pled guilty to charges of falsifying bank records. Zwerner falsified trade tickets, which record the terms of an investment agreement, by understating the marketing profits earned and syphoning those proceeds to an off-the-books account. The account was used to pay kickbacks to brokers, such as Rubin/Chambers, Dunhill Insurance Services Inc., that were involved in bid-rigging

to assure a certain bank would win the investment or other municipal finance contract. This is the ninth indictment to date on the case. [DOJ Press Release](#).

DOJ Reaches Settlement with Dean Foods Company, Requires Divestitures

March 29, 2011

The DOJ has reached an agreement with Dean Foods Company whereby the latter will divest a milk processing plant in Waukesha, WI and the Golden Guernsey brand name that it acquired in 2009 from Foremost Farms USA Cooperative. As part of the agreement, Dean is also required to notify the DOJ before undertaking any future acquisitions of milk processing plants that are in excess of \$3 million. The complaint filed by the DOJ and the state attorneys general of Michigan, Illinois and Wisconsin alleged that the 2009 acquisition had significant adverse effects on competition in the sale of milk to schools and retail stores. [DOJ Press Release](#).

Toys “R” Us Violates 1998 FTC Order

March 29, 2011

The FTC filed a complaint alleging that between 1999 and 2010 Toys “R” Us, Inc. violated a 1998 order that required it, among other things, to refrain from requesting information from its suppliers regarding the suppliers’ sales of products to discount stores and to maintain records of any communications between the company and its suppliers. According to the press release, Toys “R” Us violated the order by complaining to various of its baby product suppliers about discounts other retailers were offering on the products and that such complaints led to manufacturers limiting the supply of products. In addition, Toys “R” Us, failed to maintain records of its communications with suppliers and requested information on how suppliers distributed products to discounters. The company has agreed to pay a \$1.3 million civil penalty fine. [FTC Press Release](#).

Federal E-Rate Program Bid-Rigging Conspiracy

March 28, 2011

Tyrone Pipkin, the co-owner of Global Networking Technologies Inc. (GNT), has pled guilty to participating in a conspiracy to defraud the federal E-Rate program by paying bribes to various school officials responsible for contracting for Internet access services. The officials gave control over the E-Rate bidding process to Pipkin who awarded the E-Rate contracts to his company and his co-conspirators. Including Pipkin, a total of 22 individuals and 7 companies have pled guilty, entered settlement agreements or have been convicted in connection with this investigation. Earlier in the month, on March 3, 2011, Barret C. White, the owner of an Illinois-based technology company, also pled guilty to participating in a conspiracy to defraud the federal E-Rate program by paying bribes to school officials in various states in order to obtain E-Rate contracts for his co-conspirator’s companies which provide Internet access services. [Latest DOJ Press Release](#).

Industrial Pipe Supply Bid-Rigging Conspiracy

March 23, 2011

Barnard Grobart and Teneyck Inc., a New Jersey industrial pipe supply company owned by Grobart and formerly known as Neill Supply Co. Inc., pled guilty to participating in a conspiracy to commit fraud against Consolidated Edison of New York (Con Edison) by bribing Con Edison’s purchasing manager to award contracts to Grobart’s company. James Woo-

dason, the manager of the purchasing department at Con Edison, provided Robert Rosenberg, a former sales broker for Neill Supply, with confidential competitor bid information which led Con Edison to pay higher, non-competitive prices for the materials. Robert Rosenberg pled guilty for his role in the conspiracy on December 2, 2010.

Teneyck is the second company to plead guilty in the ongoing investigation. On March 14, 2011, American Pipe Bending and Fabrication Co., based in Edison, N.J., and Andrew Martingano, the company's owner, also pled guilty to participating in a conspiracy to commit fraud against Con Edison. Like Grobek, Martingano also paid bribes to Woodason in exchange for confidential bid information. Woodason pled guilty to accepting bribes on November 19, 2010. [Latest DOJ Press Release](#).

Aftermarket Auto Lights Price-Fixing Conspiracy

March 22, 2011

Chien Chung Chen, aka Andrew Chen, a former executive of a California distributor for a Taiwan producer of aftermarket auto lights, pled guilty for participating in a global price-fixing conspiracy. According to the charge, Chen and co-conspirators met to determine the price of aftermarket auto lights and issued price lists based on the agreements reached. In order to monitor compliance, they exchanged information on the prices and sales of the items. Chen is the second person to be charged in the price-fixing conspiracy, after Polo Shu-Sheng Hsu was charged on February 8, 2011. [DOJ Press Release](#).

Global LCD Price-Fixing Conspiracy

March 18, 2011

Samsung SDI Company Ltd. pled guilty to a price-fixing conspiracy by reducing output and allocating markets for LCD panels. LCD panels are used in electronic devices such as computers, televisions and cell phones. According to the charges, Samsung's involvement in the conspiracy dates back to at least January 1997 and continued through March 2006. The company has agreed to pay a \$32 million criminal fine. A total of 8 companies and 22 executives have so far been indicted for participating in the price fixing conspiracy and more than \$890 million has been obtained in criminal fines. [DOJ Press Release](#)

San Joaquin County, CA Real Estate Bid-Rigging Conspiracy

March 18, 2011

Gregory L. Jackson pled guilty to conspiring to rig bids by agreeing with other real estate speculators to not bid against each other at public real estate foreclosure auctions in San Joaquin County, CA from March 2009 to October 2009. Jackson also pled guilty to mail fraud. The conspiracy aimed to suppress competition to acquire real estate at low, non-competitive prices. Once the property was bought by a designated bidder for the group of conspirators, it was then auctioned off amongst the conspirators. The difference between the price at which the property was acquired during the public auction and the price paid by the winning conspirator was dividing among the remaining conspirators as profit. Jackson is the sixth individual to plead guilty. Yama Marifat and Richard W. Northcutt pled guilty on March 4, 2011 and February 4, 2011, respectively. In addition, Anthony B. Ghio, John R. Vanzetti and Theodore B. Huts have also pled guilty. [Latest DOJ Press Release](#).

DOJ Brings First Monopolization Claim Since 1999 Against Texas Hospital

February 25, 2011

The DOJ reached a settlement agreement with United Regional Health Care System of Wichita Falls, Texas that United Regional will no longer enter into contracts that prevent health insurers from contracting with United Regional's competitors. The DOJ charged United Regional with violating Section 2 of the Sherman Act by using such contracts to maintain unlawful monopoly in inpatient and outpatient surgical services. United Regional sold to insurers an average of 70 percent more inpatient hospital services per day as compared to its closest competitor also offering those services. This is the first case charging unilateral anticompetitive conduct from a monopolist since 1999.

United Regional is the largest hospital in Wichita Falls with approximately 90 percent of the share for acute-care inpatient services and more than 65 percent of the share for outpatient surgical services. In addition, it is the only provider of such vital services as cardiac surgery, obstetrics, and high-level trauma care, making it a necessary hospital for health insurance plans. United Regional charged insurers significantly higher rates if they contracted with competing hospitals, forcing health insurers into exclusionary contracts. [DOJ Press Release](#).

Water Freight Transportation Services Price Fixing Conspiracy

February 24, 2011

Horizon Lines LLC pled guilty to participating in a conspiracy to fix rates and surcharges for the water freight transportation service running between the United States and Puerto Rico. The company engaged in price fixing from May 2002 until at least April 2008 and has agreed to pay a \$45 million criminal fine. Horizon Lines LLC and co-conspirators engaged in meetings to allocate customers and agree, as well as to monitor compliance. In 2008, five former executives pled guilty to charges in connection with this investigation and were sentenced to serve prison time. [DOJ Press Release](#).

Iowa Ready-Mix Concrete Price Fixing Conspiracy

February 8, 2011

The investigation into the ready-mix concrete industry in Iowa has led to the conviction of two executives, Steven Keith VandeBrake, the sales manager of an Iowa ready-mix concrete company, and Kent Robert Stewart, the president of another Iowa ready-mix company. VandeBrake was sentenced to 48 months in prison and has to pay an \$829,715.85 criminal fine for his participation in three separate conspiracies to fix prices or rig bids for ready-mix concrete. Stewart was sentenced to a year and a day in prison and must pay an \$83,427.09 criminal fine for conspiring with VandeBrake to fix prices and rig bids. Including Chad Van Zee, who pled guilty on December 6, 2010, three ready-mix concrete executives in Iowa have pled guilty in the investigation so far. [DOJ Press Release](#).