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New York federal court denies class certification for antitrust plaintiffs for the second time on predominance grounds

For the second time, a New York federal district judge denied a motion for class certification filed by caustic soda purchasers, ruling that the plaintiffs had failed to meet the predominance requirement under Federal Rule of Civil Procedure 23(b)(3). *Miami Prods. & Chem. Co. v. Olin Corp*., No. 1:19-CV-00385 EAW, 2024 WL 5116568 (W.D.N.Y. Dec. 16, 2024).

Two named plaintiffs, The Tripp Plating Works, Inc. and Finch Paper, LLC, filed a class action on behalf of indirect purchaser plaintiffs (IPPs), alleging that caustic soda manufacturers engaged in a price-fixing conspiracy between 2015 and 2019. *Miami Prods.*, 2024 WL 5116568, at *1, *3-4. Caustic soda, also known as lye or sodium hydroxide, is sold under varied and complex contract mechanisms, including fixed pricing, index-based pricing, and formulaic agreements. *Id.* at *8-9, *11. The IPPs claimed that the manufacturers issued coordinated price increase announcements unsupported by market conditions, causing inflated prices that were passed through the supply chain to indirect purchasers. *Id.* at *1.

The IPPs incorporated the factual allegations previously raised by direct purchasers (DPPs) of caustic soda. *Id*. The DPPs had previously moved for class certification, but the same judge refused to certify the class for failure to satisfy the predominance requirement. *Id.* The IPPs then initiated new litigation and sought to certify two classes: (1) a State Antitrust Class covering indirect purchasers in 29 states and D.C., and (2) an Unjust Enrichment Class for indirect purchasers in 17 states. *Id.* at *3-4. The State Antitrust Class pursued claims under state antitrust statutes, while the Unjust Enrichment Class sought recovery for the manufacturers' alleged unjust enrichment from the price-fixing scheme. *Id.* at *3-4, *7 n.6.

The district court again denied class certification on predominance grounds. *Id.* at *6-7. Relying on the U.S. Supreme Court's decision in *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), the district court determined that common issues predominate only where the plaintiffs present evidence – particularly damages models – that aligns with their liability theory and uniformly impacts the entire class. *Id*. at *7. Common issues must predominate over individualized questions for a putative class to survive the predominance requirement inquiry. *Id.* at *6. Based on a thorough examination of the IPPs' evidence, including expert testimony and damages models, the district court found that individual issues predominated over those of the class. *Id*. at *7-12.

First, the expert report presented by the IPPs relied on regression and pass-through models to calculate the likely impact of the manufacturers' alleged conspiracy on class members. *Id.* at *3, *11. However, the court found that the expert relied on an incomplete data set that failed to accurately capture the complexities of caustic soda pricing and its influence on indirect purchasers. *Id.*

Second, the IPPs asserted that the manufacturers' price increase announcements influenced

index-based contracts and inflated prices for indirect purchasers. *Id.* at *3, *8-9, *12. The district court rejected this argument, because the IPPs offered no evidence to support this theory and relied on assumptions. *Id.* at *9.

The caustic soda market also relies on individualized manufacturer-purchaser contract negotiations, resulting in contract terms and prices that vary significantly throughout the market. *Id.* at *8-10. This business practice requires individual determinations for each class member to determine harm, which undermined the IPPs' attempts to prove classwide injury with common evidence. *Id.* As a result, the district court determined that the IPPs failed to provide a common mechanism to prove that all class members experienced uniform harm as a result of the alleged price-fixing conspiracy. *Id.*

Takeaways: The district court's second denial of class certification for caustic soda purchasers underscores the complexity of antitrust claims in markets with complex pricing structures. The IPPs' failure to present common evidence of classwide injury under Rule 23(b)(3) proved dispositive. As courts demand rigorous analysis at the certification stage, this ruling highlights the need for robust, reliable economic models and early attention to individualized issues.