CENTER FOR JUSTICE & DEMOCRACY
185 WEST BROADWAY
NEW YORK, NY 10013
TEL: 212.431.2882
centerjd@centerjd.org
http://centerjd.org

THE DANGERS OF FORCED ARBITRATION FOR SMALL BUSINESSES:

ANTITRUST CONSPIRACIES*

Antitrust conspiracies steal billions of dollars from American consumers and businesses every year.[1] These conspiracies often come in the form of international price-fixing cartels, in which business competitors illegally agree to set an artificially high price for the goods they produce. U.S. companies and consumers that need to purchase the products are forced to pay these overcharges because the conspirators have foreclosed any competition.

Recognizing the "direct and unambiguous" harm these crimes cause to our economy, the Department of Justice aggressively prosecutes the members of these illegal cartels, exacting billions of dollars in criminal fines and jail terms for corporate executives.[2] Recent examples include prosecutions of international cartels involving automobile parts, including safety equipment such as seat belts, airbags and antilock brake systems; LCD panels used in computers and TVs; and international shipping, affecting goods shipped in and out of the U.S worth tens of billions of dollars.[3]

While criminal enforcement is important for punishing and deterring antitrust conspiracies, *private* enforcement provides virtually the only way to compensate businesses and consumers that are victims of antitrust violations. The Justice Department itself has noted, "frequently restitution is not sought in criminal antitrust cases, as damages are obtained through treble damage actions filed by the victims."[4]

Under the U.S. antitrust laws that have been in effect for over 100 years, victims of antitrust conspiracies may recover three times their damages plus attorneys' fees.[5] Congress established this robust private enforcement scheme to give antitrust victims an incentive to act as "private attorneys general" to enforce the law, recognizing that free and fair competition is the underpinning of our economy.

---

* Thanks to Pamela Gilbert (Cuneo, Gilbert & LaDuca), Hollis Salzman and Michael Kolcun (Robins Kaplan Miller & Ciresi), and the Committee to Support the Antitrust Laws, for their assistance with the paper.

A recent study confirms the effectiveness of private antitrust enforcement. Law professors Robert H. Lande and Joshua P. Davis analyzed 60 private antitrust settlements since 1990, most resulting from class action lawsuits. The total recovery for consumers and businesses in the sixty cases studied ranged from $33.8 to $35.8 billion.[6]

Small businesses, which often operate with slim profit margins, are particularly hard hit when they are forced to pay price-fixed overcharges. The extra charges can eat up much of that profit, preventing these "job-creators" from hiring more employees or expanding their operations. The American Independent Business Alliance ("AMIBA"), which represents the interests of independent, locally-owned businesses and encourages entrepreneurship, summarized these effects in a recent "friend of the court" brief filed in an antitrust class action:

> AMIBA's members and affiliates depend on competitive markets to create jobs and contribute to economic growth. But when, in highly concentrated markets, commodity suppliers such as the Dow Chemical Company ("DOW") conspire to fix prices at supracompetitive levels, AMIBA's business members are forced to pay overcharges ... for free enterprise to flourish, private parties must be allowed to challenge anticompetitive behavior such as Dow's price-fixing via class actions.[7]

But a recent Supreme Court decision, entitled *American Express v. Italian Colors Restaurant*[8], would allow corporations that violate the antitrust laws to insulate themselves from private lawsuits by inserting forced arbitration clauses and class action waivers into their contracts.

THE *ITALIAN COLORS* CASE WILL SHIELD ANTITRUST VIOLATORS FROM LAWSUITS BY SMALL BUSINESSES

Background

Alan Carlson opened the Italian Colors restaurant in Oakland, California about 20 years ago. Italian Colors is a successful restaurant, but like most local restaurants, its profit margins are "razor thin."[9] According to Mr. Carlson, a significant portion of his earnings come from customers who use American Express cards and his restaurant would not survive if he refused to accept those cards.[10] But American Express demanded that, if Italian Colors accepted *any* American Express cards, it had to accept *all* types of American Express cards, even ones that carry extremely high fees. In addition, Mr. Carlson was not permitted to offer discounts to customers to encourage them to use other forms of payment besides American Express cards.[11] Mr. Carlson believed that American Express' anti-competitive conduct was a violation of the antitrust laws and he brought a class action on behalf of himself and other, similarly-situated small businesses.

When Mr. Carlson brought his lawsuit, he learned that American Express had inserted a "forced arbitration" clause into his contract that prohibited Mr. Carlson from bringing a class action lawsuit and required that he bring his dispute in a private arbitration system all by himself. It would have been impossible for Mr. Carlson to do that, however, because the cost of hiring experts to prove his case was many times more than the amount of money he could recover in his lawsuit. In other words, he could not "vindicate his rights" without the class action mechanism.

The U.S. Department of Justice supported Mr. Carlson before the Supreme Court. In its brief, the Justice Department stressed the importance of private enforcement of the antitrust laws. The brief explained, "Congress created the treble-damages remedy to encourage private suits alleging antitrust violations because such suits provide a significant supplement to the limited resources available for government enforcement."[12] The government went on to say that if the Court upheld the forced arbitration agreement in this case, "that result would vitiate the effectiveness of the private remedy."[13]

But that is precisely what the Supreme Court did. In a 5-3 opinion, the Court upheld enforcement of the forced arbitration clause even though the Court conceded that the case could not be brought in an individual arbitration because the cost of doing so was too high. The *Italian Colors* decision denies small businesses who may be victims of illegal anti-competitive practices the ability to use the courts to recover their losses as long as the perpetrators insert a forced arbitration clause into their contracts.

In a dissenting opinion joined by Justices Ginsburg and Breyer, Justice Kagan described how companies that violate the law can effectively protect themselves from having to answer to their victims by inserting forced arbitration clauses into their contracts:

> So if the arbitration clause is enforceable, Amex has insulated itself from antitrust liability — even if it has in fact violated the law. The monopolist gets to use its monopoly power to insist on a contract effectively depriving its victims of all legal recourse.[14]

Alan Carlson summed it up this way:

> Small businesses and consumers should have the SAME access to the justice system as large corporations, like American Express. And corporate Goliaths should never be able to take away our ability to hold them responsible for their actions.[15]

FORCED ARBITRATION AND CLASS ACTION WAIVERS WOULD DENY SMALL BUSINESSES BILLIONS IN RECOVERIES AND SEVERELY WEAKEN ANTITRUST ENFORCEMENT

While Alan Carlson was attempting to bring a class action lawsuit challenging alleged antitrust violations by American Express, another group of merchants brought a class action against Visa and Mastercard alleging similar illegal conduct. But the Visa and Mastercard case did not involve an arbitration agreement or a class action waiver. The case resulted in a settlement that included a guaranteed fund of *over $7 billion* for the class of merchants, the largest antitrust class action cash settlement in history.[16] In contrast, due to the Supreme Court's decision in *Italian Colors* enforcing the arbitration clause and class action waiver in the American Express contract, Alan Carlson and the class of businesses that he tried to represent received *no payment*. American Express won the case without anyone having their day in court.

Price-Fixers Could Avoid Federal Liability

When competitors in an industry make an illegal agreement to set prices, the price-fixing has harmful effects throughout the stream of commerce, potentially affecting many firms and consumers that purchase the product or service. The antitrust laws distinguish between the "direct purchasers," who are the firms that buy directly from the price-fixers, and "indirect purchasers," who are the downstream businesses or consumers. Due to a 1977 Supreme Court opinion[17], only "direct purchasers" may sue for damages under the federal antitrust laws. But direct purchasers are the entities that are most likely to have contracts with the price-fixers. If the criminal conspirators include forced arbitration clauses with class action waivers in their contracts, they can immunize themselves from all federal antitrust liability.

As the *Italian Colors* case illustrates, it is often impossible to bring an antitrust case in an individual arbitration because the costs of the expert fees usually dwarf the amount of money one company will recover in the case. But it is not only the cost of experts that makes individual arbitration prohibitively expensive in cases on behalf of small businesses against large corporations. Arbitration of a case brought by a small business against another business would generally be governed by the rules of *commercial* arbitration. Under the American Arbitration Association's (AAA) system, for example, standard administrative filing fees for commercial matters are over $1,000.[18] The majority of these fees has to be paid up front, when a party first files its claim. Also, if the case requires three or more arbitrators, the minimum filing fees total over $4,000. In addition, the parties to the arbitration must pay the arbitrators' hourly fees, which can range from $500 to $800.[19]

Like the administrative fees, a portion of the arbitrators' fees also has to be paid in advance and must be replenished if they run low. A party's inability to pay its share of fees can result in it being prejudiced in the arbitration. Unlike in most litigation, costs as well as fees are often imposed on the losing party in an arbitration. Such relief for a winning defendant could expose some antitrust plaintiffs, especially small businesses, to bankruptcy or "bet the company" risks.

Antitrust conspiracies are knowing violations of the law, often punishable by hundred million dollar fines and prison terms. The ruling in the *Italian Colors* case enabled these criminal conspirators to bar their victims from recovering their losses simply by inserting forced arbitration clauses into their contracts. Small businesses will no longer be able to use the private enforcement mechanism Congress provided in the antitrust laws to vindicate their rights.

ANTITRUST CLASS ACTION EXAMPLES: WHAT SMALL BUSINESSES WILL LOSE BECAUSE OF FORCED ARBITRATION

The following sample of just nine antitrust class action settlements distributed over $1.4 billion to tens of thousands of consumers and small and medium-sized businesses from companies who participated in criminal price-fixing cartels. The cost of hiring experts and paying expenses to litigate these cases, not including attorneys' fees, ranges from hundreds of thousands to millions of dollars. Without access to class actions, only a small handful of victims would have been able to recover any of the money that was stolen from them due to the increased prices brought about by illegal price-fixing. The criminals would have been able to keep their ill-gotten gains and their victims would have been left with nothing. The Lande and Davis study cited above found that antitrust class actions have returned tens of billions of dollars to consumers and small

businesses since 1990.[20] If forced arbitration clauses with class action waivers had been in place, preventing those cases from going forward, those recoveries would have been impossible for the vast majority of the victims.

In re Air Cargo Shipping Services Antitrust Litigation (2012), Case No. 06-md-1775 (EDNY)

In recent years, the Department of Justice uncovered a number of criminal conspiracies involving air cargo services affecting over $20 billion in commerce. In the conspiracies, major airfreight carriers imposed various fees and surcharges on customers for shipments of goods to and from the United States, including agreements on the amount and timing of surcharges in the period before the Christmas holiday.[21] Twenty-one defendants, including companies and individuals, pled guilty to participation in the conspiracy and agreed to criminal fines in excess of $1.9 billion.[22] The defendants were not ordered to pay restitution to victims in connection with their criminal fines.[23]

Individuals and businesses that purchased airfreight shipping services brought class action lawsuits against more than two dozen of the major airfreight carriers in the world.[24] They include Lufthansa, All Nippon Airways, Qantas Airways, Air France/KLM, Japan Airways, British Airways, Saudi Arabian Airlines and Air Canada.[25] The plaintiffs alleged that the defendant carriers conspired to unlawfully fix prices of airfreight shipping services worldwide, including on cargo shipments to, from and within the United States by, among other things, charging agreed-upon artificially inflated surcharges.[26]

Settlements. At least 18 settlements with the defendant airlines have been reached in the class action suits.[27] Under three separate programs, over $320 million has been distributed to class members who are mostly "freight forwarder" companies that purchased airfreight shipping services directly from the defendants.[28] These freight forwarder companies range from large to small businesses, and even include individuals who purchased airfreight shipping services directly from any of the defendants.[29] Class members received awards ranging from hundreds of dollars to hundreds of thousands of dollars, and some claimants collected over $1 million.[30] The cost to the plaintiffs to litigate these cases to date is over $11 million, not including attorneys' fees.[31]

In re Bulk [Extruded] Graphite Products Antitrust Litigation, Case no.02-CV-06030 (D. N.J.)

Companies and individuals who sold bulk extruded graphite products settled with a class of companies that purchased extruded graphite products to use in casting molds and furnace linings and components, powder metallurgy, boats and trays for sintering applications, and crucibles for melting and alloying.[32] The plaintiffs reached settlements with the defendants in which over $5 million was distributed to 112 claimants, or an average of $50,000 to each claimant.[33] The litigation expenses, not including attorneys' fees, were about $300,000.[34]

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, MDL No. 1486 (N.D. Cal.)

A number of large manufacturers of Dynamic Random Access Memory (DRAM) chips, which are used in desktop, laptop and workstation computers and in some video game consoles, settled with a class of companies that purchased DRAM chips or modules.[35] The plaintiffs alleged illegal price-fixing.[36] The defendant companies paid more than $242,000,000 to over 19,000 claimants.[37] Recoveries to the class members ranged from under $1,000 to over $1 million.[38] Litigation expenses for this case totaled over $4 million.[39]

In re Graphite Electrodes Antitrust Litigation, MDL No. 1244 (E.D. Pa.)
Graphite electrodes are used to conduct electricity in steel mill furnaces.[40] Several companies that manufacture graphite electrodes settled with a class of steel manufacturers, alleging the defendants conspired through a pattern of meetings and communications to fix the prices and allocate the markets for graphite electrodes sold in the United States.[41] The settlement totaled over $111 million, which was distributed to 166 claimants.[42] Payments ranged from under $50,000 to over $1 million.[43] It cost about $1.5 million in expenses to litigate the case.[44]

In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL No. 1827 (N.D. Cal.)
Manufacturers of Thin Film Transistor Liquid Crystal Display (TFT-LCD) flat panels settled with a class of companies that purchased TFT-LCD flat panels and products that contain the panels, such as notebook computers, computer monitors and LCD televisions.[45] The plaintiffs alleged price-fixing that raised the prices of the panels and the finished products.[46] Defendants distributed close to $320,000,000 to almost 3,000 claimants.[47] Recoveries ranged from under $10,000 to millions of dollars.[48] Eight claimants recovered over $10 million.[49] Litigation expenses for the cases exceeded $6 million.[50]

In re: Insurance Brokerage Antitrust Litigation [Zurich Settlement], Case No. 04-5184 (D. N.J.)
Insurance brokers and insurance companies, including the Zurich insurance company, settled[51] with a class of commercial insurance policyholders for allocating insurance policies or customers among the defendant insurance companies. In return, they alleged that insurers paid commissions to the defendant insurance brokers, and engaging in other improper conduct with respect to the solicitation of bids for the policies.[52] The Zurich Defendants paid about $121,800,000 to over 2,000,000 claimants.[53] Thousands of class members received between $1,000 and $10,000 and dozens received over $100,000.[54] The total cost to litigate the insurance brokerage antitrust litigation was almost $10 million.[55]

In re Linerboard Antitrust Litigation, MDL No. 1261 (E.D. Pa.)
Several U.S. manufacturers of linerboard settled with a class of businesses that purchased corrugated boxes and sheets over allegations that the manufacturers engaged in a conspiracy to reduce linerboard inventories and invite competitors to join in a coordinated price increase.[56] The settlement distributed over $140,000,000 to more than 7,000 claimants, for an average payout of $20,000 per claimant. It cost over $1 million to litigate this case.[57]

Sullivan v. DB Investments, Inc., Case No. 04-cv-2819 (SRC) (D. N.J.)
DeBeers, which mines and trades diamonds, settled with a class of purchasers of diamonds who intended to resell them.[58] They alleged that DeBeers exploited its market dominance to artificially inflate the prices of rough diamonds; this, in turn, caused reseller and consumer

purchasers of diamonds and diamond-infused products to pay an artificial overcharge for the products.[59] The settlement from DeBeers distributed over $110,000,000 to thousands of claimants.[60] The cost to litigate the case was over $2.8 million.[61]

In re: Puerto Rican Cabotage Antitrust Litigation, Case No. 08-md-1960 (D. P.R.)
Several shipping companies that provide cabotage services settled with a class of direct purchasers of ocean shipping services between Puerto Rico and the continental United States, who alleged that the shipping companies conspired to fix the prices of shipping services.[62] The defendants created a settlement fund totaling over $35.38 million.[63] The first round of distributions yielded over 1,370 payments to eligible class members, accounting for over $29.5 million of the settlement fund. Additionally, over $4.6 million was electronically distributed to class members.[64] The remaining settlement fund was sought to be redistributed to the class, with over 300 class members requested to receive an additional payment of over $1,300.[65] The cost of litigating the case totaled over $1 million.[66]

NOTES

[1] Statement of William J. Baer, Assistant Attorney General, Antitrust Division, and Ronald T. Hosko, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, before the Antitrust, Competition Policy and Consumer Rights Subcommittee of the Committee on the Judiciary, United States Senate, November 14, 2013.
[2] *Id.*
[3] *Id.*
[4] U.S. Dep't of Justice, Antitrust Division Workload Statistics FY 2003-2012, 11 n.15, http://www.justice.gov/atr/public/workload-statistics.html.
[5] *See* section 4 of the Clayton Act, 15 U.S.C. § 15 ("[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.").
[6] Robert H. Lande & Joshua P. Davis, *Defying Conventional Wisdom: The Case for Private Antitrust Enforcement*, University of San Francisco Law Research Paper No. 2013-08, p. 17 (2013).
[7] Brief of the American Independent Business Alliance as Amicus Curiae, *In re: Urethane Antitrust Litigation*, No. 13-3215, in the United States Court of Appeals for the Tenth Circuit, pp. 2-3.
[8] *American Express v. Italian Colors Restaurant*, No. 12-133, 133 S. Ct. 2304 (June 20, 2013)
[9] Testimony of Alan Carlson before the U.S. Senate Committee on the Judiciary regarding, "The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers and Small Businesses?" p. 1 (December 17, 2013).
[10] *Id.*
[11] *Id.*
[12] Brief for the United States as Amicus Curiae Supporting Respondents, American Express Company, et. al. v. Italian Colors Restaurant, et. al., No. 12-133 in the Supreme Court of the United States, p. 21.
[13] *Ibid*, p. 22.
[14] *American Exp. v. Italian Colors Restaurant*, 133 S. Ct. 2304 at 2313 (June 20, 2013).
[15] Testimony of Alan Carlson before the U.S. Senate Committee on the Judiciary regarding, "The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers and Small Businesses?" p. 3 (December 17, 2013).
[16] *See In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Case No. 1:05-md-01720-JG-JO (E.D.N.Y. December 13, 2013)(Memorandum and Order, Dkt. No. 6124 at *30).
[17] *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).
[18] See *http://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004102*
[19] *See In re A2P SMS Antitrust Litig.*, Master File 12-cv-2656 (AJN), Declaration of George A. Bermann Regarding Arbitration Issues, ¶28 (Dec. 10, 2012).

[20] Robert H. Lande & Joshua P. Davis, *Defying Conventional Wisdom: The Case for Private Antitrust Enforcement*, University of San Francisco Law Research Paper No. 2013-08, p. 17 (2013).
[21] Statement of William J. Baer, Assistant Attorney General, Antitrust Division, and Ronald T. Hosko, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, before the Antitrust, Competition Policy and Consumer Rights Subcommittee of the Committee on the Judiciary, United States Senate, November 14, 2013.
[22] *Ibid*, p. 8.
[23] *See, e.g. United States v. Lan Cargo S.A., et al.*, Case No. 09-CR-00015 (D.D.C. Feb. 19, 2009) (Plea Agreement, Dkt. 9 at *12).
[24] *See In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775, No. 06-MD-1775 (E.D.N.Y. July 15, 2011)(Memorandum and Order)
[25] *See In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775, No. 06-MD-1775 (E.D.N.Y. July 15, 2011)(Memorandum and Order) and *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, No. 06-MD-1775 (E.D.N.Y. Aug. 2, 2012) (Memorandum and Order).
[26] *Id.*
[27] *See In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, No. 06-CV-706 (E.D.N.Y. Aug. 2, 2012) (Memorandum and Order, Dkt. 37 at *1-2).
[28] *See In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, No. 06-MD-1775 (E.D.N.Y. July 15, 2011) (Memorandum and Order, Dkt. 1524 at *1-2).
[29] *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775, First Consolidated Amended Complaint, ¶¶ 159, 239 and 276, (E.D.N.Y. February 8, 2007)(Dkt. No. 271).
[30] *In re Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (E.D.N.Y. April 16, 2012)(Dkt. No. 1668, Exhibit 3) and *In re Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (E.D.N.Y. Aug. 23, 2013)(Dkt. No. 1896-1, Exhibit 3).
[31] *See In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, No. 06-CV-706 (E.D.N.Y. Aug. 2, 2012) (Memorandum and Order, Dkt. 37 at *7 & *11).
[32] =*In re Bulk Extruded Graphite Products Antitrust Litigation*, Case no.02-CV-06030 (D.N.J. 4-4-2007) (D. N.J. April 4, 2007) found at https://casetext.com/case/in-re-bulk-extruded-graphite-products-antitrust-litigation-3; Memo from Austin Cohen, Levin Fishbein Sedran & Berman, emailed to Pamela Gilbert, March 25, 2014.
[33] =Memo from Austin Cohen, Levin Fishbein Sedran & Berman, emailed to Pamela Gilbert, March 25, 2014.
[34] =Email from Austin Cohen, Levin, Fishbein, Sedran & Berman, to Michael Kolcun, June 13, 2014.
[35] *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M 02–1486 (N.D. Cal. June 5, 2006).
[36] *Id.*
[37] *In re DRAM Antitrust Litig.*, MDL No. 1486 (Declaration of Robin Niemiec, September 5, 2012 at para. 2).
[38] *In re DRAM Antitrust Litig.*, MDL No. 1486 (Declaration of Robin Niemiec, September 5, 2012 at para. 2 and Exhibit L).
[39] *In re DRAM Antitrust Litig.*, MDL No. 1486 (N.D. Cal. Aug. 16, 2007) (Order, Dkt. 1682, at *2).
[40] *In re Graphite Electrodes Antitrust Litigation*, Civil Action No. 10-md-1244, 00-5414 (E.D.Pa. January 16, 2004)(Memorandum and Order, FN 1).
[41] Email from Austin Cohen, Levin, Fishbein, Sedran & Berman, to Michael Kolcun, June 12, 2014.
[42] Email from Austin Cohen, Levin, Fishbein, Sedran & Berman, to Michael Kolcun, June 13, 2014.
[43] Email from Austin Cohen, Levin, Fishbein, Sedran & Berman, to Michael Kolcun, June 12, 2014.
[44] Email from Howard Sedran, Levin Fishbein Sedran and Berman, to Pamela Gilbert, June 13, 2014.
[45] *See In re TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. 3:07-md-1827 (October 6, 2010)(Dkt. No. 2078, Exhibit A).
[46] *Id.*
[47] *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. MDL 3:07-md-1827 (Declaration of Robin M. Niemiec, June 28, 2013 at paras. 38 & 39).
[48] *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Case No. MDL 3:07-md-1827 (Declaration of Robin M. Niemiec, June 28, 2013, Exhibit J).
[49] *Id.*
[50] *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 3:07-md-1827 (N.D. Cal. December 27, 2011)(Amended Order, Dkt. No. 4436 at p.2)
[51] *See In re Insurance Brokerage Antitrust Litigation* (MDL No. 1663) Nos. 07-1759, 07-1763, 07-1769, 07-1779, 07-1786, 07-1793, 07-1796, 07-1826, 07-2935, 07-2957, 07-3037, 07-3038, 07-3039, 07-3040, 07-3041, 07-3042, and 07-3687 (September 8, 2009).

[52] *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (Notice of Proposed Class Action Settlement, Settlement Hearing and Right to Appear, Basic Information at para. 1).
[53] *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (Notice of Proposed Class Action Settlement, Settlement Hearing and Right to Appear, Basic Information at para. 10); and *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (D.N.J.)(Declaration of Eric J. Miller, September 29, 2010 at para. 51).
[54] Confirmed via email from Cafferty Clobes Meriwether & Sprengel to Pamela Gilbert, October 7, 2014.
[55] Email from Ellen Meriweather, Cafferty Clobes Meriwether & Sprengel, to Pamela Gilbert, June 10, 2014.
[56] *See In re: Linerboard Antitrust Litigation*, No. 01-4535 (MDL No. 1261)(3d Cir. September 5, 2002).
[57] Email from Howard Langer, Langer, Grogan & Diver, to Michael Kolcun, Sept. 23, 2014.
[58] *See Sullivan v. DB Investments, Inc.*, Nos. 08-2784/2785/2798/2799/2818/2819/2831/2881(3d Cir. 2011)
[59] *Id.*
[60] *See Sullivan v. DB Investments, Inc.*, 04-CV-2819, (D.N.J. July 16, 2012)(Declaration of Daniel Coggeshall)
[61] *Sullivan v. DB Investments, Inc.*, 04-CV-2819 (D.N.J. May 22, 2008) (Order, Dkt. 305, at *2).
[62] See In re Puerto Rican Cabotage Antitrust Litigation, 269 F.R.D. 125 (D.P.R. July 12, 2010)
[63] *In re Puerto Rican Cabotage Antitrust Litig.*, 08-MD-1960 (D. P.R. Sept. 13, 2011) (Order, Dkt. 1019).
[64] *In re Puerto Rican Cabotage Antitrust Litig.*, 08-MD-1960 (D.P.R. March 13, 2014)(Supplemental Affidavit of Robert Oseas on Claims Processing and Distribution)
[65] *Id.*
[66] *See In re Puerto Rican Cabotage Antitrust Litigation*, 3:08-md-1960 (D.P.R. August 30, 2011)(Order, Dkt. 999).