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Running Up Against the Illinois Brick Wall

By [Robert S. Kitchenoff](#) and [Victoria Sims](#)

Over the last forty years, indirect purchasers – consumers and businesses – harmed by price-fixing and other anticompetitive conduct have successfully prosecuted state law antitrust claims, recovering tens of billions of dollars in damages.

Two recent cases – *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.) (\$1.2 billion, 30 states and D.C.); and *In re TFT-LCD Indirect Purchaser Antitrust Litigation*, MDL No. 1827 (N.D. Cal.) (\$1.1 billion, 24 states and D.C.) – alone account for more than \$2.3 billion in the recoveries to end purchasers of price-fixed products. But if you live in places like Pennsylvania, New Jersey, Ohio, Virginia, or Texas, among others, you did not get your fair share. Why? Because your state does not have an Illinois Brick repealer statute.

Background

First, a bit of background. In 1968, the U.S. Supreme Court decided *Hanover Shoe v. United Shoe Mach. Corp.*, which held that defendants in federal antitrust cases “are not entitled to assert a passing-on defense.” This means that defendants may not argue that a plaintiff’s recovery under the Sherman Act should be barred because the plaintiff raised prices and therefore passed the damages it suffered by reason of the cartel’s illegal activity further down the chain of distribution.

Nine years later, the Supreme court decided *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), where the Court restricted standing to bring federal antitrust claims to plaintiffs who purchased directly from an antitrust violator. *Illinois Brick* is the corollary to *Hanover Shoe*, and can be explained in terms of general fairness. Because defendants are barred from asserting the passing-on of damages as a defense, defendants should not be subject to offensive use of pass-on by

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indirect purchasers further down in the chain of distribution. Despite the simplicity of this corollary, the parties, the government, other amici, and three Justices were not in agreement that prohibiting the offensive use of pass-on was necessary or appropriate. The government and certain amici argued that the asymmetrical enforcement of the antitrust laws furthered the goals of the law. Others argued for the reversal of the *Hanover Shoe* rule, allowing a pass-on defense as to the claims of indirect purchasers. The Supreme Court concluded that limiting standing to those who purchased directly from the antitrust violator, the so-called “first purchasers,” achieves the central goal of the antitrust laws as articulated in *Hanover Shoe* – deterrence – without needlessly complicating the litigation.

But the federal law does not prohibit indirect purchaser actions. To the contrary, Section 4 of the Clayton Act, 15 U.S.C. §15(a) provides that “any person who shall be injured in his business or property” may bring an action for treble damages, costs, and attorney’s fees. The majority of state antitrust laws, modeled on the federal statute, contain similar, if not identical, language. It is only by judicial construct that standing is limited to direct purchasers. In response to *Illinois Brick*, numerous states passed laws “repealing” the *Illinois Brick* direct purchaser rule for

claims by indirect purchasers under their state’s antitrust laws. These states are Alabama, California, The District of Columbia, Guam, Puerto Rico, Hawaii, Illinois, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Dakota, South Dakota, Vermont, West Virginia, and Wisconsin. In 2017, Maryland law was expanded to provide claims for all indirect purchasers, and in 2018, Connecticut joined the group of states with *Illinois Brick* repealer statutes. A handful of other states have determined that the wording of their state’s antitrust statutes, like the wording of the Clayton Act, does not prohibit indirect purchaser claims and that the intent of the legislature requires them to reject the *Illinois Brick* direct purchaser construct. Still others have held that while their state’s antitrust statutes do not permit indirect purchaser claims, such claims may nevertheless may be brought under the state’s consumer protection law.

In *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100, 108 (Fla 1st Dist. 1996), the Florida court held that “[w]e have not overlooked the argument . . . that this ruling in effect will create an *Illinois Brick* repealer to the Florida Antitrust Act, which the Florida Legislature has declined to adopt.” Together, more than half of the States and U.S. territories, such as Guam and Puerto Rico, permit indirect purchasers to recover damages from

violators of state antitrust laws. In addition, Colorado, Idaho and Washington have enacted limited *Illinois Brick* repealers, for instance, by al-lowing suits by the State’s Attorneys General only. Several of these statutes require or permit the court to prevent duplicative recovery.

Current Status of Indirect Purchaser Actions

Two developments have generally brought all antitrust claims together in a single federal court. First, in *California v. ARC America Corp.*, 490 U.S. 93 (1989), the Supreme Court determined that federal antitrust law does not preempt indirect purchaser claims under state antitrust law. Of particular note is the Supreme Court’s rejection of the multiple liability issue, stating that the court has not identified “. . . a federal policy against States imposing liability in addition to that imposed by federal law . . .” and “state causes of action are not preempted solely because they impose liability over and above that authorized by federal law . . .” The second development is the enactment of the Class Action Fairness Act, 28 U.S.C. §1332 (d)(2) (“CAFA”), conferring federal subject matter removal jurisdiction over most class actions filed in state courts. Today, it is not un-common for actions filed by direct purchasers, end purchasers, direct action plaintiffs, and state attorneys’ general to be litigated in the same jurisdiction before the same

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judge.

By limiting standing under the federal antitrust laws to direct purchasers, *Illinois Brick* prohibits recovery by those “most frequently injured.” If we accept that there is a reluctance and often an inability for direct purchasers in at least certain industries to bring claims against their suppliers, then state law indirect purchaser claims support deterrence of unlawful behavior and provide compensation to those who are actually injured. Moreover, the fear of multiple liability if both direct and indirect purchasers recover has been empirically debunked by John M. Connor & Robert H. Lande in their book, *Not Treble Damages: Cartel Recoveries Are Mostly Less than Single Damages*.

Detriments of Not Having Illinois Brick Repealer Laws and the Way Forward

Looking back at *Auto Parts* and *LCDs*, while nearly \$2.5 billion was or will be distributed to end users in *Illinois Brick* repealer states or states where the antitrust or consumer protection laws have been interpreted to provide claims to indirect purchasers, consumers and businesses who were victimized by these antitrust violations in states such as Pennsylvania, Ohio, Indiana, Kentucky, Virginia, Texas, Oklahoma,

Georgia, Colorado, Wyoming, Idaho, Delaware, and New Jersey, among others, got nothing. Presently pending before the U.S. District Court for the Eastern District of Pennsylvania are indirect purchaser class actions in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724. If successful, the *Generics* case has the potential to dwarf the recoveries in *Auto Parts* and *LCDs*. Ironically given the venue of the case, Pennsylvania residents will not be able to recover the damages they suffered because Pennsylvania has no anti-trust statute, and its consumer protection law, even if it were applicable, has been interpreted to bar class actions. The result of the gaps in the statutory schemes of these states is that the indirect purchasers who reside or paid an overcharge in those states are left with no recovery. This means that indirect purchasers, who often are in the best position to sue and most likely to sue, are deprived of the ability to do so, leaving them with no recovery, and failing to provide any deterrent to violators who seek to harm competition in those states.

So, what should be done to provide recovery to the citizens of these states? Given the passage of time since the Supreme Court decided *Illinois Brick* (40+ years), and *ARC America* (30 years), a solution appears unlikely to come from Congress. It has been suggested that the Supreme Court should simply overrule *Illinois Brick*, and allow indirect purchasers

to sue under federal anti-trust laws. While perhaps appealing on its face, it is extremely unlikely that the Court would over-turn 40 years of precedent without compelling justification, particularly given the reluctance of Congress to revisit the issue in all this time.

More importantly, were the Court to suddenly overrule *Illinois Brick*, private civil enforcement of the antitrust laws would be hindered, not helped, by the resulting disarray and confusion. For example, overruling *Illinois Brick* would not mean that every person in a distribution chain would be allowed to bring a federal antitrust claim. Instead, each district court and in turn each circuit court would be left to develop its own antitrust standing rules, resulting in a patchwork of rules and procedures that would vary from circuit to circuit making litigation less predictable and making case management more difficult for the courts and litigants. Overruling *Illinois Brick* without a plan for what comes next would simply create chaos from what is today an orderly, well-functioning process.

We believe that the solution lies in those States which have yet to enact legislation giving a private right of action to indirect purchasers harmed by price-fixing, illegal monopolization, or abuse of monopoly power. They can join their sister states in providing remedies to their victimized citizens by passing their

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own *Illinois Brick* repealer laws or by liberalizing already enacted *Illinois Brick* repealer acts by adding a private right of action or by removing class action bans. Illinois, the first state to pass an *Illinois Brick* repealer, bars class actions for private enforcement, making its law virtually useless for claims by individuals or businesses with smaller claims that would not support, on an individual basis, the investment necessary to litigate a complex antitrust case. This will allow indirect purchasers in their states to take advantage of the well-developed post-CAFA rules and procedures in which all antitrust claimants are brought together in one federal court proceeding with established pretrial and trial practices.

It is indirect purchasers who are most often in the best position to deter antitrust violations. Stated conversely, there are innumerable reasons why direct purchasers may choose not to sue or may be prohibited from suing their suppliers. For example, direct purchasers are often unwilling to sue for fear of negatively affecting relationships with their suppliers (without whose products they could not stay in business), choosing to forgo any recovery or negotiate a private commercial resolution. For instance, in *Auto Parts*, only two of the original equipment vehicle manufacturers who purchased price-fixed products

directly from the defendant part manufacturers who had pleaded guilty to fixing prices and rigging bids to them sued. In other instances, arbitration provisions, forum selection clauses, and jurisdictional issues make it impossible for direct purchasers to sue or participate in a class action. Without state law indirect purchaser actions, enforcement suffers and violations go unremedied.

It is long past time, maybe as much as 40 years past time, for the legislatures in states without *Illinois Brick* repealers to protect their citizens who are actually injured – consumers and businesses – and ensure that they are compensated for the harm caused by price fixing, abuse of monopoly power, and other anticompetitive behavior.

About COSAL

Established in 1986, the [Committee to Support the Antitrust Laws](#) (COSAL) promotes and supports the enactment, preservation, and enforcement of a strong body of antitrust laws in the United States. It is the only organization in the U.S. that is dedicated to lobbying for strong anti-trust laws and effective private enforcement.

About the Authors

[Robert S. Kitchenoff](#) of Weinstein Kitchenoff & Asher is President of COSAL. Mr. Kitchenoff has been involved in the litigation of numerous

precedent-setting antitrust actions including *In re Copper Antitrust Litigation*, MDL No. 1303 (W.D. Wisc.) (co-lead counsel); *In re Brand Name Prescription Drugs Antitrust Litigation*, MDL No. 997 (N.D. Ill.) (plaintiffs' steering committee); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, MDL Docket 1720 (E.D.N.Y.) (plaintiffs' steering committee); *In re Pressure Sensitive Label-stock Antitrust Litigation*, MDL Docket 1556 (M.D. Pa.) (discovery team); and *Rolite, Inc. v. Wheelabrator Technologies, Inc.*, Civil Action No. 94-CV-5894 (E.D. Pa.).

[Victoria Sims](#) of Cuneo Gilbert & LaDuca focuses her practice on antitrust litigation. Ms. Sims has represented both plaintiffs and defendants in federal litigation and before state agencies, as well as co-authored an amicus brief in the U.S. Supreme Court. She received the American Antitrust Institute's Outstanding Litigation Achievement by a Junior Lawyer Award (2017) for her work in *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.). She is also lead counsel for retailers and other resellers of hard disk drive suspension assemblies, in *In re Hard Disk Drive Suspension Assemblies Antitrust Litigation*, MDL No. 2918 (N.D. Calif.). ☐

Research Report

Who's Who in McIntyre v Trans Union FCRA Suit

by Psyche Maricon Castillon

The Complaint

Patricia McIntyre sued Trans Union, LLC, and Trans Union Rental Screening Solutions, Inc., (TURSS) for violations of the Fair Credit Reporting Act, 15 U.S.C. §1681, et seq. (“FCRA”), alleging that Trans Union failed to obtain up-to-date information related to the disposition of eviction cases and published harmful, misleading and inaccurate tenant screening consumer reports to landlords and property managers, in violation of Section 1681e(b) of FCRA.

McIntyre also alleged that Trans Union failed to provide complete disclosures of the information it maintains about consumers and the sources of that information upon requests made by consumers, in violation of Section 1681g(a) of FCRA.

Case Parties

Founded in 1968, Trans Union is a global provider of information and risk management solutions. Its technology and services are used by businesses that involve credit granting, risk management, underwriting, fraud protection and customer acquisition decisions. Trans Union’s website provides consumers with real-time access to personal credit information and analytical tools that help them understand and proactively manage their personal finances. The company operates in the United States, Africa, Canada, Latin America, Asia Pacific

and India, and provides services in 33 countries.

Trans Union operates the tenant screening report business through TURSS, now known as SmartMove. SmartMove is a patented tenant screening product that allows renters to “push” credit reports directly to landlords, which enables credit screening while protecting consumer information. Through SmartMove, landlords are able to identify tenants for their properties and renters have a secure way in which to pass their information.

On or about August 18, 2016, McIntyre applied to rent an apartment at Duffield Homes, an apartment complex in Philadelphia, Pennsylvania. A Duffield House representative obtained a tenant screening report from TURSS containing what McIntyre alleged were inaccurate and out-of-date entries of eviction information. The lawsuit against Trans Union is not the only FCRA lawsuit McIntyre filed against a tenant screening company. She also sued Rentgrow, Inc., doing business as “Yardi Resident Screening,” days before she filed the complaint against Trans Union and TURSS. According to the complaint against Rentgrow, McIntyre applied to rent an apartment at Alden Park, and an Alden Park representative obtained a Yardi Resident Screening report that included 11 allegedly inaccurate and out-of-date items of eviction information purportedly pertaining to her.

With respect to the Duffield House case, McIntyre alleged that TURSS included seven inaccurate and outdated instances of eviction information on an August 18, 2017 tenant screening report that was sold to Duffield House. Each of the instances were inaccurate because the report failed to show that the judgments had been satisfied over a year prior to the date of the report. TURSS also included 11 instances of inaccurate eviction information about McIntyre in a July 27, 2017 tenant screening report and was sold to RentGrow.

McIntyre further alleged that the Defendants inaccurately represented that they obtained eviction information from public sources. Trans Union obtained the information from third parties and made it available to TURSS. She said she asked for a copy of her credit disclosure from Trans Union. The Trans Union disclosure contained no information about the eviction litigation that had been provided by TURSS to her potential landlords. McIntyre alleged that Trans Union’s incomplete disclosure denied her the opportunity to learn the extent of the eviction litigation information provided to third parties.

McIntyre’s Purported Class

McIntyre asserts claims on behalf of herself and on behalf of five alleged classes:

(1) Failure to Update Class-United States;

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(2) Failure to Update Subclass I: Commonwealth of Pennsylvania;

(3) Failure to Update Subclass II: Philadelphia Municipal Court;

(4) Incomplete Disclosure Class; and

(5) Sources Disclosure Class.

The “Failure to Update Class – United States” is defined as follows: For the period beginning five years prior to the filing of this Complaint, which was September 10, 2019, and continuing through the date of judgment, all natural persons with an address in the United States and its Territories who were the subjects of tenant screening consumer reports created by TURSS that contained eviction information, but failed to state that, according to court records dated at least 30 days prior to the date Defendant prepared the report, the referenced eviction action had been withdrawn, dismissed, non-suited, or had resulted in a judgment for the tenant defendant.

The Incomplete Disclosure Class is defined as follows: For the period beginning five years prior to the filing of the complaint and continuing through the date of judgment, all natural persons with an address in the United States and its Territories for whom Trans Union, LLC, has a record of transmitting a file disclosure in response to a request, which did not include any eviction information that TURSS had previously included in a consumer report it prepared about the

subject of the file disclosure.

Court Refuses to Drop Claims v Trans Union

Trans Union and TURSS sought to dismiss allegations of violation of FCRA Section 1681g(a)(1) against Trans Union (Count II), and to strike all allegations in Count I (violation of FCRA Section 1681e(b) against TURSS) and Count III (violation of FCRA Section 1681g(a)(2) against Trans Union and TURSS).

The Defendants contend that Count II should be dismissed because the eviction information was maintained by TURSS and not by Trans Union, and therefore Trans Union is not liable for not disclosing this information to the Plaintiff. According to the Defendants, Trans Union is not liable for the acts and omissions of its wholly-owned subsidiary, TURSS, and the Plaintiff has failed to plead facts supporting a claim for piercing the corporate veil.

The District Court held that McIntyre has sufficiently alleged that Trans Union evaded its obligation to make full and accurate disclosure of her consumer file under Section 1681g(a)(1) through the use of corporate organization, reorganization, structure, or restructuring, etc. Section 1681g(a)(1) provides that a “consumer reporting agency shall not circumvent or evade treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis .

. . . by any means, including, but not limited to: (1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency . . .”

The Court also agreed with McIntyre’s argument that the eviction litigation information that TURSS provided to her potential landlords is also part of her Trans Union “consumer file” under Section 1681g(a)(1) and therefore must have been disclosed by Trans Union upon her request. The eviction information fits within FCRA’s definition of “file” as it is “information on [a] consumer recorded and retained by [Trans Union].” The eviction information also fits within the Third Circuit’s formulation of file because it is information that was “furnished or might be furnished in a consumer report.”

The Court pointed out that its conclusion aligns with policy considerations that underscore the FCRA. The statute, “was crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner,” the Court said, citing *Cortez v. Trans Union, LLC*, 617 F.3d 688, 706 (3d Cir. 2010). FCRA is a remedial statute containing “consumer oriented objectives” that

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supports a “liberal construction” of its provisions in favor of consumers. When enacting the statute, Congress intended to address certain consumer issues, including “the inability at times of the consumer to know [s] he is being damaged by an adverse credit report, the lack of ‘access to the information in [her] file, [and] the difficulty in correcting inaccurate information.’”

“Section 1681g is designed to help remedy these problems, particularly individuals’ failure to obtain information that would help them to correct inaccurate information in their files,” the Court added. A consumer like McIntyre may not know that inaccurate and out-of-date eviction information is causing damage to her credit because Trans Union does not disclose that information upon request.

Court Refuses to Strike Class Allegations

The Defendants contend that McIntyre’s claims in Counts I and III are precluded by a settlement agreement in a different class action of which McIntyre is a member, *Clark v. Trans Union, LLC*, No. 15-391 (E.D. Va.), which was approved on August 29, 2018, and resolved not only claims in *Clark* but also claims in 11 other class action lawsuits against Trans Union. The Defendants further contend that pursuant to the *Clark* settlement agreement, the *Clark* settlement class, including McIntyre,

waived the right to assert the claims contained in Counts I and III of this Complaint on a class-wide basis. McIntyre insists that she is not a member of the *Clark* settlement class and therefore did not waive any claims asserted in this action.

The Defendants contend that striking class allegations is supported by Rules 12(f) and 23(d) of the Federal Rules of Civil Procedure, but the Court said Rule 12(f) does not apply in the McIntyre case, pointing out that courts generally do not consider motions to strike class allegations under Rule 12(f) because “[i]t is unlikely that a defendant can show the class allegations constitute ‘an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter’”.

The Court also pointed out that district courts in the Third Circuit very rarely grant motions to strike under Rule 23(d)(1)(D) prior to a motion for class certification. This is because motions to strike class allegations are considered premature before plaintiff has moved for class certification. This approach is consistent with the Third Circuit’s admonition to conduct a “rigorous analysis” of the class certification requirements under Rule 23.

“Discovery and full briefing on the merits of class certification are typically required to conduct this ‘rigorous analysis,’” the Court held. District courts will make an exception to this general rule and entertain substantive arguments in support of

a motion to strike class allegations prior to discovery, but only where “the complaint itself demonstrates that the requirements for maintaining a class action cannot be met.”

The *Clark* settlement class is defined as: “all consumers in the United States who . . . had (between July 5, 2014, and the date of preliminary approval of the Settlement) a Consumer Report communicated by Trans Union to a third party where such Consumer Report contained a CJ/TL Public Record where the status of such CJ/TL Public Record was not accurately described or where the CJ/TL Public Record belonged to a different person.”

“CJ/TL Public Record” is defined in the settlement agreement as “a record of a civil judgment, state tax lien or federal tax lien on file in a court or recorder of deeds.”

The Court held that McIntyre’s claims, which involve the inaccurate disclosure of eviction litigation information on tenant screening reports, may bear some relationship to the actions covered by the *Clark* settlement agreement, but without more information, it is unable to determine the types of claims that were contemplated by the *Clark* settlement agreement, and whether McIntyre’s specific claims fall within it.

Moreover, the Court noted that it appears as though McIntyre would not be a member of the class as articulated in the *Clark* settlement agreement

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because she alleges that TURSS, not Trans Union, sent the inaccurate tenant screening reports to Duffield House and RentGrow.

In any event, this case is not among the “rare few where the complaint itself demonstrates that the requirements for maintaining a class action cannot be met.”

Thus, the Court denied, without prejudice, the Defendants’ Motion to Strike. If the Defendants wish to pursue their waiver argument, they may raise it in opposition to a motion for class certification, the Court said.

What’s Next?

FCRA lawsuits have steadily increased over the past decade, according to WebRecon LLC, a data-tracking company based in Grand Rapids, Michigan. In 2018 alone, the number of FCRA lawsuits reached 4,513. Meanwhile, in 2019, FCRA lawsuits filed from January to October totaled 4,163. The spike in FCRA filings could be attributed to two things: (1) heightened consumer expectation of privacy, and (2) attractiveness of the remedies, including an attorney shifting fee provision in the FCRA.

According to, Matthew Simpson, a partner at **Fisher Phillips, LLP**, there is an increasing concern about maintaining privacy of personal data and sensitivity to the disclosure and authorization of that people. Elizabeth McLean, general counsel for GoodHire, said it is easy for plaintiffs’ lawyers to enter into settlements

especially with employers because of the availability of statutory damages, especially in the class action context.

The other landlord, RentGrow, that McIntyre sued, suffered the same fate with its motion to dismiss and motion to strike class allegations. Melanie A. Conroy, counsel at **Pierce Atwood**, wrote an opinion piece on the RentGrow case, and cautioned defendants in using the motion to strike strategy because in some cases a decision denying a motion to strike could later disadvantage the defendant at the class certification stage.

The RentGrow court noted that when a complaint alleges a consistent, routine practice that injured a potential class in a generally uniform manner, a motion to strike class allegations will likely fail. Those motions are better reserved for complaints wherein a class definition is vague or overbroad and includes people who were not injured or who were not injured by the identified common practices. And, when a motion to strike is based on predecessor actions wherein class certification motions have been denied, a defendant should carefully consider whether class treatment has been categorically and conclusively rejected before invoking principles of comity, Ms. Conroy said.

Ms. Conroy, whose practice is also focused on class action defense and complex commercial litigation, advised that the better strategy will be to seek phased discovery limiting the first stage to the issue

of class certification and the named plaintiff’s individual claim. When class allegations hinge on a general practice, class certification discovery should focus on whether such a uniform practice existed and whether it harmed an identifiable group of people in a uniform way that would not require individualized analysis to determine their claims, she said.

Discovery of the plaintiff’s individual claim may also create a record that would support the opposition to class certification on grounds of typicality, adequacy, or predominance. As reflected by the Court’s decision in this case, generally only after it is armed with this class certification discovery can a defendant make a full and effective attack on the ability of a plaintiff to pursue its claims on a class-wide basis, Ms. Conroy added.

The Third Circuit’s ruling in *Cortez* prompted Trans Union to modify one of its add-on services, the Office of Foreign Assets Control, Specifically Designated National and Blocked Persons alert list (the “OFAC Alert”), which assists the company’s customers with their compliance obligations in connection with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

Trans Union’s OFAC Alert service became a subject in another lawsuit, *Ramirez v. Trans Union LLC*, No.

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3:12-cv-00632-JSC (N.D. Calif.), where the plaintiff alleged that the OFAC Alert service does not comply with the *Cortez* ruling. The court in *Ramirez* certified a class of approximately 8,000 individuals solely for purposes of statutory damages if Trans Union is ultimately found to have willfully violated the FCRA, and a sub-class of California residents solely for purposes of injunctive relief under the California Consumer Credit Reporting Agencies Act.

When the U.S. Supreme Court issued its decision in *Spokeo v. Robins*, Trans Union's motion to decertify the *Ramirez* classes were denied. In 2017, the jury in *Ramirez* returned a verdict in favor of a class of 8,185 individuals in the amount of approximately \$8.1 million (\$984.22 per class member) in statutory damages and approximately \$52.0 million (\$6,353.08 per class member) in punitive damages. Trans Union's post-trial motions for judgment were denied as a matter of law, a new trial and a reduction on the jury verdict.

The U.S. Court of Appeals for the Ninth Circuit affirmed the class certification, holding each of the 8,185 class members had standing on each of the class claims because Trans Union's reckless handling of information from the Department of the Treasury's OFAC exposed every class member to a real risk of harm to their concrete privacy,

reputational, and informational interests protected by the FCRA. As to Trans Union's reasonable procedures claim, the Ninth Circuit also held that the violation of a statutory right constituted a concrete injury under the *Spokeo* test and that each class member has established standing on the disclosure and summary-of-rights claims. The Ninth Circuit reversed only the portion of the punitive damages award, which it said was excessive in violation of constitutional due process.

Plaintiff

Patricia McIntyre is represented by **E. Michelle Drake** of Berger & Montague, PC; **James A. Francis** and **Lauren K.W. Brennan** of Francis Mailman Soumilas, PC; and **Leonard A. Bennett** of Consumer Litigation Associates PC.

James A. Francis, **John Soumilas**, **David A. Searles**, and **Lauren KW Brennan** of Francis Mailman Soumilas, PC, also represented the *Ramirez* class before the Ninth Circuit. **Andrew J. Ogilvie** and **Carol McLean Brewer** also served as counsel for the *Ramirez* class in its appeal.

Defendant

Trans Union, LLC & Trans Union Rental Screening Solutions, Inc., are represented by **Michael C. Falk**, **Albert E. Hartmann**, and **Michael O'Neil** of Reed Smith LLP in the *McIntyre* case.

Paul D. Clement, **Erin E. Murphy**, **Robert M. Bernstein**, and **Matthew D. Rowen** of Kirkland & Ellis LLP; **Julia B. Strickland**, **Stephen J. Newman**, **Christine E. Ellice**, and **Jason Yoo** of Stroock & Stroock & Lavan LLP, represented Trans Union before the Ninth Circuit in the *Ramirez* appeal.

Andrew J. Pincus, **Archis A. Parasharami**, and **Daniel E. Jones** of Mayer Brown LLP; and **Steven P. Lehotsky** and **Warren Postman** of the U.S. Chamber Litigation Center Inc., represented the Chamber of Commerce of the United States of America, an Amicus Curiae, in the Ninth Circuit appeal.

RentGrow Inc., doing business as Yardi Resident Screening, is represented by **Elizabeth M. Nagle** and **Matthew J. Frankel** of Nixon Peabody LLP.

The case against Trans Union is *Patricia McIntyre, v. Trans Union LLC*, et al., Civil Action No. 18-3865 (E.D. Pa.).

The case against RentGrow is *Patricia McIntyre, on behalf of herself and all others similarly situated, Plaintiff, v. Rentgrow, Inc., d/b/a/ Yardi Resident Screening*, Defendant, Civil Action No. 18-cv-12141-ADB (D. Mass.).

The case before the Ninth Circuit is *Sergio L. Ramirez, Plaintiff-Appellee, v. Trans Union LLC*, Defendant-Appellant, No. 17-17244 (9th Circuit).

The Trans Union case is assigned to Hon. R. Barclay Surrick.

The RentGrow case is assigned to Hon. **Allison D. Burroughs**. □

(Sponsored Content)

Outsourcing Legal Intake Services Supporting Class Action Firms in COVID-19 Crisis

by [Alert Communications](#)

Like most businesses, Alert Communications has spent the last several weeks learning about COVID-19 (coronavirus) and how it is impacting our world. This means understanding how it affects employees, business, and clients, as well as communities – and making the necessary and critical adjustments to our work and operations.

We wanted to share how to navigate the COVID-19 pandemic and how outsourcing legal intake services supports your class action firm through these challenging times. We've also included some tips for working remotely, as most firms have left the building and are entering a "new normal."

Supporting Class Action Law Firms with Outsourced Intake

Many firms have trouble with bandwidth and responding to calls, web form submissions, and chats in a timely manner during normal circumstances, particularly after-hours. This is especially true in disaster situations like the COVID-19 crisis where most firms are planning to or already have closed their doors to send their employees to work safe from home.

It's no secret that consumer and plaintiff law firms budget and deploy thousands, even hundreds of thousands of dollars, monthly into marketing campaigns. Not being able to immediately respond to every inquiry, contact or lead can and will negatively impact marketing return on investment (ROI) in a significant manner.

Class actions often have multiple marketing and intake

phases required for employment law and other consumer products. These could be state-by-state, regional or national advertising. One phase could be inbound (with or without document delivery and/or mail or e-sign requirements), and another phase could be outbound (with or without document delivery and/or mail e-sign requirements). The volume could be lower (hundreds) or extremely high (tens of thousands) which puts extreme, likely impossible to withstand, pressures on internal intake teams with limited resources, systems and bandwidth.

Therefore, class action and mass tort firms require a robust team of trained and dedicated intake specialists to respond to all inquiries immediately, especially when call or web lead volume is far beyond internal bandwidth. If your firm can't handle a large influx of calls, web submissions or leads due to lack of internal bandwidth, particularly during COVID-19, outsourcing your intake to a fully operational legal call center can help you continue to maximize your marketing ROI and stop lead loss as well as reduce marketing budget limitation created by limited bandwidth.

Here are some key aspects to look for when you decide to outsource your intake to a legal call center:

1. Expertly Trained Legal Intake Specialists

Class action campaigns require superb customer service around the clock. Quality legal call centers provide intake specialists who can deliver just that.

Intake specialists answer calls in under three rings and respond to web leads within one to three minutes, so no leads are left hanging or sent to voicemail. They can also provide immediate communication for outbound via text,

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Outsourcing Legal Intake Services Supporting Class Action Firms in COVID-19 Crisis

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call and email. Specialists perform multiple attempt follow-up and chase with the help of the legal call center's robust tracking and tasking software system.

Equally as important, legal call centers offer bilingual capabilities. With the ability to capture both English and Spanish leads, marketing can target a wider range of individuals for better results and more cases. Outsourced legal intake specialists help build client rapport and trust through active listening skills, empathy, psychology and call control.

2. Keep Your Marketing Budgets at Home

While running a class action campaign, the main goal is to sign all qualified leads immediately once the intake process is complete. Legal call centers can handle both lead qualification and retainer e-sign by text and email without breaking contact. For leads not ready to sign on the first call, intake specialists can track and follow-up sent retainers that have not been signed yet – whether sent by text, email or regular mail. Interested clients responded to in a timely manner are taken care of properly and retained at a high rate of conversion which means your firm is effectively using their marketing dollars to help as many plaintiffs or consumers as possible. Doing this mean you have stopped using your marketing budgets for other competitive law firms due to poor or weak intake response. You have now optimized your campaign.

3. Reporting and Measuring Marketing Results

A superior legal call center can measure your law firm's internal marketing or marketing agency results for a percent

of leads qualified and converted to signed clients.

Class action campaigns demand detailed daily reporting on lead count, flow, status, conversions and signed details, tracking for qualified leads, and other important data.

4. Technological Integrations & Capabilities

Running large scale class action campaigns requires expert technical integration teams with solution architects and programmers for API posting and integrations – from website landing pages to CRM and case management software and custom solutions for inbound and outbound.

If you don't have these capabilities at your class action firm, outsourced legal call centers are equipped with teams of programmers to handle integrations. They can set up all necessary and associated call-forwarding protocols and API integrations for web leads and programming. They can also provide advanced programming and integrations for your CRM or case management software to push your lead contact data, intake scripts and signed contracts directly into your systems. Lastly, they can integrate and sync with your calendar to schedule appointments on your behalf or even warm transfer as needed.

5. Disaster Preparedness

Superior legal call centers allow your class action campaigns to continue running smoothly, even when your law firm is shut down or you cannot staff internally due to a catastrophe or disaster – like the COVID-19 crisis. Legal call centers are there to support and respond to all your leads when you cannot, prepared for disaster with full-site power back-ups and triple telecom carrier back-

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Outsourcing Legal Intake Services Supporting Class Action Firms in COVID-19 Crisis

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ups and the necessary redundancy to assure that they stay up and running while your advertising is up and running.

Are All Call Centers an “Essential Service?”

Alert Communications is fully operational and has joined the fight against COVID-19 and with an ongoing effort to ensure excellent continuous service to law firms.

California’s Governor Gavin Newsom issued an executive order stating all individuals living in the State of California to stay home or shelter in place, except to access necessities such as food, prescriptions and healthcare. Many states have similar situations or will be quickly following.

Residents may report to work, however, and businesses may remain open, in order to maintain continuity of operations of the federal critical infrastructure sectors (essential services) as outlined by the Department of Homeland Security. Functioning critical infrastructures are imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being.

Legal intake is a component of the broader communication ecosystem, most notably allowing law firms to increase their work from home capabilities, which is especially important at this critical time. These legal call centers provide communication and other services in support of our nations legal and law enforcement system. Alert Communications is now accepting calls on behalf of New York for scheduling COVID-19 Tests, which makes us even more needed company during this crisis.

Alert’s Commitment to Our Clients & Employee Safety

Alert Communications will continue serving our clients through this COVID-19 season. With our own disaster solutions in place, and our team of experts, we will continue running as normal to ensure our clients’ businesses continue to run as well.

We realize that by remaining open we have an increased responsibility to take care of our employees. Given this, we are doing the following:

- We have spent extra resources procuring the necessary servers and computers to enable work-from-home capability for agents and all other employees via a remote login through a secure VPN.
- Our IT staff has worked around the clock to get these computers shipped, provisioned, tagged and ready to go home with all employees.
- Our IT team is providing online training and support for everyone at home.
- We previously instituted, before the big move home, all the enhanced cleaning, social distancing and other recommendations to keep our employees as safe as possible.

We are working diligently to navigate through this rapidly changing situation while prioritizing the health and safety of our employees. We are working to mitigate any long-term financial risk to our own company and the livelihood of our employees. While our work environment has radically changed, our ability to perform and support our clients has not.

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Outsourcing Legal Intake Services Supporting Class Action Firms in COVID-19 Crisis

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Tips for Class Action Firms Working Remotely

As the world is battling the COVID-19 pandemic, law firms – like most businesses – are having to adjust to the “new normal.” While some law firm employees adapt to home offices naturally, others need assistance and guidance to remain productive. To keep your class action practice afloat during these challenging times, it’s important to adjust both work behavior and the related technologies. Here are three things that can help you stay in the game while working from home during the COVID-19 outbreak.

1. Inventory Your Supplies

While many lawyers have a computer at home, only a few own a printer. To keep the work flowing, it’s important to either buy or borrow printers for at-home use. You may consider sending office printers home.

Make sure your staff and attorneys have any other supplies they might need to stay as productive and efficient as they would be if they were in the office.

2. Ensure a Secure Connection

Another key issue to consider when working from home is security. Remote work creates a perfect environment for cybercrime.

Protect confidential client information by securing your at-home internet connection, using a secure VPN, tightening network access and updating antivirus software.

3. Keep Your Weekday Morning Routine

A home office is still an office. To maintain focus and concentration, you need to stay as close to your everyday work routine as possible. Keep up such weekday morning

habits as:

- Waking up the same time every day
- Eating breakfast before sitting down in front of the computer
- Dressing fully

4. Use video chat When Possible

You can maintain a connection with your associates and clients by using video chat software. The most popular efficient platforms for remote video communication are Skype, Webex, Zoom, Google Duo, and Facebook Messenger.

Use video chatting as much as possible. It emphasizes physical and mental presence at meetings and consultations, keeping everyone accountable and on the right track.

Bottom Line

We all must adapt to what is happening around us. We do not know how long this will go on. There is a new playing field out there and everyone needs to figure out proper solutions for their business to get through this pandemic. You do not need to stop running campaigns or close your law office because of internal legal call and intake bandwidth issues. Consider outsourcing your intake to a reliable call center that can customize services for you and even sign clients up on the initial contact.

Alert Communications has taken the steps to remain fully operational and can be the lifeline you need during this crisis. We are here to help you. ☐

For more info, please visit:

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Lack of bandwidth and unprofessional response leads to losing plaintiffs and wasting publicity budgets. This is especially true in local and regional class actions.

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Lead generation is only half the battle.

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- Customizing screening criteria depending on stage of the case (pre-litigation, litigation, late-stage litigation)
- How does your firm prevent being overwhelmed with bad leads?

HOW TO OPTIMIZE QUALIFICATION FOR THE CLASS

Skills needed to be a lawyer are not always the same as the skills needed to be a legal intake specialist.

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- Effectively following up after first contact
- Best practices for mailing packets and email follow up



Tom Ball
Senior Vice President
Alert Communications

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Research Report

Who's Who in Glumetza Antitrust Litigation

by Psyche Maricon Castillon

The Hatch-Waxman Act

All pharmaceutical drugs require approval by the Federal Drug Administration (FDA) to enter the market. The Drug Price Competition and Patent Term Restoration Act of 1984, more commonly known as the “Hatch-Waxman Act,” implements a combined patent and pharmaceutical-regulatory framework to encourage timely introduction of low-cost generics into the pharmaceutical market yet still drive new drug development.

Under the Hatch-Waxman Act, a proposed generic manufacturer may submit an Abbreviated New Drug Application (ANDA), rely on testing data for the corresponding, already-approved brand-name drug, and avoid “the costly and time-consuming studies” needed for approval. Piggybacking on a brand drug’s testing, however, only removes one barrier, the FDA, because new brand-drug applicants must list the patents, if any, covering the new drug, and generic applicants must certify to the FDA either that no patents cover the brand drug, that the relevant patents have expired, or that such patents are invalid or will not be infringed by the new drug

A certification of invalidity or non-infringement—usually called the “Paragraph IV certification”—is deemed a statutory act of patent infringement. And, if the brand

manufacturer sues within 45 days, the FDA must stay the generic’s approval for 30 months (or until the end of the suit, whichever comes first).

To encourage patent-challenging ANDAs with Paragraph IV certifications, the Hatch-Waxman Act grants the “first filer” 180 days of generic exclusivity. This can be “worth several hundred million dollars” to the generic manufacturer, thus outweighing the risk of infringement suit. Significantly, however, the 180-day exclusivity does not bar the brand manufacturer itself from marketing an “authorized generic” to recoup some of those millions. And, the first filer can forfeit the 180-day exclusivity if it fails to market its generic within 75 days of another generic successfully challenging the brand’s patents—but in that case, the 180-day exclusivity period vanishes; it does not transfer to any other manufacturer.

Glumetza Antitrust Litigation

The Hatch-Waxman scheme aims to bring generic drugs to market sooner. But, as the Supreme Court recognized in *FTC v. Actavis*, 570 U.S. 136, 142-144 (2013), sometimes that scheme can backfire. The Glumetza antitrust litigation alleges a variation of the Actavis scheme. Instead of a cash payment, however, the patent owner gave something else of great value, a promise not to compete.

In 2002, one of defendant Bausch

Health Companies Inc.’s predecessors, Depomed, Inc. (later Assertio Therapeutics, Inc.), developed a new controlled-release version of the classic diabetes medication, metformin. The FDA approved Assertio’s NDA for 500 mg and 1000 mg formulations of Glumetza in June 2005. Assertio held several patents on their new drug.

In July 2009, defendants Lupin Pharmaceuticals, Inc. and Lupin Ltd. filed an ANDA seeking approval to market generic versions of Glumetza. Lupin filed a Paragraph IV certification of non-infringement or invalidity against four relevant patents: U.S. Patent Nos. 6,340,475; 6,635,280; 6,488,962; and 6,723,340. Lupin had successfully designed around the patents, which had claimed only a subset of the controlled-release technology that Glumetza employed. Assertio used, and had claimed, a polymeric “matrix” system, wherein the active drug was distributed throughout a polymer and formulated into a pill to time the release. Lupin, however, employed a “reservoir” system, wherein the active drug core was coated in an acrylic polymer to extend the drug’s release.

Assertio (the brand) sued Lupin (the proposed generic) in November 2009, triggering the thirty-month stay against FDA final approval. In January 2012, with the suit still going, the FDA tentatively approved the ANDA,

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meaning Lupin's generic had passed the review process and was finally approvable but for the thirty-month stay. One month later, Assertio and defendant Santarus, Inc., who now owned the commercialization rights to Glumetza (though Assertio retained the patents), settled with Lupin.

Lupin promised to walk away from the lawsuit, to no longer challenge the patents' validity, and to not market a generic version of Glumetza for four years. As payment for Lupin's delay, Assertio and Santarus promised to not market or permit another to market an authorized generic for at least 180 days following Lupin's generic market entry in 2016.

Two separate "180 day" periods hovered over Lupin's market entry:

1. the FDA-granted 180-day period during which the FDA would not permit any other generics to market (which, by statute, would run from Lupin's market entry); and
2. the settlement agreement 180-day period during which Assertio and Santarus would not market an authorized generic (which, by contract, would also run from Lupin's market entry). Lupin presumably gave up its statutory 180-day exclusivity period in favor of a contractual 180-day exclusivity period, enforced by Assertio and Santarus's assertion of patent rights against other generics.

To protect Lupin, the "no-authorized generic" clause allegedly included two more provisions. The "most-favored-entry" subclause expressly provided that if any other generic succeeded in marketing a generic Glumetza before February 2016, Lupin could market immediately. In addition, the "most-favored-entry-plus" subclause stated that Assertio and Santarus would not license any other generic Glumetza manufacturers until 180 days following Lupin's market entry.

According to the complaint, the Defendants designed these provisions (collectively the "no-AG" provision) to undercut any incentive for other manufacturers to file a Paragraph IV certification, litigate an infringement suit to final decision, and (if successful) beat Lupin to market. If the defendants' scheme worked, Lupin could keep both the FDA-granted exclusivity against other generics and Assertio and Santarus's promise to not market an authorized generic and, thus, be the only competitor to brand Glumetza for at least 180 days. The complaint calculates the added value of this provision to Lupin, looking prospectively from February 2012, at over \$50 million dollars.

The scheme worked. No generic manufacturers marketed a version of Glumetza before Lupin. Sun Pharmaceuticals filed an ANDA for generic Glumetza around May 2011. In June, Assertio and Santarus sued

Sun, and by January 2013 those parties settled. Allegedly informed of Assertio, Santarus, and Lupin's no-AG scheme, Sun agreed not to market a generic Glumetza until August 2016. And when Watson Pharmaceuticals filed its ANDA for generic Glumetza in March 2012, Assertio and Santarus again sued in April, then settled in November 2013. Also, allegedly informed of the no-AG scheme, Watson agreed to delay its market entry until August 2016. Ultimately, Sun and Watson (by then Teva Pharmaceutical Industries Ltd.) did not market any generic Glumetza until mid-2017.

Assertio and Santarus milked their four-year preserved monopoly. In 2012, Glumetza sales yielded about \$150 million. In November 2013, defendant Salix Pharmaceuticals bought Santarus for \$2.6 billion and Bausch paid \$14.5 billion for Salix (and the Glumetza machine) in April 2015. Then Glumetza prices to diabetes patients skyrocketed.

In February 2015, a 500 mg Glumetza tablet cost \$5.72—by July, purchasers paid more than \$51. The 1000 mg tablet jumped the same 800% from \$12 to \$111 in the same time period. Glumetza is one of the primary glucose regulation drugs for the more than thirty million diabetes patients in the United States, and it appears the ill had little choice but to pay the new prices. Glumetza

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produced \$145 million in the first two quarters of 2015. In the latter two, Bausch reaped \$818 million.

In February 2016, Lupin joined in the bonanza, charging \$44 for a single 500 mg tablet of Glumetza. When Teva's generic Glumetza entered the market in May 2017, the price of a 500 mg tablet dropped to \$23, and when Sun's generic entered in July the price dropped to \$16, still approximately three times the early-2015 cost.

Beginning on August 29, 2019, plaintiffs began suing. As of now, 10 suits have been filed in the Northern District of California. Following a case management conference, nine remain active.

The Plaintiffs are divided into three groups:

1. the direct-purchaser plaintiffs and putative class;
2. the end-payor plaintiffs and putative class; and
3. the retailer plaintiffs, who sue as the assignees of absent direct purchasers.

One defendant, PDL Biopharma, left the case by voluntary dismissal in January. The remaining defendants have moved to dismiss all the complaints.

Antitrust Claims Are Timely

Under 15 U.S.C. §15b, private plaintiffs must file an antitrust action within four years. An antitrust claim accrues when a defendant commits an

unlawful act and injures a plaintiff. In the context of the Glumetza case, the injury accrues "on the date that the generic firm would have entered the market but for the unlawful settlement."

The Plaintiffs allege that absent the unlawful agreement, Lupin would have marketed generic Glumetza:

1. "at risk" following the expiration of the thirty-month stay (May 6, 2012);
2. following Lupin's victory in the patent suit; or
3. earlier than February 1, 2016, on a date to be determined by the jury.

The Court noted that the consolidated complaint plausibly alleges that Lupin did not infringe the patents because it designed around the patents using a "reservoir system" to "extend the drug's release" rather than use Assertio's "claimed polymeric matrix system." So, at this stage, the complaint plausibly alleges Lupin would have won the patent suit and would have launched generic Glumetza in the summer or fall of 2012 after FDA final approval following the expiration of the thirty-month stay.

The problem is that this action commenced on August 29, 2019, so the limitations period only reaches back to August 29, 2015. The Plaintiffs offer two counterarguments: (1) that the defendants' continuing violations reset the statute of limitations;

and (2) the defendants' fraudulent concealment tolled the statute of limitations, both considered now.

The Court held that though the "original sin" occurred back in 2012, the later sales are continuing violations, not barred by the statute of limitations, because of both the defendants' maintenance of the Glumetza monopoly following the February 2012 settlement agreement and their careful February 2016 partition of the Glumetza market, between the brand drug and Lupin's sole generic.

The continuing violation "standard is meant to differentiate those cases where a continuing violation is ongoing—and an antitrust suit can therefore be maintained—from those where all of the harm occurred at the time of the initial violation." So, "action taken under a pre-limitation contract [can be] sufficient to restart the statute of limitations so long as the defendant had the ability not to take the challenged action, even if that would have required breaching the allegedly anti-competitive contract."

The Court pointed out two instances illustrating subsequent actions that constitute violations:

1. It is true that the sulphorous agreement occurred in 2012, but the conduct taken to cause competitive harm continued well into the later four-year period. This order notes most

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other cases to address this question have concluded that continued overcharges constitute a continuing violation.

2. In February 2016, the defendants carefully converted the Glumetza monopoly into a brand-versus-generic duopoly with a new round of conduct, a new form of antitrust violation, and new harm to plaintiffs.

The Plaintiffs may recover for overcharges flowing from defendants' split of the market. Assertio and Santarus describe their February 2016 conduct not as overt, but instead as inaction reflecting continued adherence to the 2012 settlement. Yes, they defined their duties in the 2012 settlement, but the price gouging anticipated by the agreement extended for years, well into the later four-year period.

A continuing violation did not, by itself, reset the statute of limitations for prior acts. Rather, each continuing violation (i.e., each new sale) merely triggered the statute of limitations anew for that act. Thus, while plaintiffs' challenge to the Glumetza sales since August 29, 2015—including the February 2016 conduct and its results—are timely, all earlier conduct and sales can only be reached via fraudulent concealment.

The Plaintiffs contend that the defendants' fraudulent concealment of their settlement agreement,

specifically the no-AG provision, tolled the statute of limitations. The Court agreed.

The thrust of the complaint is that Assertio and Santarus paid Lupin to end its patent challenge and grant them four more years of Glumetza monopoly, during which enormous price gouging occurred. As the Supreme Court recognized in *Actavis*, the pay-for-delay scheme is unique to pharmaceutical patents. And, Lupin's delay of a generic Glumetza was public knowledge by March 2012. So, by then, plaintiffs were on notice of two key aspects of the pharmaceutical pay-for-delay scheme: a pharmaceutical patent case; and a settlement delaying generic market entry.

But they had no knowledge of the no-AG provision, Assertio and Santarus's promise to not market an authorized generic for 180 days after Lupin's market entry, to not license any other generics in that time, and that Lupin could market immediately if another generic succeeded in marketing.

The Court finds that, at least at this stage, the complaint plausibly shows that knowledge of the no-AG provision was necessary to excite the curiosity of the reasonable person. Though two of the relevant Glumetza patents expired in 2016, one allegedly did not expire until June 2020. And only one valid claim of one patent was

necessary to block generic Lupin from the market. So, viewed in February 2012, a proposed February 2016 market entry for Lupin meant halving the remaining patent term. This 50-50 compromise plausibly conveyed no impropriety to the reasonable observer.

Second, the complaint plausibly alleges the defendants improperly concealed the existence and details of the no-AG provision. Failure to disclose information does not constitute affirmative concealment absent a duty to disclose, the Court said. But the defendants were under a duty to disclose.

"[H]alf-truths—representations that state the truth only so far as it goes, while omitting critical qualifying information—can be actionable misrepresentations," the Court pointed out.

Third, the complaint plausibly alleges the defendants concealed the no-AG provision until within four years of this suit. Generally, a motion to dismiss turns on, and only on, the complaint. The judicial notice exception under Federal Rule of Evidence 201 permits district courts to consider a fact "not subject to reasonable dispute" because it is "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

The Defendants contend "sole

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exclusivity” obviously meant that Lupin’s 180 days of exclusivity would not be compromised by an AG launch, but the Court recalled that two 180-day exclusivity periods hover over Lupin’s market entry: (1) the FDA-granted 180 days of exclusivity against other generics; and (2) the settlement-granted 180 days without an authorized generic. So facially, the subject of “sole exclusivity” is open to reasonable dispute.

It is undisputed that before Lupin uttered “sole exclusivity,” the public had no knowledge of the no-AG provision. Perhaps, enjoying the facts now known, “sole exclusivity” clearly refers to the no-AG provision. But the defendants’ suggestion must be that the reasonable observer on July 25, 2015, would have construed the language as disclosing the then-unknown settlement provision, rather than the known FDA-granted exclusivity—an improper attribution of hindsight, the Court said. Because the language was subject to reasonable dispute when uttered, judicial notice is improper. The concealment continued into the statutory four-year period, or so a reasonable jury could find.

In sum, the Court found the Plaintiffs’ claims timely. The Court further held that Assertio’s argument that it just stood in the background while Santarus and Lupin did all the wrongs is unavailing. Assertio signed on to the conspiracy, even if its co-

conspirators did the heavy lifting, and remains liable for every penny, if liability is established.

End-payor Plaintiffs Can Pursue Claims in Only 3 States

The end-purchaser plaintiffs reside only in California, New York, and Rhode Island (not counting the new plaintiffs). End-purchaser plaintiffs did not purchase, lack injury, and therefore lack standing in states other than California, New York, and Rhode Island.

Contrary to the Plaintiffs’ argument, the Court said Melendres is not applicable here because in that case the plaintiffs all raised federal constitutional claims against the Maricopa County Sheriff’s Department for conduct all within the District of Arizona. In the Glumetza case, where the plaintiffs raise separate claims under the laws of several states, the general requirement of standing for each claim and mode of relief articulated in *DaimlerChrysler* remains unsatisfied.

The Plaintiffs’ remaining prudential arguments about the scope of discovery are unavailing because standing is a jurisdictional requirement, the Court found.

California, New York, and Rhode Island also impose four-year antitrust statutes of limitations. Here, the defendants point to no distinctions in either the continuing violation or

fraudulent concealment doctrines. Thus, the timeliness of end-payor plaintiffs’ California and New York antitrust claims merges with the federal-claim analysis.

The Rhode Island Antitrust Act also appears to contemplate continuing violations and tolling for fraudulent concealment. The Defendants contend Rhode Island law did not permit indirect purchaser antitrust claims until July 2013. Because the challenged conduct was in early 2012, and Rhode Island’s new claim is not retroactive, the plaintiffs’ claims are barred. The Defendants are partially correct, the Court ruled. According to the only case out of Rhode Island or the District of Rhode Island applying the new statute:

“[T]he [Rhode Island] General Assembly passed an Illinois Brick-repealer statute, effective July 15, 2013, which expressly conveys standing to indirect purchasers. The ... statute is presumed to apply only prospectively, absent evidence of legislative intent to the contrary. Therefore, the [end-payor plaintiffs’] recovery under the Rhode Island Antitrust Act is limited to damages incurred after July 15, 2013.”

But Defendants apply this law too far, the Court pointed out. Rhode Island recognized the claim by 2013 and thus recognized the Plaintiffs’ timely challenge to late 2015 Glumetza monopoly-sales and the Defendants’

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February 2016 Conduct.

The Plaintiffs contend that Rhode Island's new grant of indirect purchaser standing is merely a procedural rule which applies retroactively to permit end-purchasers to challenge the original 2012 conduct. While it is true the amendment does not impose new standards of conduct on the Defendants, it redefines who was injured by the Defendants' conduct. The Court refuses to depart from *In re Loestrin 24 FE Antitrust Litigation*, 410 F.Supp.3d 352, 374 (D.R.I. 2019)—Rhode Island's grant of end-purchaser standing is prospective only. Thus, the timeliness of end-payers' Rhode Island antitrust claim merges with the federal-claim analysis above, but with the caveat that no recovery will be permitted before July 15, 2013, when Rhode Island first recognized the indirect antitrust claim.

Retailer Plaintiffs' Sherman Act Claims Fail

The Defendants challenge the Retailer Plaintiffs' standing to sue on their own behalf under *Illinois Brick*, which bars federal antitrust damages claims by indirect purchasers. The Retailer Plaintiffs respond, and the Defendants do not contest, that *Illinois Brick* does not bar indirect purchasers' claims for injunctive relief. The *Retailer Plaintiffs* also contend in their brief that certain of them did directly purchase Glumetza or generic

Glumetza from the Defendants. But the Court noted that the retailers' complaints neither allege direct purchase nor pray for injunctive relief. To the extent the Retailer Plaintiffs seek relief on their own behalf under the Sherman Act, these claims are either barred or not alleged.

The Retailer Plaintiffs sue as assignees of various direct purchasers, including McKesson Corporation. Another assignee of McKesson, KPH Healthcare, is currently part of the putative direct-purchaser plaintiff class. The Defendants contend these split claims raise the specter of a "multiplicity of suits" and "duplicative recovery" and request dismissal or stay of the separate retailer complaints.

The Defendants do not challenge the Retailer Plaintiffs' rights to opt-out of the direct-purchaser class, rather they argue Rule 19 requires partial claim assignments to be raised in the assignor's complaint. They rely on *In re Fine Paper Litigation State of Washington and Bailey Lumber & Supply Co. v. Georgia-Pacific Corporation*, where the United States Court of Appeals for the Third Circuit and District Court for the Southern District of Mississippi (respectively) expressed concern that split partial claims would undermine the certainty of judgment or settlement, contravening Rule 19.

The circumstances here have

already been persuasively addressed in this District: *Bailey Lumber and Fine Paper* stand for the principle that antitrust plaintiffs with partially assigned claims may not opt [out] of a class due to concerns that they will circumvent joinder rules or interfere with the rights of the defendant to be free of excessive and repeated suits growing out of same basic facts. They do not stand for the proposition that partially assigned claims must be dismissed or stayed in actions such as this, where there is no prior history of litigation of these claims in a different court.

Indeed, as Judge Orrick noted in *United Food*, both *Fine Paper* and *Bailey Lumber* addressed the scenario where classes had already been certified. And in *Bailey Lumber*, the plaintiff had filed a new case in a new venue.

The Court found that the Defendants' concerns are not ripe. As to the Defendants' complaint of the uncertainty from multiple suits—regardless of whether some partial assignees filed as direct-purchaser or retailer plaintiffs, all suits arising out of the challenged conduct are consolidated here. The Court refused to speculate about whether other complaints may be filed elsewhere. And as to the Defendants' fears of duplicative recovery, the Court is confident that the high-end lawyers in this case, following discovery, will

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obtain all the information necessary to ensure damages are tailored to each partial assignment.

What's Next?

The Court's order dated March 5, 2020, did not address the two latest complaints, Nos. C 20-01196 WHA and C 20-01198 WHA. The Defendants were given until March 26 to move to dismiss those two complaints, and a hearing on any motion to dismiss is scheduled to take place on April 16 at 8:00 a.m.

Antitrust lawsuits arising from the Hatch-Waxman Act can be complicated and tedious, according to **Janet B. Linn**, counsel in the Intellectual Property Group at Tarter Krinsky & Drogin LLP. Ms. Linn offered several strategies for counsel for a generic drug company on how to prepare for patent litigation under the Act. One strategy she recommends is getting early input from patent counsel and outside experts because there is a limited number of litigation experienced technical experts that the generic drug company can hire during litigation. She noted as an example that Celgene initiated patent litigations against 25 defendants in New Jersey on Otezla, narrowing the number of experts who do not have conflict of interests. Lex Machina reported that patent infringement suits related to ANDA filings is on the rise consistent with the number

of ANDA applications being received by the FDA. The percentage of patent infringement cases triggered by Paragraph IV certifications made by drugmakers filing ANDA applications represent about 10% of the patent infringement cases filed in the U.S., the Lex Machina report showed.

"The real takeaway from this report is that ANDA practice is a vital growing practice area," Lex Machina's Chief Evangelist Owen Bird said in the 2017 report. "If I was the head of an IP group at a big law firm looking into trends, I'd be investing in an effort to obtain these cases and market our practice to pharmaceutical firms."

Another strategy Ms. Linn recommends is venue analysis because it is not straightforward in a Hatch-Waxman suit because the artificial act of infringement does not fit the statutory language of 28 U.S.C. § 1400(b), which provides that a patent infringement suit must be filed either (1) where the defendant is incorporated, or (2) where the defendant has committed acts of infringement and has a regular and established place of business.

In *Bristol Myers Squibb*, the Delaware court looked to the venue in which the proposed generic drug would likely be marketed in determining that infringement was committed in Delaware, but the court (Texas) in *Galderman* dismissed the

suit for improper venue, holding that the act of infringement occurred where the ANDA was prepared and filed with the FDA, not where the generic drug would be marketed.

The Lex Machina report noted that ANDA lawsuits filed in the District of Delaware increased by 60%, from 151 cases in 2016 up to 241 cases in 2017. Mr. Byrd noted that this is not usual because many or most pharmaceutical companies are incorporated in Delaware and many companies have their headquarters in New Jersey. More broadly, both branded and generic pharmaceutical makers bring cases in jurisdictions where they know the judges have considerable expertise in these cases, Mr. Byrd said.

Plaintiffs

Meijer, Inc. & Meijer Distribution, Inc., Plaintiffs, are represented by **Alberto Rodriguez, Daniel Abraham Shmikler, David Paul Germaine, Eamon Padraic Kelly, John Paul Bjork**, and **Joseph M. Vanek** of Sperling & Slater PC; **Barry Steven Taus** and **Brett H. Cebulash** of Taus, Cebulash and Landau; **David S. Nalven, Kristen A. Johnson, Lauren G. Barnes, Rochella T. Davis, Thomas M. Sobol**, and **Shana E. Scarlett** of Hagens Berman Sobol Shapiro LLP; and **Steve D. Shadowen** of Hilliard & Shadowen, LLP.

Research Report

Who's Who in Glumetza Antitrust Litigation

Continued from page 21

City of Providence, individually and on behalf of all others similarly situated, Plaintiff, is represented by **Stephen J. Teti** and **Whitney E. Street** of Block & Leviton LLP; and **Steve D. Shadowen** of Hilliard & Shadowen, LLP.

BI-LO, LLC & Winn-Dixie Logistics, Inc., are represented by **Matthew C. Weiner**, **Nicholas William Shadowen**, **Steve D. Shadowen**, and **Richard M. Brunell** of Hilliard & Shadowen, LLP; **Barry Steven Taus** and **Brett H. Cebulash** of Taus, Cebulash & Landau, LLP; **David S. Nalven**, **Kristen A. Johnson**, **Lauren G. Barnes**, **Rochella T. Davis**, **Thomas M. Sobol**, and **Shana E. Scarlett** of Hagens Berman Sobol Shapiro LLP.

UFCW Local 1500 Welfare Fund, on behalf of itself and all others similarly situated & Pensioned Operating Engineers Health and Welfare Fund, Plaintiffs, represented by **Domenico Minerva**, **Ethan H. Kaminsky**, **Gregory Ascioffa**, **Jay L. Himes**, **Robin Van Der Meulen**, and **Matthew Perez** of Labaton Sucharow LLP; **Whitney E. Street** of Block & Leviton LLP; and **Steve D. Shadowen** of Hilliard & Shadowen, LLP.

KPH Healthcare Services, Inc., individually and on behalf of all others similarly situated, Plaintiff, represented by **A.J. De Bartolomeo** and **Brian R. Morrison** of Tadler Law LLP, **Debra G. Josephson**, **Karen**

Sharp Halbert, **Michael Roberts**, **Sarah E. DeLoach**, **Stephanie Egnor Smith**, and **William Olson** of Roberts Law Firm, PA; and **Steve D. Shadowen** of Hilliard & Shadowen, LLP.

Walgreen Co., Plaintiff, is represented by **Anna Theresa Neill** and **Scott Eliot Perwin** of Kenny Nachwalter, P.A., **Lauren C. Ravkind** of Kenny Nachwalter, PA; and **William Francis Murphy** of Dillingham & Murphy.

The Kroger Co., Albertsons Companies, Inc. & H-E-B LP, Plaintiffs, are represented by **Anna Theresa Neill** of Kenny Nachwalter, PA.

Service Employees International Union Local No. 1 Health Fund & MSP Recovery Claims, Series LLC, Plaintiffs, are represented by **Whitney E. Street** of Block & Leviton LLP.

Defendants

Bausch Health Companies Inc., Salix Pharmaceuticals, Ltd., Salix Pharmaceuticals, Inc. & Santarus, Inc., Defendants, are represented by **Jennifer Bridget Patterson**, **Laura S. Shores**, **Saul P. Morgenstern**, and **Daniel B. Asimow** of Arnold and Porter Kaye Scholer LLP; and **Wendy Lynn Devine** of Wilson Sonsini Goodrich Rosati PC.

Assertio Therapeutics, Inc., Defendant, is represented by **Eric Jonathan Stock** of Gibson Dunn, **Victoria Leigh Weatherford** of Durie

Tangri LLP, and **Wendy Lynn Devine** of Wilson Sonsini Goodrich Rosati PC.

Lupin Pharmaceuticals, Inc. & Lupin Ltd., Defendants, are represented by **Brendan Jasper Coffman**, **Jeffrey C. Bank**, and **Wendy Lynn Devine** of Wilson Sonsini Goodrich Rosati PC.

CVS Pharmacy, Inc., Movant, is represented by **Anna Theresa Neill** of Kenny Nachwalter, PA, **Alexander J. Egervary**, **Barry L. Refsin**, **Caitlin V. McHugh**, **Chelsea M. Nichols**, **Eric L. Bloom**, and **Monica L. Kiley** of Hanglely Aronchick Segal Pudlin & Schiller; and **William Francis Murphy** of Dillingham & Murphy.

Rite Aid Corporation & Rite Aid Hdqtrs. Corp., Movants, are represented by **Anna Theresa Neill** of Kenny Nachwalter, PA; **Alexander J. Egervary**, **Barry L. Refsin**, **Caitlin V. McHugh**, **Chelsea M. Nichols**, **Eric L. Bloom**, and **Monica L. Kiley** of Hanglely Aronchick Segal Pudlin & Schiller.

Hy-Vee, Inc., Movant, is represented by **Anna Theresa Neill** of Kenny Nachwalter, PA.

The case is *In re Glumetza Antitrust Litigation*, Nos. C 19-05822 WHA, C 19-05831 WHA, C 19-06138 WHA, C 19-06156 WHA, C 19-06839 WHA, C 19-07843 WHA, C 19-08155 WHA, C 20-01196 WHA, C 20-01198 WHA (Consolidated)(N.D. Calif.).

The case is assigned to **Hon. William Alsup**. ☐

Special Report

Most Active Class Action Plaintiff Law Firms - 2019

Firm	Senior Professionals	Target Defendants
ADEMI & O'REILLY, LLP Cudahy, WI (414) 482-8000 ademilaw.com	Ben James Slatky Jesse Fruchter John D. Blythin Mark Andrew Eldridge Shpetim Ademi	Alliant Capital Management; Americollect; Atlantic Credit and Finance; Capital Management Services; Central Collection Corporation; Commonwealth Financial Systems; Creditech; Diversified Adjustment Service; Dobberstein Law Firm; FMA Alliance; Frost-Arnett Company; Kohn Law Firm; Panda Restaurant Group; Professional Account Management; Professional Placement Services; Resurgent Capital Services; State Collection Service; Tate & Kirlin Associates; TrueAccord Corp.; Vital Recovery Services; and Windham Professionals.
BARSHAY SANDERS, PLLC Garden City, NY (516) 203-7600 bakersanders.com	David Michael Barshay Craig B. Sanders	AFNI, Inc.; Alltran Financial; ARS National Services; Cavalry Portfolio Services; Collection Bureau of Hudson Valley; EGS Financial Care; Enhanced Recovery Company; Financial Recovery Services; Forster & Garbus, LLP; Halsted Financial Services; I.C. System; Jefferson Capital Systems; Levinbook Law Firm; LJ Ross Associates; Malen & Associates, P.C.; Mandarich Law Group; Monarch Recovery Management; Radius Global Solutions; Relin, Goldstein & Crane; Sunrise Credit Services; and United Collection Bureau.
COHEN & MIZRAHI LLP Brooklyn with offices in Flushing and Uniondale, NY (929) 575-4175 cml.legal	Daniel C. Cohen Joseph H. Mizrahi	Global Custom Commerce; Jet.com, Inc.; Lenovo United States; Mattel, Inc.; MSD USA; Nakedwines.com; Natural Essentials; Painful Pleasures; Pharmapacks, LLC; Santa Maria Novella NY Retail; Selectblinds LLC; Sennheiser Electronic Corp.; SJV USA Inc.; Skinit Acquisition; Sonder USA Inc.; STAMPS.COM INC.; Vintage King Audio; and Zazzle Inc.
EDELSBERG LAW, P.A. Aventura, FL (305) 975-3320 edelsberglaw.com	Scott Edelsberg	Abercrombie & Fitch Stores; Boomtown ROI; Checkers Drive-In Restaurants; Coralreef Productions; Cultured Quotes LLC; Delta Healthcare Placement; Drybar Holdings; Ficohsa Express; Galeana Chrysler Jeep; Hardcore Dispatch Services; Jelly Belly Candy; Jenny Craig Inc.; Keyes Company; Liv Fitness Clubs - Condado; Maoz Development; Mercola.com Health Resources; New Beginnings Medical; Prenlyn Enterprises; Quick Weight Loss Centers; Village Ford Inc.; Amica Mutual Insurance Company; Imperial Fire and Casualty Insurance; Progressive American Insurance; and USAA Casualty Insurance.

Special Report

Most Active Class Action Plaintiff Law Firms - 2019

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Firm	Senior Professionals	Target Defendants
<p>GLANCY PRONGAY AND MURRAY LLP Los Angeles and Berkeley, CA; and New York, NY (310) 201-9150 glancylaw.com</p>	<p>Lionel Z. Glancy Robert Vincent Prongay</p>	<p>Astrazeneca Pharmaceuticals; Capital One Financial; Comscore Inc.; DXC Technology Company; Eros International; Farfetch Limited; Granite Construction; Helius Medical Technologies; Mallinckrodt Plc; Meredith Corporation; Pareteum Corporation; Plantronics; PriceSmart; Quest Diagnostics; RA Medical Systems; RCI Hospitality Holdings; Sonim Technologies; Sunrise Medical Laboratories; Thalmann & Co. Inc.; and Zuora Inc.</p>
<p>GOTTLIEB & ASSOCIATES New York, NY (212) 228-9795 gottliebblaw.net</p>	<p>Jeffrey M. Gottlieb Dana L. Gottlieb</p>	<p>Anker Technology; Ascena Retail Group; Bridgeton Holdings; Chick-Fil-A, Inc.; Christopher Kane US, Inc.; Designer Brands; Ethan Allen Interiors; Gab & Aud, Inc.; Godiva Chocolatier; Intimacy Management Company; Joshua Liner Gallery; Juvenex, Ltd.; Little Caesar Enterprises; Roscoe Campsite Park; Saks Fifth Avenue; The Fort William Henry Corporation; and Vivian Horan Fine Art.</p>
<p>LIPSKY LOWE LLP New York, NY (212) 518-1506 lipskylowe.com</p>	<p>Douglas Lipsky Christopher Lowe</p>	<p>Andrew Torregrossa & Sons; Astor Wines & Spirits; Dune Resorts doing business as: East Hampton House Resort; Fitzpatrick Hotel Group; Flying Point Sport; Huckberry Inc.; Inns of Aurora; Me.N.U. Kids LLC; Medici Living doing business as: Go Quarters; Mirror Lake Inn; Palms Hotel; Parm Fund and Major Food Group; Pier A Battery Park Associates; Samaritan Daytop Village; Sixx Nouveaux Design Services; Sunspel Mercer St. LLC; Taiyaki NYC Inc.; and Wise Bar & Grill.</p>
<p>THE MARKS LAW FIRM, P.C. New York, NY (646) 770-3775 markslawpc.com</p>	<p>Bradly Gurion Marks</p>	<p>Applebee's Restaurants; Banana Republic; Burger King; Darden Restaurants; First Street Gallery; G.O.L.A.; Harman Hashimoto Enterprises; J.C. Penney; Kathryn Markel Fine Arts; Krispy Kreme Doughnut; Lehmann-Maupin; Lowe's Companies; Olive Garden Holdings; Outback Steakhouse of Florida; Papa John's USA; Stop & Shop Supermarket; Tim Horton's USA; Walgreens Boots Alliance; and Yard House USA.</p>

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Most Active Class Action Plaintiff Law Firms - 2019

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Firm	Senior Professionals	Target Defendants
<p>MICHAEL FAILLACE & ASSOCIATES, PC New York, NY (212) 317-1200 faillacelaw.com</p>	<p>Michael Faillace</p>	<p>Barbeque Integrated; Capital Region Landfills; Countywide Builders; Cristy's Pizza; Dyckman Electronics Center; E & E Food; Elegant Linen of NY; Flaming Grill NJ; General Motors; Guru Krupa 104 Corporation; Healthy Heart Food Service; Hill and Dale Restaurant Group; John L. Loeb, Jr. Associates; Milo Cafe Corp.; Musical.Ly; Rainbow Cleaners of NY; Texas Roadhouse; Vector Structural Preservation Corp.; Watman, William Waite; and West New Malaysia Restaurant.</p>
<p>POMERANTZ LLP New York, NY with offices in Chicago, IL; Los Angeles, CA; and in Paris, France (212) 661-1100 pomerantzlawfirm.com pomlaw.com</p>	<p>Jeremy A. Lieberman Patrick V. Dahlstrom</p>	<p>3M Company; Abiomed Inc.; Altria Group; AT&T Inc.; Beazer Homes; Cantrust Holdings; Carbonite Inc.; Cloudera Inc.; Curaleaf Holdings; CVS Health; Dropbox; Eagle Bancorp; FedEx Corporation; Netflix Inc.; NIO Inc.; Qihoo 360 Technology; Sundial Growers; Venator Materials; Verb Technology Company; and Vivint Solar.</p>
<p>RIGRODSKY & LONG P.A. Wilmington, DE, with offices in Garden City, NY; and Palm Springs, CA (302) 295-5310 rigrodskylong.com rl-legal.com</p>	<p>Gina M. Serra Seth D. Rigrodsky Brian D. Long</p>	<p>Acacia Communications; Advanced Disposal Services; Aerohive Networks; Buckeye Partners; Caesars Entertainment; Carbon Black; Carrizo Oil & Gas; Gannett Co.; Genesee & Wyoming; Genomic Health; LegacyTexas Financial Group; Monotype Imaging Holdings; Rayon Company; Roan Resources; Suncoke Energy; Tableau Software; TCF Financial; United Financial Bancorp; Vical Incorporated; Wageworks; and Wellcare Health Plans.</p>
<p>THE ROSEN LAW FIRM, P.A. New York, NY with offices in Los Angeles, CA; and Jenkintown, PA (212) 686-1060 rosenlegal.com</p>	<p>Laurence M. Rosen Phillip C. Kim</p>	<p>2U Inc; Abiomed Inc.; Amtrust Financial; CVS Health; Floor & Décor; Fred's Inc.; GTT Communications; Ideanomics Inc.; International Flavors & Fragrances; Just Energy; LogMeIn Inc.; Mallinckrodt Plc; Merrill Lynch, Pierce, Fenner & Smith; Mindbody Inc.; Netflix Inc.; Nokia Corp.; PluralSight Inc.; Realogy Holdings; Revolution Lighting Technologies; Valaris Plc; Venator Materials; and Verb Technology.</p>

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Most Active Class Action Plaintiff Law Firms - 2019

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Firm	Senior Professionals	Target Defendants
SHAMIS & GENTILE, P.A. Miami, FL (305) 479-2299 shamisgentile.com sflinjuryattorneys.com	Andrew J. Shamis Garrett O. Berg	Aronesty and Santoro; Bellaochio Luxury; Classic Chevrolet; Coca-Cola; Derma Laser; Fred Haas Motors; Free Fly Inc.; Gator'S Dockside Group; Gold Card Finance; HomeJob, LLC; Horizon Talk; Indochino Apparel US; Kolter Group; Leazer Group; Nations Info Corporation; Neal Communities; Prada USA; Presidential Real Estate Group; Primal Life Organics; Real Estate Sales; Senor Frog's Orlando; and Venus Fashion.
STEIN SAKS, PLLC Hackensack, NJ (201) 282-6500 steinsakslegal.com	Yaakov Saks Judah Stein Raphael Deutsch Kenneth Willard	Abode Systems; Amerimark Direct; Aquasana Global; BG & Associates; Black Diamond Equipment; Dermstore; Equifax Information Services; Frontpoint Security Solutions; Gildan Apparel USA; Grizzly Industrial; Haro Bicycle Corporation; Lorex Corporation; Luxury Brand Holdings; MGM Springfield; Resurgent Capital Services; Sportsman's Warehouse; Steklen & Walker; Transunion Interactive; and Werner Media Partners.
LAW OFFICES OF TODD M. FRIEDMAN, P.C. Beverly Hills, Calif., with offices in Santa Ana and Woodland Hills, Calif.; King of Prussia, Pa.; Northbrook, Ill.; and Cleveland (877) 206 4741 toddflaw.com	Todd M. Friedman Meghan E. George Adrian R. Bacon Tom E. Wheeler	Allied Capital Corp.; Bandwidth.com CLEC; Clean Energy Experts; Consumer Advocacy Center; Fidelity National Home Warranty; Global Equity Finance; Instaboost; Leo Capital Group; Life Protect 24/7; Monterey Financial Services; Paramount Equity Mortgage; Switch2web.com; Tucker, Albin and Associates; Wheels Labs Inc.; Heineken USA; HP, Inc.; Trader Joe's Company; Wal-Mart, Inc.; Barclays Bank Delaware; LoanMe Inc.; Midwest Recovery Systems; and XoticPC.com.

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BAKER & HOSTETLER LLP Cleveland with offices in Atlanta; Chicago; Cincinnati and Columbus, Ohio; Los Angeles and Costa Mesa, Calif.; Denver; Houston; New York; Orlando, Fla.; Philadelphia; Seattle; and Washington, D.C. (310) 442-8893 bakerlaw.com	Paul Gregory Karlsgodt Margaret Rosenthal	Adesa Inc.; Choice Hotels; CSX Intermodal Terminals; Harbor Freight; Lion Oil; Progressive Preferred Insurance; Southwest Airlines; USAA Casualty Insurance; Vimeo Inc.; and Trusted Media Brands.
FISHER & PHILLIPS LLP Atlanta with 33 offices in the U.S. (404) 231-1400 fisherphillips.com	Craig Robert Annunziata Lonnie D. Giamela Philip J. Azzara	5 Star Pizza; ADT, LLC; Air Methods Corp.; Applied Services Augmentation Partners; FedEx Ground Package System; Orkin Services of California; Seagle Pizza; and VF Outdoor.
FOLEY & LARDNER LLP Milwaukee with another 23 offices in the U.S., Brussels, Mexico City and Tokyo (608) 257-5035 foley.com	Jay N. Varon Michael D. Leffel	22nd Century Group; Amcor Rigid Plastics USA; Anda, Inc.; Tough Mudder Incorporated; HomeServices of America; and Stein Mart Inc.
GREENBERG TRAURIG LLP Miami with 41 offices in the U.S., Latin America, Europe, Asia and the Middle East (305) 579-0500 gtlaw.com	Robert J. Herrington Mark D. Kemple Stephen L. Saxl Rick L. Shackelford	Centene Management; Conestoga Settlement Services; Energizer Holdings; Hearst Magazine Media; Ocwen Loan Servicing; Orlando Utilities Commission; Sandals Resorts International; and Tharaldson Hospitality Staffing.

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Most Active Class Action Defendant Law Firms - 2019

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Firm	Senior Professionals	Recent Engagements
<p>KING & SPALDING LLP Atlanta with 20+ offices in the U.S., Europe and Asia (404) 572-2782 kslaw.com</p>	<p>David L. Balsler Stephen B. Devereaux</p>	<p>Capital One, Inc., JetBlue Airways, Hat World, Home Depot, and South Carolina Electric & Gas Company</p>
<p>KIRKLAND & ELLIS LLP Chicago with 15 offices in the U.S., Europe and Asia (312) 862-2000 kirkland.com</p>	<p>Michael B. Slade Jeremy A. Fielding Kasdin M. Mitchell</p>	<p>3M Company; Fairlife LLC; Boeing Company; Torrent Pharma Inc.; Travelport Worldwide; and Wayfair Inc.</p>
<p>LEWIS BRISBOIS BISGAARD & SMITH LLP Los Angeles with offices in 52 cities and 29 states throughout the U.S. Los Angeles (213) 680-5040 lewisbrisbois.com</p>	<p>Jon P. Kardassakis Eric Y. Kizirian Pamela Ferguson</p>	<p>BMW of North America; Copart Inc.; Directory Distributing Associates; Hidden Villa Ranch Produce; Interstate Cleaning; Kimpton Hotel & Restaurant Group; Parex USA; Propak Logistics; and Labcorp.</p>
<p>LITTLER MENDELSON PC San Francisco with 80 U.S. and global offices (310) 772-7284 littler.com</p>	<p>Keith A. Jacoby Allan G. King</p>	<p>Abercrombie & Fitch; All Freight Carriers; Beacon Sales Acquisition; Blazin Wings; Deluxe Check Printers; Gate Gourmet; Heartland Employment Services; Interstate Management Company; Just Energy Marketing; Kindred Healthcare; McKesson Medical-Surgical; Packaging Corporation of America; Prince Telecom; Raymours Furniture; Reynolds Metals; rue21 Inc.; Schenker Inc.; Signature Healthcare; Southwest Airlines; Sprint/United Management Company; Texas De Brazil (Fresno); The Coca-Cola Company; Titlemax of Alabama; Ulta Beauty; United Parcel Service; Waste Management Inc.; and Zillow Group.</p>

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Most Active Class Action Defendant Law Firms - 2019

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Firm	Senior Professionals	Recent Engagements
<p>MCGUIREWOODS LLP Richmond, Va., with 21 offices across the U.S. and Europe (804) 775-4352 mcguirewoods.com</p>	<p>Bryan A. Fratkin Bethany Gayle Lukitsch</p>	<p>Bank of America; Capital One Bank; Comprehensive Health Management; DG Strategic VII; Ikea US Retail; McLane Company; MillerCoors LLC; Portfolio Recovery Associates; Seterus Inc.; Watkins and Shepard Trucking; and Zale Delaware.</p>
<p>MORGAN, LEWIS & BOCKIUS LLP Philadelphia with 31 offices across North America, Europe, Asia, and the Middle East (215) 963-4806 morganlewis.com</p>	<p>Grace E. Speights J. Gordon Cooney, Jr.</p>	<p>ABB Optical Group; Amazon.com Inc.; Aramark Uniform & Career Apparel; BNSF Railway Company; Burlington Coat Factory; Charter Communications; Comcast Cable Communications; CVS Health; Duchesnay USA; Garfield Beach CVS; HP Inc.; JetBlue Airways; JP Morgan Chase Bank; Merrill Lynch, Pierce, Fenner & Smith; Quest Diagnostics Clinical Laboratories; Realogy Holdings; Spark Energy; Timm Medical Technologies; United Natural Foods; and WM. Bolthouse Farms.</p>
<p>OGLETREE DEAKINS NASH SMOAK & STEWART PC 54 offices across U.S. and in Europe, Canada, and Mexico (858) 652-3100 ogletree.com</p>	<p>Spencer C. Skeen Tim L. Johnson Jesse C. Ferrantella Evan R. Moses Marlene M. Moffitt</p>	<p>Alterra Group; Autozone Inc.; Becton, Dickinson and Company; Blood Centers of the Pacific; Carmax Auto; Champion Home Builders; Circle K Stores; Estenson Logistics; Flexsteel Industries; Flowers Baking; G6 Hospitality; Georgia-Pacific Corrugated; Hungry Man Inc.; Irwin Industries; Johnson Controls; CB&I LLC; MRC Global US; Professional Transportation; Ruskin Company; Service King Paint & Body; Southwest Airlines; Synergy One Lending; and Top Golf USA.</p>

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