

Hospital Class Action Seeks to Recover Overcharges for Plasma Derivative Products

On July 24, 2009, Solaris Health Systems (which operates acute care hospitals and other facilities in NJ) filed a complaint in the U.S. District Court in Philadelphia against Baxter International, Inc., CSL Limited and CSL Behring, LLC alleging that these companies conspired, in violation of the antitrust laws, to fix prices for plasma derivative products. The complaint seeks the certification of a class of direct purchasers of such products on the belief that if the defendants fixed Solaris' prices, they also fixed the prices of other purchasers. Accordingly, any direct purchaser of these products, such as hospitals, may stand to recover if the case is successful.

The complaint is modeled, almost entirely, on a civil action and a concurrent administrative action filed by the Federal Trade Commission on May 27, 2009 against CSL Limited and Cerberus-Plasma Holdings, LLC seeking to prevent the merger of these two entities. The parties subsequently abandoned their merger plans.

In the class action lawsuit, Solaris alleges that as a result of consolidation in the plasma derivative markets, the defendants have been able to coordinate price and/or output for the purpose of raising the prices of these products. The complaint alleges that the defendants have engaged in "signaling" (indirectly suggesting) competitive information to restrain output, thereby driving prices up. As a result, because there are no substitutes for the products, hospitals and other direct purchasers were willing to pay higher prices.

Solaris seeks treble damages for such overcharges, in addition to costs and attorneys' fees as mandated by the Clayton Antitrust Act. If you are a direct purchaser of these items, you may be a potential class member and be entitled to a share of any verdict or settlement.

The next phase of the litigation will be to determine whether the class should be certified. The defendants may also file a motion to dismiss the complaint on technical antitrust grounds. If you have any questions, or would like a copy of the class action or FTC complaints, please do not hesitate to contact Mark Mattioli at 215-587-1087 or at mmattioli@postschell.com.

Mark Mattioli concentrates his commercial litigation practice in the areas of health law and antitrust litigation. His practice includes representation of, among others, health care providers in antitrust litigation involving price fixing, monopolies, interlocking directors, staff privilege disputes, and class action antitrust litigation in addition to counseling health care clients regarding PHOs, joint venture relationships, exclusive contracting, and economic credentialing. He has written on a wide variety of topics, including antitrust law, health law and the False Claims Act.

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