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Third Circuit Rejects *De Beers* Class Settlement

Last month the Third Circuit Court of Appeals rejected the proposed settlement in the *De Beers* antitrust class action. The court sent the settlement back to the lower court for further consideration citing issues with certifying the purchasers in question as a class.

The lawsuits, filed between 2001 and 2005, included plaintiffs who were companies that bought diamonds directly from De Beers and indirect diamond purchasers that were companies or individuals who acquired diamonds, but not directly from De Beers. Both the direct and indirect purchasers alleged price fixing, monopolization under the Sherman Act and injunctive relief. Indirect purchasers also claimed violation of state antitrust, consumer protection and unjust enrichment laws.

In settlement agreements with indirect purchasers approved by the District Court, De Beers agreed to establish a \$272.5 million dollar fund to be paid out to class members, to consent to class certification for the purpose of settlement and to abide by an injunction restraining De Beers from violating US antitrust law. Additionally, a \$22.5 million fund was established for direct purchasers, required De Beers to consent to class certification for the purposes of settlement and similar injunction. The indirect purchasers raised numerous objections to the settlement, but the District Court overruled these objections. Subsequently, the objectors appealed to the Third Circuit, which vacated the judgment and remanded the case.

This appeal to the Third Circuit marked the first time an appeals court scrutinized whether differences in state antitrust laws prevented class certification on a nationwide basis. The Third

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Circuit held that “the differences in the state laws in question were great enough that they outweighed any commonalities among the class members.” Due to those differences, the appeals court remanded to the district court to clarify which claims were subject to the treatment as a class.

The Judge said that there was a great disparity between class members and their claims. The opinion points out that, unlike federal law, some state antitrust laws allow indirect purchasers to personally bring antitrust claims against a defendant. However, in other states indirect purchasers do not have a personal right to sue, absent the consent of the state attorney general. Moreover, in other states antitrust claims brought on behalf of indirect purchasers are barred. Those who supported the settlement tried to minimize those differences arguing that they were just differences in procedure. The Third Circuit disagreed.¹

Allegations of price fixing do not appear to have hurt De Beers. In fact, De Beers earned \$762 million in the first half of 2010 – double the revenue of the same period in the previous year.

Let us know what you think about these issues on our interactive blog!

If you have questions about this issue, or if we may be of assistance to you, please feel free to contact us.

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¹ A concurring opinion suggested the class definition be revised instead of the broader changes recommended by the majority.