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***Sperry v. Crompton Corp.*: New York Court of Appeals Rules that Treble Damages Are Unavailable in Class Actions Brought Under the Donnelly Act**

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The New York Court of Appeals has held in *Sperry v. Crompton Corp.* that treble damages constitute a penalty for the purposes of CPLR 901(b), and thus cannot be sought in class actions based on the Donnelly Act, New York's state antitrust statute. Given the unavailability of treble damages in class actions brought under the Donnelly Act, the decision likely will result in a decrease in the number of state antitrust cases filed under the Donnelly Act.

Sperry filed this purported class action suit on behalf of a class of consumers who purchased tires manufactured with defendants' chemical products. Among other things, plaintiffs claimed that defendants engaged in price-fixing and overcharging tire manufacturers, which in turn resulted in higher costs for consumers and violated New York's Donnelly Act and other sections of the New York General Business Law.

At issue for the Court was whether the treble damages provision of New York's Donnelly Act barred plaintiffs from seeking recovery in a class action case because of the operation of CPLR 901(b). The Donnelly Act provides that a plaintiff "shall recover three-fold the actual damages sustained thereby." CPLR 901(b), however, prohibits a class action that is based on a statute that provides for the recovery of a "penalty," unless the statute in question specifically authorizes a class action. The Court found that the treble damages provided by the Donnelly Act constituted a penalty under CPLR 901(b), and that the Donnelly Act did not expressly authorize class actions to seek "three-fold the actual damages."

In reaching this conclusion, the *Sperry* court looked to legislative intent, citing the purpose of the bill proposing CPLR 901(b) to "preclude[] a class action based on a statute creating or imposing a penalty or minimum measure of recovery unless the specific statute allows for a class action." In the portions of the legislative history cited by the Court, the Legislature stated its belief that a statute's imposition of a penalty already gave plaintiffs an incentive to sue, and that permitting a class to take advantage of such provisions would lead to unfair results. The Court also noted that the Donnelly Act was amended to include treble damages shortly after CPLR 901(b) passed, implying that the legislature had in mind the effect the change to the damages provision would have on plaintiffs' ability to bring a class action.

The Court acknowledged that whether damages are viewed as a penalty may vary with the case context; however, it found that in this case that "[a]lthough one third of the award unquestionably compensates a plaintiff for actual damages, the remainder necessarily punishes antitrust violations, deters such behavior (the traditional purposes of penalties), or encourages plaintiffs to commence litigation."

The *Sperry* decision follows other holdings in New York state and federal courts that have concluded that class actions may not be brought under the Donnelly Act. The Court cited with approval the language in *Texas Indus., Inc. v. Radcliffe Materials, Inc.*: "[t]he very idea of treble damages reveals an intent to punish past, and deter future, unlawful conduct, not to ameliorate the liability of wrongdoers." 451 U.S. 630, 639 (1981). In basing its holding on relevant New York law, the Court

declined to follow federal precedent that plaintiffs claimed demonstrated that treble damages under the US antitrust laws are remedial in nature.

The Court declined to decide whether a class action still could be maintained under the Donnelly Act for actual damages because that issue was not presented by the plaintiffs. Still, by reducing the availability of large damages awards in class actions, the *Sperry* decision likely will reduce the number of Donnelly Act claims filed against companies in New York. The decision may also impact the number of class action cases filed under other New York laws with comparable damages provisions that remain subject to the restriction included in CPLR 901(b).