

Corporate & Financial Weekly Digest

Posted at 12:52 PM on February 4, 2011 by [Julie Pechersky](#)

Fraudulent Concealment Doctrine Unavailable to Plaintiffs Faced with Statute of Limitations Challenge

In an antitrust matter arising under Section 1 of the Sherman Act, the district court granted defendants' motion for summary judgment on statute of limitations grounds, despite plaintiffs' argument that the statute of limitations period should be tolled under the doctrine of fraudulent concealment. The U.S. Court of Appeals for the Third Circuit affirmed this decision, finding that a plaintiff who neglects to take reasonable measures to uncover the existence of injury is not entitled to the benefit of the fraudulent concealment doctrine.

Plaintiffs, Nog, Inc. and Sorbee International, Ltd., represented a putative class of direct purchasers of Aspartame, an artificial sweetening product. Defendants are producers of Aspartame and entities related to its distribution and supply. Plaintiffs commenced this action on April 25, 2006, alleging that defendants conspired to fix the price of Aspartame between January 1993 and December 2003. Nog, however, had not purchased the sweetener since 1995 and Sorbee's last purchase occurred in 2001. Defendants moved for summary judgment on the grounds that plaintiffs' claims were brought outside the four-year statute of limitations applicable to federal antitrust claims. Plaintiffs argued that their delay in bringing this action was attributable to defendants' efforts to fraudulently conceal their anticompetitive behavior.

The Third Circuit stated that even if it was assumed that defendants fraudulently concealed their anticompetitive conduct, there was no evidence to show that plaintiffs exercised the level of due care necessary to toll the limitations period. The court found that in spite of three clear "storm warnings," which should have put plaintiffs on notice that defendants were engaging in price fixing, plaintiffs did nothing. (*In re Aspartame Antitrust Litigation*, No. 09-1487, 2011 WL 263647 (3d Cir. Jan. 25, 2011))

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