

SuperValu, C&S Beat Class Cert. In Price-Fixing Suit

By Jonathan Randles

Law360, Los Angeles (July 26, 2012, 3:38 PM ET) -- In a ruling unsealed Wednesday, a Minnesota federal judge refused to certify a class of grocers who allege wholesalers SuperValu Inc. and C&S Wholesale Grocers Inc. conspired to charge them inflated prices after entering noncompete agreements.

U.S. District Judge Ann D. Montgomery said in the July 16 ruling that there was no proof that each potential class member, independent grocery stores located throughout the Midwest and New England, paid higher prices for wholesale goods as a result of C&S and SuperValu's alleged collusion.

Although expert analysis showed SuperValu and C&S profits increased after a deal was struck, the analysis couldn't prove that grocery stores paid higher prices because of alleged price-fixing, the ruling said. Prices grocery stores paid varied depending on several factors including how far a store was located from SuperValu and C&S distribution centers, Judge Montgomery said.

"Plaintiffs merely assume that C&S did in fact raise prices in response to the absence of SuperValu as a competitor," Judge Montgomery said. "That profits may have increased on average does not mean that monopolist profits were extracted from each class member."

Grocery retailers across 13 states, including Gary's Foods and Rangeley IGA, claim rivals C&S and SuperValu struck an illegal deal dividing the market after a third rival wholesaler, Fleming Cos., filed for bankruptcy in 2003 and C&S agreed to purchase its distribution facilities in the Midwest. The move encroached on territory dominated by SuperValu, which itself had been aggressively expanding into C&S' New England territories.

SuperValu and C&S entered into an asset exchange agreement later that year that allegedly included a provision not to do business with or solicit customers in each other's territory, the grocers claim. The wholesalers also allegedly exchanged distribution centers that were in the other company's agreed-upon territory and closed them months after the deal was struck.

Plaintiffs attorney Richard Drubel of Boies, Schiller & Flexner LLP said that while the judge's ruling was disappointing, it wouldn't deter his clients from proceeding with litigation against SuperValu and C&S. Drubel said the merits of the case regarding C&S and SuperValu's alleged illegal pact haven't changed.

"We look forward to moving forward on the merits of the case and there are a lot of different ways that could be done," Drubel said.

SuperValu spokesman Mike Siemienas said the company was pleased with the judge's ruling but declined to speak further about the case.

"We believe the court reached the right conclusion and are pleased with the outcome," Siemienas said.

A message left with C&S seeking comment was not immediately returned.

The plaintiffs are represented by Richard B. Drubel of Boies, Schiller & Flexner LLP and W. Joseph Bruckner and Elizabeth R. Odette of Grindal, Nauen, PLLP

SuperValu is represented by Stephen P. Safranski and Heather M. McElroy of Robins, Kaplan, Miller & Ciresi LLP

C&S is represented by Charles A. Loughlin, and David S. Shotlander of Baker Botts LLP and Todd A. Wind of Fredrikson & Byron PA.

The case is In re: Wholesale Grocery Products Antitrust Litigation, case number 09-md-02090, in the U.S. District Court for the District of Minnesota.

--Editing by Richard McVay.

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