

## Graco Escapes Antitrust Class Action Over Rival Buys

By **Michael Lipkin**

*Law360, Los Angeles (March 11, 2014, 8:49 PM ET)* -- A Minneapolis federal judge on Tuesday tossed a putative antitrust class action against Graco Inc. and its distributors that accused the company of buying two rivals in the spray foam equipment market in a plot to rule the market and increase prices.

U.S. District Judge Ann Montgomery ruled that Calif.-based plaintiff Insulate SB Inc., which bought fast-set foam equipment from one of the defendant distributors, based its suit on acts that allegedly took place more than four years before it filed its suit, outside of federal and California statute of limitations. Judge Montgomery also dismissed Insulate's other state claims, finding that it had not alleged any injuries that took place outside California.

Even if the claims were not time-barred, the court ruled, Insulate's allegations were speculative and conclusory, according to the opinion.

"The complaint has no factual allegations identifying which distributors charged anti-competitive prices and which distributors controlled which geographic areas, much less conduct or communications suggesting concerted or conspiratorial action by distributor defendants," Judge Montgomery wrote in the opinion, dismissing the complaint with prejudice. "Thus, the bare allegations of a price-fixing conspiracy are too vague to put the defendants on notice of the factual grounds for this claim."

Insulate sued Graco in September 2013, claiming that distributors who sell foam installation equipment to contractors used to sell multiple brands until Graco bought Gusmer Corp. in 2005 and GlasCraft Inc. in 2008. Those acquisitions allegedly empowered it to enter deals with distributors to keep new entrants out of the market, which in turn enabled the distributors to charge anti-competitive prices, the complaint says.

The lawsuit followed Graco's April Federal Trade Commission settlement that bars it from pressuring distributors into not carrying its competitors' equipment products. Insulate also filed **a similar suit against Graco** in June 2013 in Pennsylvania federal court.

Fast-set equipment is used by contractors to install foam insulation in residential and commercial buildings and apply polyurea coatings to protect bridges, holding tanks, marine hulls and other structures, the complaint says.

Fast-set equipment manufacturers sell their products almost exclusively through a channel of distributors that act as intermediaries between the manufacturer and contractors, according to the complaint.

The lawsuit alleges that after Graco bought Gusmer and GlasCraft, it struck deals with all of its distributors to boycott competitors. When former Gusmer owners and employees tried to enter the market in 2007 by operating through Polyurethane Machinery Corp. and other companies, Graco allegedly reaffirmed its exclusion conspiracy with its distributors, which the complaint says prevented PMC, and others from entering the market.

But in Tuesday's decision, the court ruled that Insulate had pointed to actions allegedly taken before 2009 in its complaint and were barred by the statute of limitations. Insulate had argued that Graco fraudulently concealed its scheme and that continuing violations meant it could still bring the suit.

The court found, however, that Insulate had not exercised due diligence in attempting to discover the conspiracy and should have been on notice of its potential antitrust claims. After Graco bought Gusmer in 2005, Gusmer's products became obsolete and prices for fast-set equipment increased, the opinion said. That should have drawn Insulate's attention when it was forced to "begrudgingly" switch to more expensive models, according to the opinion.

Insulate had also claimed that distributors' ongoing compliance with Graco's boycott was a continuing violation. But the court held that Insulate had not alleged any new acts taken to maintain the agreements. A 2012 Graco letter reminding distributors not to carry competitors' products was a reaffirmation of previous actions, and not an overt act, the court ruled.

The court also dismissed Insulate's request for injunctive relief for its federal antitrust claims, including mandating Graco divest its fast-set business. The court rejected those requests, finding it a "drastic" remedy for the situation.

"Graco's acquisition occurred over five years ago, and divestiture would impose obvious hardship on Graco employees and distributors," the opinion said.

Representatives for Graco declined to comment. Representatives for the remaining parties did not immediately respond Tuesday to requests for comment.

Insulate is represented by Nossaman LLP and Lockridge Grindal Nauen PLLP.

The defendants are represented by Robins Kaplan Miller & Ciresi LLP, Bassford Remele PA and Foley & Mansfield PLLP, among others.

The case is Insulate SB Inc. v. Abrasive Products & Equipment et al., case number 0:13-cv-02664, in the U.S. District Court for the District of Minnesota.

--Additional reporting Ama Sarfo. Editing by Emily Kokoll.