CLASS ACTION DEFENSE GROUP

ANTITRUST CLASS ACTION REVIEW 2025

Duane Morris®

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All citations in the *Antitrust Class Action Review* are designed to facilitate research.

If available, the preferred citation of the opinion included in the West bound volumes is used, such as *Zivkovic, et al. v. Laura Christy LLC,* 94 F.4th 269 (2d Cir. 2024).

If the decision is not available in the preferred format, a Lexis or Westlaw cite from the electronic database is provided, such as *Gibson, et al. v. Cendyn Group, LLC,* 2024 U.S. Dist. LEXIS 83547 (D. Nev. May 8, 2024).

If a ruling is not available in one of these sources, the full case name and docket information is included, such as *Batton, et al. v. The National Association of Realtors*, Case No. 21-CV-430 (N.D. Ill. Feb. 20, 2024).

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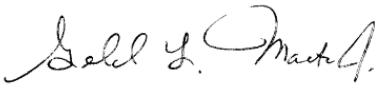
NOTE FROM THE EDITOR

Class action litigation generally involves high stakes that can keep corporate counsel and senior management awake at night. These cases can impact a company's market share and reputation in a significant manner, creating substantial pressure on decision-makers who must navigate the associated risks and exposures.

The *Antitrust Class Action Review* serves multiple purposes. It aims to clarify the complexities of antitrust class action litigation and provide corporate counsel with up-to-date insights into the evolving nuances of Rule 23 and other types of representative proceedings. Through this publication, we seek to offer an analysis of emerging trends and key rulings, empowering our clients to make informed decisions when managing complex litigation risks.

Defending class actions is a cornerstone of Duane Morris' litigation practice. We hope this book, which reflects years of experience and expertise of our class action defense team, will help our clients identify key trends in antitrust case law and offer practical strategies for handling antitrust class action litigation.

Sincerely,



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GLOSSARY AND KEY U.S. SUPREME COURT DECISIONS

Adequacy Of Representation – Plaintiffs must show adequacy of representation per Rule 23(a)(4) to secure class certification. It requires representative plaintiffs and their counsel to be capable of fairly and adequately protecting the interests of the class.

***Amchem Products, Inc. v. Windsor, et al.*, 521 U.S. 591 (1997)** – *Windsor* is the U.S. Supreme Court decision that elucidated the requirements in Rule 23(b), insofar as common questions must predominate over any questions affecting only individual class members and class resolution must be superior to other methods for the adjudication of the claims.

Ascertainability – Although not an explicit requirement of Rule 23, some courts hold that the members of a proposed class must be ascertainable by objective criteria.

***Comcast Corp. v. Behrend, et al.*, 569 U.S. 27 (2013)** – *Comcast* is the U.S. Supreme Court decision that interpreted Rule 23(b)(3) to require that, for questions of law or fact common to the class, the plaintiffs' damages model must show damages are capable of resolution on a class-wide basis.

Commonality – Plaintiffs must show commonality per Rule 23(a)(2) to secure class certification. This requires that common questions of law and fact exist as to the proposed class members.

Class – A group of individuals that has suffered a similar loss or alleged illegal experience on whose behalf one or more representatives seek to bring suit.

Class Action – The civil action brought by one or more plaintiffs in which they seek to sue on behalf of themselves and others not named in the suit but alleged to have suffered the same or similar harm.

Class Certification – The judicial process in which a court reviews the submissions of the parties to determine whether the plaintiffs have met their burden of showing that class treatment is the most appropriate form of adjudication.

Collective Action – A type of representative proceeding governed by 29 U.S.C. § 216(b) where one or more plaintiffs seeks to bring suit on behalf of others who must affirmatively opt-in to join the litigation. It is applicable to claims under the Fair Labor Standards Act, the Age Discrimination in Employment Act, or the Equal Pay Act.

***Cy Pres* Fund** – In class action settlement agreements, this is the money set aside for distribution to a § 501(c) organization when class members do not return a settlement claim form and money is left over after distribution to the class.

Decertification – Following an order granting conditional certification of a collective action or certification of a class action, a defendant can move for decertification based on the grounds that the members of the collective action are not actually similarly-situated or that the requirements of Rule 23 are no longer satisfied for the class action.

***Epic Systems Inc. v. Lewis, et al.*, 138 S. Ct. 1612 (2018)** – *Epic Systems* is the U.S. Supreme Court decision holding that arbitration agreements requiring individual arbitration and waiving a litigant's right to bring or participate in class actions are enforceable under the Federal Arbitration Act.

Opt-In Procedures – Under 29 U.S.C. § 216(b), a collective action member must opt-in to join the lawsuit before he or she may assert claims in the lawsuit or be bound by a judgment or settlement.

Opt-Out Procedures – If a court certifies a class under Rule 23(b)(3), class members are bound by the court's judgment unless they opt-out after receiving notice of the lawsuit.

Numerosity – Plaintiffs must show that their proposed class is sufficiently numerous that adding each class

member to the complaint would be impractical. This is a requirement for class certification imposed by Rule 23(a)(1).

***Ortiz, et al. v. Fibreboard Corp.,* 527 U.S. 815 (1999)** – *Ortiz* is the U.S. Supreme Court ruling that interpreted Rule 23(b)(3) to require personal notice and an opportunity to opt-out of a class action where money damages are sought in a class action.

Predominance – The Rule 23(b)(3) requirement that, to obtain class certification, the plaintiffs must show that common questions predominate over any questions affecting individual members.

Rule 23 – This rule from the Federal Rules of Civil Procedure governs class actions in federal courts and requires that a party seeking class certification meet four requirements of section (a) and one of three requirements under section (b) of the rule.

Rule 23(a) – It prescribes that a class meet four requirements for purposes of class certification, including numerosity, commonality, typicality, and adequacy of representation.

Rule 23(b) – To secure class certification, a class must meet one of three requirements of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

Rule 23(b)(1) – A class action may be maintained if Rule 23(a) is satisfied and if prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Rule 23(b)(2) – A class action may be maintained if Rule 23(a) is satisfied and the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

Rule 23(b)(3) – A class action may be maintained if Rule 23(a) is satisfied and questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Similarly-Situated – Under 29 U.S.C. § 216, employees may bring suit on behalf of themselves and others who are similarly-situated. The standard is not clearly defined in the statute and many courts have found that, if plaintiffs make a preliminary showing that they are similarly-situated to those they seek to represent, conditional certification is appropriate. A finding in this regard is usually not based on the merits of the claims.

Superiority – The Rule 23(b)(3) requirement that a class action can be permitted only if class resolution is the superior method of adjudicating the claims.

Typicality – The plaintiffs' claims and defenses must be typical to those of proposed class members' claims. This is required by Rule 23(a)(3).

***Wal-Mart Stores, Inc. v. Dukes, et al.,* 564 U.S. 338 (2011)** – *Wal-Mart* is the U.S. Supreme Court ruling that tightened the commonality requirement of Rule 23(a)(2) and held that judges must conduct a "rigorous analysis" to determine whether there is a "common" contention central to the validity of the claims that is "capable of class-wide resolution."

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Antitrust Class Actions

I. Executive Summary

Class action litigation involving antitrust claims had several key developments in 2024, despite a relative lack of actual verdicts. Because antitrust remedies often allow recovery of treble damages, the incentive to settle these cases is often paramount. Additionally, plaintiffs are entitled to reasonable attorneys' fees that may be substantial because of the complexity of this kind of litigation. As a result, most antitrust class actions are settled before trial, and one of the most crucial phase in these cases is class certification. Thus, the order granting or denying a motion to certify a class in these cases is critical. Even in cases taken to jury verdict, there are frequently post-trial motions regarding decertification of the class. This played out in two cases this year in *Burnett, et al. v. The National Association Of Realtors,* Case No. 19-CV-332 (W.D. Mo. Mar. 26, 2024), and *In Re NFL Sunday Ticket Antitrust Litigation,* 2024 U.S. Dist. LEXIS 140596 (C.D. Cal. Aug. 1, 2024).

In 2024, cases based on uses of pricing algorithms, information sharing, and data management increased in popularity. This reflects the changes in technology used by organizations, and as a result, changes in the types of allegations made by the plaintiffs' bar and mechanisms for challenging alleged anticompetitive behavior. In the fall of 2024, the U.S. Department of Justice (DOJ) weighed in on information sharing in a pricing algorithm case – in a *Gibson, et al. v. Cendyn Group, LLC,* No. 24-3576 (9th Cir. Oct. 24, 2024) - and argued that some types of information sharing are illegal even without further evidence of an agreement regarding prices. Whether or not that will be accepted by courts remains to be seen, but that perspective is likely to permeate through to the private plaintiffs' class action bar.

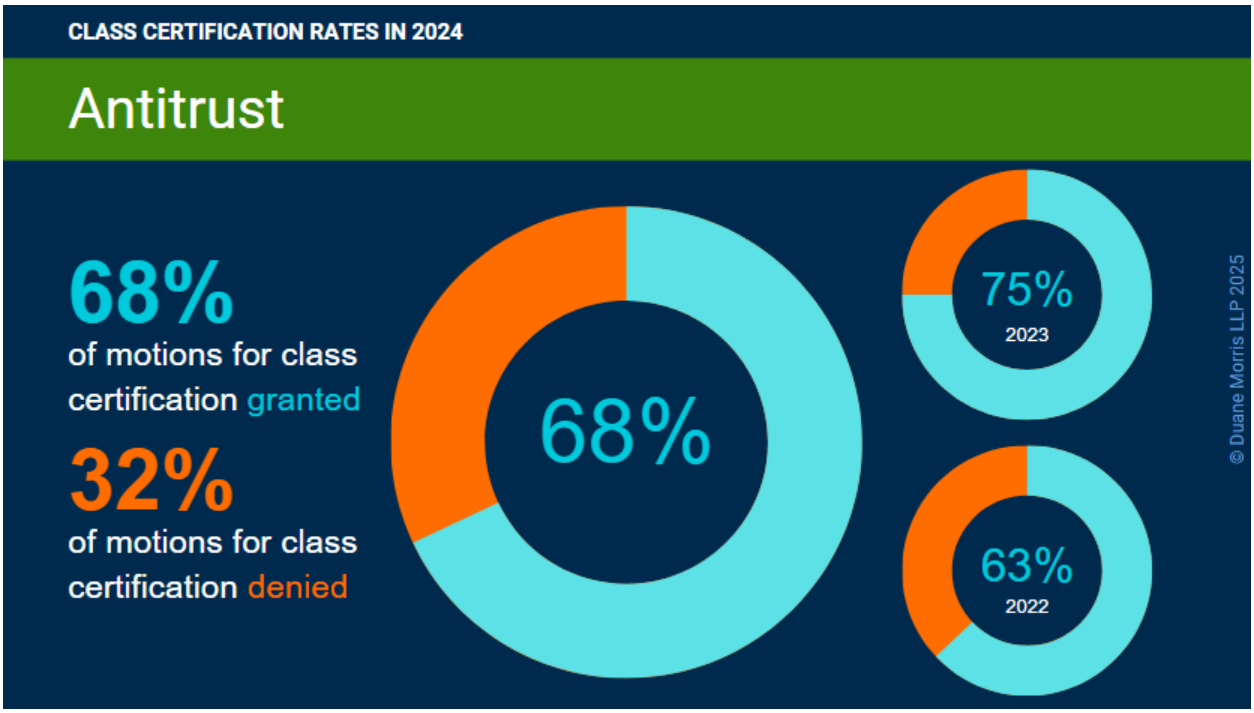
Unlike in prior years, there were relatively fewer challenges to alleged restraints in labor markets in 2024. This could reflect a reluctance to pursue these types of claims given the relative lack of success that the DOJ has had in pursuing labor market cases.

Many of the class certification decisions issued in 2024 were in the pharmaceutical industry – a traditional sector of focus of the antitrust plaintiffs' bar. The competitive structure and dynamics of this industry play a large role in whether courts grant class certification. That is, the simpler the supply chain and mechanism for harm, the more likely a class was to be certified and vice versa. This played out *In Re Lipitor Antitrust Litigation,* 2024 U.S. Dist. LEXIS 101271 (D.N.J. June 6, 2024), and with *In Re Actos Antitrust Litigation,* 2024 U.S. Dist. LEXIS 142236 (S.D.N.Y. Aug. 9, 2024).

Plaintiffs in antirust actions often seek class certification under Rule 23(b)(3), which, after all of the requirements of Rule 23(a) have been met, allows for class certification where common questions of law or fact predominate and a class action is a superior method of adjudication. The predominance requirements involve a fact-intensive inquiry into the availability and adequacy of "class-wide evidence" and continued to be a battleground for antitrust litigants in 2024.

While class certification in antitrust lawsuits is determined by the criteria of Rule 23, like all other class actions, courts may take specialized approaches to the Rule 23 requirements when dealing with antitrust cases. For example, Rule 23(a)(1) requires the plaintiffs to show that their proposed class is so numerous that joinder of the members would be impracticable. This element of class certification is often referred to as the "numerosity" requirement. Essentially the courts weigh the advantages and efficiencies of class actions against the practicality of simply joining parties to the litigation. In the antitrust context, courts have found that fewer than 20 members is likely insufficient while more than 40 members is likely sufficient, and between 20 to 40 members requires an analysis of other circumstances in the case that affect impracticability of joinder. This analysis played out over the past year in *In Re EpiPen Direct Purchaser Litigation,* 2024 U.S. Dist. LEXIS 115224 (D. Minn. July 1, 2024), where a proposed class of over 40 members, and all relatively large claims, was deemed not impracticable of joinder and class certification was denied.

In 2024, courts granted class certification in 68% of antitrust class actions, or in 15 of 22 motions.



II. Significant Rulings In Antitrust Class Actions In 2024

1. Algorithm Cases And Other Tech Industry Cases

In *Gibson, et al. v. Cendyn Group, LLC,* 2024 U.S. Dist. LEXIS 83547 (D. Nev. May 8, 2024), the class plaintiffs, comprised of "all persons who rented hotel rooms on the Las Vegas Strip" from one of the defendants from January 24, 2019 to present, alleged that the defendants (five hotel entities that operate on the Las Vegas Strip, and two providers of hotel management software) unlawfully conspired to fix prices and artificially inflate the price of hotel rooms in violation of § 1 of the Sherman Antitrust Act. *Id.* at *4. Specifically, the plaintiffs alleged a "hub and spoke" conspiracy where the defendant hotels tacitly agreed that each hotel would use the software provider's prices, which would then be set artificially high. The defendants moved to dismiss the action, and the court granted the motion. *Id.* at *6. The court determined that the plaintiffs failed to sufficiently allege a tacit agreement between the hotel operators and the software companies (The Rainmaker Unlimited Inc. and Cendyn Group) to manipulate prices. The court stated that the plaintiffs failed to demonstrate that the hotel operators agreed to use the pricing-algorithm software simultaneously or show that the hotel operators followed the software's pricing recommendations uniformly or that they exchanged confidential information through the software's machine-learning capabilities. Further, the court rejected the plaintiffs' argument that vertical agreements were in place between the hotel operators and Cendyn Group because there was no evidence suggesting that the hotel operators were obligated to accept the software's pricing recommendations, and that they often rejected them. The court concluded that the plaintiffs failed to sufficiently allege an agreement by defendants to restrain their ability to price their hotel rooms competitively, and thus granted the defendants' motion to dismiss. An appeal followed and the DOJ has weighed in on this case on appeal, arguing that the court erred on multiple fronts, and that information sharing alone can form the basis of a Sherman Act claim; and that no parallel pricing is required.

The court in *In Re Apple iPhone Antitrust Litigation,* Case No. 11-CV-6714 (N.D. Cal. Feb. 2, 2024), granted the plaintiffs' motion for class certification. It rejected the defendants' arguments that the model of the plaintiffs' expert revealed millions of uninjured class members and that individual issues would predominate. Instead, the court found that the model showed an estimated 7.9% of the class was uninjured and that with more complete data the model will be capable of showing antitrust impact on a class-wide basis. The plaintiffs were purchasers of iPhone applications (apps), app subscriptions, and/or in-app content via the iPhone App Store. The defendant

sold iPhones and required app purchases to be made via the App Store. The plaintiffs claimed that Apple charges App Store developers supracompetitive commissions that were passed on to consumers in the form of higher prices for app downloads, subscriptions, and in-app purchases. The plaintiffs asserted claims under § 2 of the Sherman Act for unlawful monopolization and attempted monopolization of the iPhone applications aftermarket. In a prior ruling, the court denied class certification, finding that the methodology of the plaintiffs' expert failed to reasonably ascertain how many class members were unharmed by the alleged conduct and individual questions would predominate. In response to the court's ruling, the plaintiffs narrowed their class definition to include only Apple account holders who have spent $10 or more on app or in-app content. Using that new definition, the plaintiffs submitted revised expert reports estimating that the proposed class included only 7.9% unharmed members and again moved for class certification under Rule 23(b)(3). In the interval between this ruling and the court's prior ruling, the Ninth Circuit had rejected the argument that "Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members" in *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F. 4th 651, 669 (9th Cir. 2022). According to the court in *In Re Apple iPhone*, the revised model could show the impact of Apple's allegedly anticompetitive conduct across all class members, and once Apple produces the rest of its app transactional data, the model will be able to calculate the exact extent of injury suffered by each class member. Based on *Olean*, the court opined that the plaintiffs meet the predominance requirement, and for that reason, it granted the plaintiffs' motion for class certification.

The plaintiffs in *Caccuri, et al. v. Sony Interactive Entertainment LLC*, 2024 U.S. Dist. LEXIS 93509 (N.D. Cal. May 24, 2024), filed a class action alleging that the defendant's decision to stop selling digital PlayStation game download cards to third-party retailers was anticompetitive. The defendant moved to deny class certification pursuant to arbitration and class action waiver provisions in its terms of service that the plaintiffs assented to when creating online accounts. The plaintiffs alleged that these agreements did not cover their claims and that the defendant waived its right to enforce the provisions. The court denied the defendant's motion to deny class certification, stating that there was not sufficient evidence to rule out class proceedings based on the current record. The plaintiffs sought to represent a class of U.S. consumers who bought digital video game content from the PlayStation Store from April 1, 2019, to the present. During this period, several versions of the defendant's agreements, which included arbitration and class action waivers, were in effect. The defendant argued that the class action waiver in its PlayStation 5 system license agreement and product license agreement should apply to the plaintiffs' claims, asserting that digital games are included under these agreements. The plaintiffs countered that their claims were related to the purchase of digital games rather than the use of the defendant's software, and therefore, these agreements are not applicable. The plaintiffs also argued that the defendant failed to provide the effective dates for the agreements, and therefore did not adequately establish which terms were relevant for the class period starting April 1, 2019. The court found that the defendant's agreements have had multiple updates over time, and their class action waiver language differed between versions, such that there was lack of clarity on which agreement applies to which period. The court found that due to these inconsistencies, the defendant failed to definitively establish that plaintiffs were bound by the class action waivers in these agreements. The court also determined that the defendant's continued litigation in court, including engaging in discovery and seeking summary judgment, supported the argument that the defendant Sony waived its right to arbitrate.

Hundreds of automotive software application vendors in *In Re Dealer Management Systems Antitrust Litigation,* 2024 U.S. Dist. LEXIS 129625 (N.D. Ill. July 22, 2024), filed a class action alleging that the defendants engaged in anticompetitive behavior by limiting data services in car dealerships. The defendants CDK Global, LLC (CDK) and The Reynolds and Reynolds Company (Reynolds) are leading providers of automotive software industry, specifically in the dealer management systems (DMS) market, where they control approximately 70% of the U.S. franchise dealership market. The defendants' DMS platforms manage critical functions for car dealerships, such as sales and service operations. To enhance their DMS offerings, dealerships often use additional software applications provided by third-party vendors, which rely on access to dealership data stored in DMS to function effectively, but the data is typically raw and needs to be processed through data integration services (DIS), which are offered by both CDK and Reynolds as well as independent providers. The plaintiffs, who compete to sell dealers various applications to assist with management functions, alleged that CDK and Reynolds conspired to restrict plaintiffs' access to dealer data, which unlawfully eliminated competition from independent DIS providers, leading to inflated prices for data integration services. The plaintiffs sought to certify a class of automotive software vendors who purchased DIS from CDK or Reynolds since October 2013. The

court granted plaintiffs' motion. First, the court stated that the class of 244 members was sufficiently numerous and that the class definition was based on objective criteria (*e.g.,* CDK's and Reynolds' data), making the class easily ascertainable. The court also determined that there were common questions of law or fact, such as whether the defendants conspired to control the data integration market. Regarding the commonality and typicality requirements, the court found that the plaintiffs' claims were common across the members, arose from the same events, and involved the same alleged conspiracy. The court focused on the evidence of common antitrust injury throughout the class, including increased prices for DIS services at CDK and Reynolds, costs associated with forced switching to CDK and Reynolds and away from preferred DIS providers, the elimination of the option to switch away from CDK and Reynolds to a preferred DIS option, removal of the upward quality pressure on CDK's and Reynolds's DIS offerings that is generated by market competition, and the exclusion of outside options to use in negotiations with CDK and Reynolds. Dr. Mark Israel, an expert for AutoLoop, provided economic models to demonstrate that the alleged conspiracy led to increased DIS prices. CDK challenged several aspects of the expert methodology, but the court ruled that the models were admissible. Based on these findings, the court granted plaintiffs' motion for class certification.

2. Class Certification Rulings In Other Antitrust Cases

Several important antitrust lawsuits in 2024 went to decision on class certification, including many in the pharmaceutical industry, in which plaintiffs experienced various degrees of success.

The simplicity of the alleged mechanism of harm was a key feature in whether the class was certified, with ascertainability being the key Rule 23 requirement. For example, in *In Re Lipitor Antitrust Litigation,* 2024 U.S. Dist. LEXIS 101271 (D.N.J. June 6, 2024), the plaintiffs filed a class action alleging that Ranbaxy Inc. and its affiliates engaged in a reverse payment settlement with Pfizer Inc. and its associated companies. Plaintiffs assert that this reverse payment settlement delayed the entry of a generic version of Lipitor, causing consumers and third-party payors to pay inflated prices for the drug. The end-payor plaintiffs (EPPs) filed a motion for class certification of two classes, including: (i) a third-party payor (TPP) class, which included entities that reimbursed for branded Lipitor or generic atorvastatin calcium; and (ii) a consumer class, subdivided into two periods specified as the total generic exclusion period (June 28, 2011 to November 29, 2011), covering individuals who bought branded Lipitor without using a Pfizer co-pay card; and the generic overcharge period (November 30, 2011 to December 31, 2012), covering individuals who purchased generic atorvastatin calcium.

The court denied the motion for class certification, holding that Rule 23's ascertainability requirement had not been met. The parties' positions on ascertainability were supported by opposing expert opinions on a proposed methodology presented by EPPs' expert, Laura Craft. The prescription pharmaceutical payment flow is intricate, involving several entities such as Third-Party Payers (TPPs), pharmacies, Pharmacy Benefit Managers (PBMs), Third-Party Administrators (TPAs), Administrative Services Only (ASO) providers, and various federal and state agencies. TPPs, which include insurers, self-funded plans, and union funds, often cover some or all of the costs of prescription drugs. PBMs act as intermediaries in the pharmaceutical distribution chain but do not make payments themselves. They manage pharmacy claims by processing and adjudicating them for health plans and payors. Pharmacies determine the payment process for a drug, including co-pays and coverage, by communicating with PBMs. The PBMs' role involves handling claims data electronically, detailing who made the purchase, what was purchased, when and where the transaction occurred, and the respective payments made by the consumer and TPP.

EPPs' expert presented an opinion that class members could be identified and excluded using data from this distribution chain. Craft's methodology relied on standardized, HIPAA-protected data collected and maintained by PBMs, TPPs, and other entities involved, so as to confirm class membership. Craft's methodology also proposed a method for identifying exclusions from the class, through lists and PBM data. To be included in the Consumer Class, individuals must have made at least one Lipitor purchase without using a Pfizer co-pay card. Pfizer kept detailed records of co-pay Card usage, including reimbursements processed directly between the pharmacy and Pfizer. Although detailed data from Pfizer's co-pay card program was not available to the EPPs, Craft argued that Pfizer had records of who used the co-pay cards. The defendants argued that the method was not reliable and potentially very costly. They asserted that Craft's approach relied on unsupported opinions and did not provide a clear, step-by-step methodology for identifying class members, thereby highlighting issues with harmonizing data from various sources and the challenges of using outdated or incomplete data.

The court agreed that Craft's methodology lacked the specificity required to meet Rule 23's ascertainability requirement. The court noted that despite Craft's claims that her approach did not necessitate individual inquiries, it found the methodology too vague and general to be reliable or administratively feasible. The court thus concluded that the EPPs failed to meet the burden of proof to show that their class identification and exclusion methodologies were reliable, specific, or administratively feasible. For these reasons, the court denied the EPPs motion for class certification.

The plaintiffs in two consolidated class actions, *In Re Actos Antitrust Litigation,* 2024 U.S. Dist. LEXIS 142236 (S.D.N.Y. Aug. 9, 2024), brought claims alleging that the defendant inflated the price of its diabetes drug, Actos, by delaying the market entry of generic versions, causing the direct purchasers and end-payor purchasers to overpay for both the brand and generic versions of Actos. The plaintiffs moved for class certification for a direct purchaser class and an end-payor class, and the court granted the motion, adopting the Magistrate Judge's recommendation. The plaintiffs, which included employee health care plans and direct payer wholesalers, argued that the defendant misrepresented its patents to the FDA, thereby preventing generics from entering the market and causing them to pay higher prices for Actos. The court agreed with the Magistrate Judge's determination that the plaintiffs established that all class members suffered similar injuries, and therefore met the commonality requirement. Despite the potential presence of some uninjured class members, the court concluded that the class could still be certified as long as the number of uninjured members was minimal, and the plaintiffs' expert demonstrated that only a small percentage of the class members would be uninjured by the alleged delay of generic versions. The Magistrate Judge also found that the end payors provided a viable damages model based on the difference between the actual costs paid and what would have been paid in a hypothetical competitive market, multiplied by the quantity of purchases.

In *Miami Products & Chemical Co., et al. v. Olin Corp.,* 2024 U.S. Dist. LEXIS 227194 (W.D.N.Y. Dec. 16, 2024), a case involving allegations of price-fixing in the caustic soda, or lye, market, the Indirect Purchaser Plaintiffs (IPPs) alleged that several chemical companies — Olin Corp., K.A. Steel Chemicals, Occidental Chemical Corp., Westlake Chemical Corp., Shintech Inc., and Formosa Plastics Corp. — colluded to artificially inflate the price of caustic soda in the U.S. The IPPs asserted that the conspiracy led to supracompetitive prices that harmed indirect purchasers of the chemical. The IPPs filed a motion for class certification pursuant to Rule 23, seeking to represent two classes of purchasers who were allegedly affected by the price-fixing. The classes were defined based on geographic regions and time periods, with one class focusing on antitrust claims and the other on unjust enrichment claims. To support their motion for class certification, the IPPs offered the expert testimony from Dr. Gareth Macartney, who used statistical models to argue that prices were artificially inflated and that class-wide damages could be calculated. The defendants opposed class certification on the basis that the case was unsuitable for class treatment. The defendants also moved to exclude the expert opinions by Dr. Macartney. The IPPs moved to exclude the testimony of the defendants' expert, Dr. John H. Johnson, which contradicted Dr. Macartney's models, claiming they failed to account for key market factors and were based on flawed assumptions. The court first addressed the IPPs' challenge to the reliability of Dr. Johnson's regression analysis, which was central to the defense's argument that any price increases in the caustic soda market were not driven by anticompetitive conduct. The IPPs claimed that Dr. Johnson's analysis failed to reliably account for global supply and demand dynamics. The court, however, opined that it already addressed, and rejected, a similar argument raised by the Direct Purchaser Plaintiffs (DPPs) in their class certification motion, finding Dr. Johnson's methodology reasonable. Accordingly, the court denied the IPPs' motion to strike Dr. Johnson's opinions and testimony. Further, the court found that the IPPs' proposed classes failed to meet the predominance requirement of Rule 23(b). The court explained that the caustic soda market is characterized by diverse and complex pricing mechanisms, including fixed price contracts, indexed pricing, and differing negotiated terms. The defendants periodically issued price increase announcements, but these did not automatically lead to price hikes for all customers, particularly those with contract types that were not directly affected by such announcements. The court explained that because of these characteristics of the caustic soda market, to prove class-wide injury, the DPPs and the IPPs both must present common proof of a plausible mechanism through which the defendants' alleged anticompetitive behavior — namely, agreeing to increase prices by issuing parallel price increase announcements unsupported by market conditions — could have caused customers with widely differing contract terms to pay inflated prices. *Id.* at *32. The court concluded that the DPPs had not done so in their previous attempt for class certification and ruled that the IPPs also failed to make the same showing. *Id.* at *33. The court also stated that Dr. Macartney's model relied on flawed

transaction data that had not been properly categorized, which undermined the reliability of the analysis, and that the model was thereby unsuitable for proving class-wide injury. For these reasons, the court concluded that the IPPs failed to demonstrate by a preponderance of the evidence that common questions would predominate over individual questions with respect to their proposed class and denied the motion for class certification.

The court granted class certification to a class of over 32,000 individuals and companies in *In Re Valve Antitrust Litigation*, 2024 U.S. Dist. LEXIS 215475 (W.D. Wash. Nov. 26, 2024). The plaintiffs, Wolfire Games, LLC, Dark Catt Studios Holdings, Inc., and Dark Catt Studio Interactive LLC filed a class action alleging that the defendant, Valve Corp., the digital distributor of PC games through its Steam platform, had an anti-competitive practice known as the Platform Most Favored Nations (PMFN) Policy, which required game companies to offer games on Steam at the same price and with the same features as they offered them elsewhere. If game developers violated this policy by offering a lower price or better version of a game on another platform, Valve could retaliate by removing the game from Steam's marketing or delisting it altogether. The plaintiffs contended that this practice resulted in higher consumer prices, prevented competition between digital distribution platforms, and harmed other game companies by forcing them to accept Valve's higher commission rates in violation of §§ 1 and 2 of the Sherman Act and Washington's Consumer Protection Act. The plaintiffs filed a motion for class certification, and the defendant moved to exclude the plaintiffs' expert testimony from Dr. Steven Schwartz. The court granted the plaintiffs' motion and denied the defendant's motion. The plaintiffs sought certification of a class consisting of U.S.-based individuals or entities that paid commissions and U.S.-based consumers who purchased games during this period. Dr. Schwartz opined that the defendant's PMFN Policy allowed the company to maintain its market dominance and inflate its commission rates and that without the PMFN Policy, the defendant would face more competition and would have to reduce its commission rates to stay competitive. The defendant challenged Dr. Schwartz's testimony on several grounds, arguing that his methods were flawed, especially his analysis of Steam as a "one-sided" rather than "two-sided" platform and his speculative conclusions regarding Valve's market share in a competitive, "but-for" world. *Id.* at *11. The court rejected the defendant's arguments. The court ruled that Dr. Schwartz's conclusions were not based on unreasonable assumptions, and that his analysis of the defendant's pricing and commissions was sufficiently grounded in viable evidence. Accordingly, the court denied the defendant's motion to exclude Dr. Schwartz's expert testimony. Relative to the motion for class certification, the defendant contested that the plaintiffs could establish the predominance and commonality requirements. The defendant argued that the plaintiffs could not establish a "price parity" policy, that the antitrust impact and damages were too individualized, and that the statute of limitations posed individualized issues that would predominate. The court rejected all arguments. The court found sufficient evidence that the defendant maintained a "content parity" and "price parity" policy and that the policy affected all class members. *Id.* at *29-30. The court also determined that Dr. Schwartz's testimony provided common evidence of antitrust impact (inflated commissions) and injury, which affected all class members. As to any statute of limitations issues, the held opined that even if some individualized inquiry was required, it would not defeat class certification. Thus, the court determined that a class action would be the superior method of adjudication and granted the plaintiffs' motion for class certification.

The plaintiffs in *City Of Rockford, et al. v. Mallinckrodt ARD, Inc.,* 2024 U.S. Dist. LEXIS 58878 (N.D. Ill. Mar. 29, 2024), including the named plaintiff City of Rockford, filed a class action lawsuit alleging anticompetitive behavior by the defendants. The plaintiffs asserted that defendant Express Scripts, a drug distributor, conspired with Mallinckrodt, a drug manufacturer, to raise prices of H.P. Acthar Gel, a drug prescribed to plaintiffs' employees under their health plan. The plaintiffs filed a motion for class certification for four classes, including: (i) direct Acthar purchasers; (ii) indirect purchasers via CVS Caremark; (iii) an injunction class; and (iv) a declaratory judgment class on antitrust liability issues. The court denied the motion for class certification. The main dispute for the damages classes concerned the damages model proposed by the plaintiff's expert, Professor Comanor. The defendant argued that the model failed to account for non-conspiratorial factors affecting Acthar's price and lacked a proper basis for using the Producer Price Index (PPI) as a comparison metric. The court found Comanor's model unreliable due to unsupported assumptions about therapeutic benefits and failure to control for market factors. The court determined that without a reliable method to calculate damages on a class-wide basis, the individualized issues of damages would overwhelm common questions, thereby making class certification impractical. Therefore, the court denied certification of the damages class because the plaintiffs had not met Rule 23(b)(3)'s predominance standard because they lacked a reliable economic model to demonstrate that damages were capable of measurement on a class-wide basis. The court also denied class certification for the plaintiffs' injunction class under Rule 23(b)(2). The court explained that the

plaintiffs failed to address the appropriateness of equitable relief to remedy the class's harm, and without an assurance that such relief was "appropriate," class certification was "necessarily improper." *Id.* at *32-33. Finally, the court denied the request for certification of an issues class, finding that although the plaintiff addressed the common questions of liability that tend to attend antitrust conspiracy claims generality, the common evidence that would be used to address each particular question proposed for certification was not addressed at all. Accordingly, the court denied the plaintiff's motion for class certification. Subsequently, the parties settled in July 2024.

In the litigation captioned *In Re Seroquel XR Extended Release Quetiapine Fumarate Antitrust Litigation,* 2024 U.S. Dist. LEXIS 49646 (D. Del. Feb. 6, 2024), the plaintiffs alleged that the defendants engaged in an illegal scheme to delay competition in the United States and its territories for Seroquel XR, a prescription medication. The court granted the direct purchaser class plaintiffs' (DPPs) motion for class certification in relation to their claims against the defendants regarding the purchase of Seroquel XR. The DPP class was defined as all persons or entities in the United States who directly purchased specific strengths of brand or generic Seroquel XR from any of the defendants between August 2, 2015, and April 30, 2017. *Id.* at *2. The court determined that the class was sufficiently numerous and geographically dispersed. The court found several common questions of law and fact that were central to the claims and defenses of the class, including whether the defendants suppressed competition, illegally maintained monopoly power, and caused antitrust injury through overcharges. The court found that the DPPs, including Smith Drug and KPH Healthcare Services, Inc., were adequate representatives of the class because their claims were typical of those of the class, and they would adequately protect the interests of the class members. As to the Rule 23(b) requirements, the court held that questions of law and fact predominated over individual issues, thereby making a class action the superior method for adjudicating the claims. The court also held that concentrating the claims in one action would provide efficient and manageable adjudication.

The plaintiffs in *In Re EpiPen Direct Purchaser Litigation,* 2024 U.S. Dist. LEXIS 115224 (D. Minn. July 1, 2024), the drug wholesalers Rochester Drug Co-Operative, Inc. and Dakota Drug, Inc., filed a class action against Mylan Inc., Mylan Specialty L.P., and a group of pharmacy benefit managers, over alleged anticompetitive practices related to the EpiPen. The plaintiffs asserted that Mylan engaged in bribery and kickbacks with pharmacy benefit managers to maintain a monopoly and raise prices in violation of the RICO and the Sherman Antitrust Act. The wholesaler plaintiffs filed a motion for class certification pursuant to Rule 23, and the court denied the motion. The plaintiffs sought to certify a class consisting of wholesalers who bought EpiPens directly from Mylan between January 1, 2013, and December 31, 2020. The court determined that the plaintiffs failed to meet the numerosity, adequacy, or predominance requirements. The court opined that the proposed class was "comparatively small with mostly large individual claims," which, while potentially qualifying under numerosity requirements, did not meet the necessary standards. *Id.* at *23. The court also ruled that Rochester and Dakota did not satisfy the requirement for accurate class representation as they could not represent the class effectively because they were allegedly harmed by the same actions that benefited other members, such as additional service fees, rebates, and inventory gains resulting from EpiPen price hikes. Accordingly, the court held that the class was not sufficiently numerous, and the putative class members held conflicting interests. Additionally, the court stated that the plaintiffs failed to demonstrate that the alleged bribery and kickback scheme had a uniform impact on all class members, and thus, common questions did not predominate over individual issues. For these reasons, the court denied the motion for class certification because class action litigation was not superior to the individual joinder of other drug wholesalers.

One case in this industry raised ascertainability issues even prior to class certification – *Mayor And City Council of Baltimore, et al. v. Merck Sharp & Dohme Corp.,* 2024 U.S. Dist. LEXIS 154841 (E.D. Penn. Aug. 28, 2024). The plaintiffs filed an antitrust class action alleging that the defendant engaged in illegal conduct that foreclosed competition in a significant portion of the rotavirus vaccine market. The plaintiff is a third-party payor that paid for all or part of the purchase price of vaccines, including the defendant's RotaTeq vaccine, pursuant to its obligations under its self-funded health insurance plan. The defendant moved to strike the class allegations, and the court denied the motion. The plaintiff sought to represent a class of all entities that: (i) are third-party payors that (ii) have purchased, paid, and/or provided reimbursement for some or all of the purchase price of RotaTeq; (iii) for consumption by their members, employees, insureds, participants, or beneficiaries (iv) in one of the Repealer Jurisdictions (v) after March 3, 2019, and (vi) do not fall within any of the two exclusion categories. The defendant argued that the class could not be certified because there would be no administratively feasible

mechanism to identify class members without individualized fact-finding. The court ruled as that the parties were still in an early stage of litigation before the end of fact discovery, the motion was premature. Moreover, the court stated that even if the defendant was correct that ultimately the plaintiff will be unable to meet the ascertainability requirement, it was too early to make such a determination. Accordingly, the court denied the motion to strike the class allegations from the complaint.

The pharmaceutical industry was not the only one that saw class certification decisions in 2024. The court in *In Re Broiler Chicken Grower Antitrust Litigation No. II,* 2024 U.S. Dist. LEXIS 84110 (E.D. Okla. May 8, 2024), granted class certification to the plaintiffs, consisting of growers of broiler chickens providing broiler grow-out services, who filed suit alleging that defendant Pilgrim's Pride Corp. (PPC) engaged in a years-long conspiracy to suppress grower compensation in violation of the Sherman Antitrust Act. The proposed class included 24,354 Growers who raised at least one flock of broilers for either PPC or one of PPC's co-conspirators during the class period, defined as any time between January 27, 2013 and December 31, 2019. The court agreed that commonality existed and common issues predominated such that the plaintiffs could establish the "essential elements" of their claims with class-wide proof. *Id.* at *28. The court rejected PPC's argument that "there is no common evidence for resolution of plaintiffs' sweeping wage-suppression claims" as "[t]he market for grower services is highly localized with myriad local factors that determine grower pay." *Id.* The court determined that the plaintiffs presented documentary, testimonial, and economic evidence to support the alleged antitrust violation that PPC and its co-conspirators engaged in a years-long nationwide conspiracy to suppress Grower pay. The court reasoned that a horizontal conspiracy of this nature "is the prototypical example of an issue where common questions predominate, because it is much more efficient to have a single trial on the alleged conspiracy rather than thousands of identical trials all alleging identical conspiracies based on identical evidence." *Id.* at *91. The court stated that either the alleged nationwide conspiracy exists, or it does not. Therefore, the court concluded that the plaintiffs' claim likely will prevail or fall in common based on the answer to that single predominating question. Similarly, the court determined that the plaintiffs showed, through their broadly-accepted two-step method, that antitrust impact presents issues susceptible to common proof. The court noted that the plaintiffs presented documentary, testimonial, economic, and econometric evidence to demonstrate the overarching agreement suppressed grower pay and that the suppression was experienced broadly throughout the class. The court also stressed that litigating this case as a class action was preferable because most proposed class members could not bear the costs of litigating the claims individually, and due to the overlapping nature of the claims, evidence, and witnesses, individual litigation would be "grossly inefficient, costly," and "unnecessarily duplicative." *Id.* at *96.

The plaintiffs in *Burnett, et al. v. The National Association Of Realtors,* Case No. 19-CV-332 (W.D. Mo. Mar. 26, 2024), a group of home sellers, filed a class action alleging that the defendants, HomeServcies, BHH Affiliates, LLC, and HSF Affiliates, LLC, violated the Sherman Antitrust Act by entering into a conspiracy to follow and enforce a rule adopted by National Association of Realtors (NAR), which allegedly inflated buyer broker commission rates paid by home sellers from April 29, 2015, through June 30, 2022. The court certified the class of plaintiffs on April 22, 2022, and the Eighth Circuit denied Rule 23 review requested by the defendants. In October 2023, a jury awarded $1.8 billion to the class against NAR, HomeServices, and Keller Williams, though Keller Williams had previously settled out of the litigation. Subsequently, NAR entered into a groundbreaking $418 million settlement to resolve all related litigation as multiple cases had been filed all over the country against NAR and its member organizations based on NAR's cooperative compensation rule.

In January 2024, the defendants moved for decertification of the class in *Burnett,* which the court denied. The court endorsed its initial analysis in granting class certification. Specifically, the court reasoned that the class's economic expert opined that commission rates were uniformly high because of the cooperative compensation rule, without which a seller would not pay the commission of the buyer's broker. According to the court, trial testimony from the class plaintiffs further established that commission rates were uniformly high due to the cooperative compensation rule and that higher commissions were paid during the entire class period. The court further found that the damages model of the plaintiffs' expert sufficiently relied on common proof by calculating the specific amount of damages for each class home sale transaction.

In *Oliver, et al. v. American Express Co.,* 2024 U.S. Dist. LEXIS 4717 (E.D.N.Y. Jan. 9, 2024), the plaintiffs, a group of non-Amex cardholder credit and debit card users, filed a class action alleging that the defendant's "non-discrimination provisions" (NDPs) restricted merchants who accept defendant's cards from showing

preferences for other payment networks or charging fees in violation of state and federal antitrust laws. *Id.* at *4. The plaintiffs filed a motion for class certification of two classes (one of credit card users and one of debit card users) in 11 states, alleging that these NDPs result in higher costs for non-Amex cardholders due to inflated merchant fees. The court granted the plaintiffs' motion to certify the class for debit card users, but denied it for credit card users. The court found that the plaintiffs' class definitions, which were based on billing addresses, card usage, and transactions with qualifying merchants within the same state, were readily ascertainable. The classes consisted of thousands or millions of potential members, and clearly met the numerosity requirement. As to the commonality and typicality requirements, the court determined that the classes both met these requirements as the class members were all subject to the alleged higher fees from using non-Amex cards. As to the predominance requirement, the court concluded that common evidence supported the argument that Amex's practices led to higher merchant discount rates and thus higher prices for consumers. However, the court opined that individual issues overwhelmed the common proof for credit card classes regarding the impact on non-Amex card-issuing banks. Therefore, the court found that the statewide debit card classes met the predominance requirement, but the credit card classes failed to establish predominance. The court thereby granted in part and denied in part the plaintiffs' motion for class certification.

3. Other Important Antitrust Rulings

In a case relating to the same NAR cooperative compensation rule discussed in *Burnett*, on February 20, 2024, the court granted the defendants' motion to dismiss with respect to a federal antitrust claim seeking injunctive relief for violations of § 1 of the Sherman Act, among other claims, in *Batton, et al. v. The National Association of Realtors*, Case No. 21-CV-430 (N.D. Ill. Feb. 20, 2024). The court accepted defense arguments that the members of the putative class were only indirect purchasers of buyer-broker services; therefore the court opined that they were barred from seeking damages under federal antitrust law by *Illinois Brick Co., et al. v. Illinois*, 431 U.S. 720, 729 (1977), and dismissed the claim for injunctive relief under Section 1 because the more directly injured home sellers are challenging the same rules and seeking the same injunction in separate, related cases. The plaintiffs are homebuyers. The defendants, National Association of Realtors (NAR), Realogy Holdings Corp., HomeServices of America, Inc., HSF Affiliates, LLC, Long & Foster Companies, Inc., BHH Affiliates, LLC, RE/MAX LLC, and Keller Williams Realty, Inc. utilized a Multiple Listing Service (MLS) in the sale of homes. The plaintiffs alleged that MLS access was restricted only to home sellers who make a set commission offer to the successful buyer-broker, resulting in supracompetitive commission rates that get baked into the purchase price for homes. The plaintiffs brought a claim for injunctive relief under § 1 of the Sherman Act as well as various state antitrust and consumer protection claims. Although *Illinois Brick* does not preclude indirect purchasers like the putative class of homebuyers from pursing claims for injunctive relief under the Sherman Act, the court dismissed the claim. It reasoned that because the more directly injured home sellers were challenging the same rules and seeking the same injunction in separate litigation before the same court, the claim could not stand. *Batton* could be an important test of indirect purchasers' ability to use antitrust law when there are other purchasers better suited to bring federal antitrust claims. Hence, it is a significant decision in this space.

In *Alvarado, et al. v. Western Range Association,* 2024 U.S. Dist. LEXIS 36803 (D. Nev. Mar. 4, 2024), the plaintiff filed a class action against an association of sheep ranges, the Western Range Association (WRA) and eight individual member ranches, under § 1 of the Sherman Act. The plaintiff alleged that WRA and its member ranches fixed wages and allocated the market for sheepherders. Initially suing only WRA, the plaintiff later amended the complaint to include the member ranches, and alleged that WRA, an association of sheep ranches, coordinated the hiring of foreign sheepherders through the H-2A visa program and mandated minimum wage compliance among its members. The defendants moved to dismiss the amended complaint, arguing that the plaintiff failed to sufficiently allege each defendant's participation in the alleged anticompetitive agreements, beyond alleging membership in the Association. The court agreed, finding that the complaint did not sufficiently allege each defendant's participation in the anticompetitive agreements with WRA.

Though antitrust jury trials are rare, they do happen as discussed above in *Burnett* – and that was true again in *In Re NFL Sunday Ticket Antitrust Litigation,* 2024 U.S. Dist. LEXIS 140596 (C.D Cal. Aug. 1, 2024). There, the plaintiffs filed an antitrust class action alleging that the defendants entered into agreements that limited the number of telecasts of out-of-market NFL games, leading to inflated prices for the Sunday Ticket option. During trial, the jury determined that the defendants' actions violated §§ 1 and 2 of the Sherman Act. The jury awarded damages of approximately $96.9 million to the commercial class and $4.6 billion to the residential class.

Following the trial, both parties sought judgment as a matter of law under Rule 50(a). The defendants argued that the testimony from plaintiffs' key experts Dr. Rascher and Dr. Zona, should be excluded due to unreliable methodologies. Dr. Rascher's testimony was based on a model that compared the NFL's broadcasting of out-of-market games to college football's system. Dr. Rascher hypothesized that without the alleged anticompetitive practices, NFL games would have been available for free on over-the-air and major cable channels, leading to zero costs for consumers. However, the court found that Dr. Rascher's model was fundamentally flawed. His projections lacked a coherent economic basis and failed to address how such a distribution model would work in practice. The court excluded Dr. Rascher's testimony due to its reliance on speculative assumptions rather than solid economic analysis. Dr. Zona's models suggested that in a but-for world without exclusivity, the price of Sunday Ticket could have been higher through alternative distributors, including potential streaming services. However, the court determined that the models predicted irrational consumer behavior and failed to account for the feasibility of alternative distribution channels, such as streaming services, during the relevant period. The court found that Dr. Zona's models lacked necessary assumptions and reliable data, and excluded the reports. Given the exclusion of these key expert testimonies, the court determined that the plaintiffs could not establish class-wide damages reliably. As a result, while the jury could reasonably find that an anticompetitive conspiracy existed, the court granted judgment as a matter of law in favor of the defendants due to the absence of reliable damages.

On April 15, 2024, in *Visa Inc., et al., v. National ATM Council, Inc., et al.,* No. 23-814 (U.S. Apr. 15, 2024), the U.S. Supreme Court declined a petition for review submitted by Visa and Mastercard urging the Supreme Court to resolve a circuit split over the correct standard of review courts should use when evaluating motions for class certification. Mastercard and Visa argued that the U.S. Court of Appeals for the D.C. Circuit erred by only requiring plaintiffs to show that questions common to the class predominate and allowing the fact finder to later address issues related to uninjured class members. The Supreme Court denied the petition for review. The plaintiffs are ATM operators. The defendants are global payment technology companies. The plaintiffs alleged that the defendants instituted ATM fee non-discrimination rules that violated federal antitrust laws by prohibited ATM operators from charging customers different access fees for transactions on different ATM networks. Specifically, the plaintiffs alleged that the rules allowed the defendants to charge supracompetitive transaction fees and foreclose competition from other networks. Specifically, the Supreme Court declined the defendants' petition for review of the D.C. Circuit's affirmation of the certification of three different classes. Two consumer classes were certified on grounds that they were forced to pay supracompetitive ATM surcharges and a class of ATM operators was certified on grounds that that they could not use competing ATM networks. According to the defendants, the D.C. Circuit used a lower standard for class certification similar to one utilized by the Eighth and Ninth Circuits, whereas the Second, Third, Fifth, and Eleventh Circuits employ a more rigorous "careful consideration" standard regarding a plaintiffs' burden to establish predominance. By denying review, this issue remains unresolved in terms of Rule 23 class certification standards.

On January 18, 2024, the court denied the defendants' motion for summary judgment in a wage suppression antitrust class action and declined to exclude two of the plaintiffs' key experts in *Le, et al. v. Zuffa, LLC*, Case No. 15-CV-1045 (D. Nev. Jan. 18, 2024). The court rejected defense arguments that summary judgment was appropriate on largely the same grounds that it certified the class on August 9, 2023, including arguments that the statistical model of the plaintiffs' expert was flawed because it failed to include everyone in the sport and failed to consider the ways promoters help fighters develop into bigger stars. The defendant also argued that there was no dispute that there are more UFC fighters, more fights, and better compensation than at the start of the class period; however, the court found sufficient evidence that UFC may have used its market power to suppress wages. The plaintiffs are current or former UFC fighters. The defendant, Zuffa, LLC does business as UFC and is the preeminent MMA event promoter in the United States. The plaintiffs alleged that UFC used exclusive contracts, market power, and a series of acquisitions to suppress wages paid to UFC fighters during the class period by up to $1.6 billion. Plaintiffs filed suit in December 2014 and defeated UFC's motions for partial summary judgment in 2017. In February 2018, plaintiffs moved to certify two classes. A class consisting of all persons who competed in one or more live professional UFC-promoted MMA bouts taking place in the United States from December 16, 2010 to June 30, 2017 was certified last August. In light of the class certification, the defendant renewed its motion for summary judgment and moved to exclude expert testimony. The court struck two of the defendant's motions to exclude and denied summary judgment. The court rejected the defendant's arguments for summary judgment on grounds that they were repetitive and unavailing. Specifically, Zuffa asserted that the total number of bouts, fighter compensation, and fighters all increased

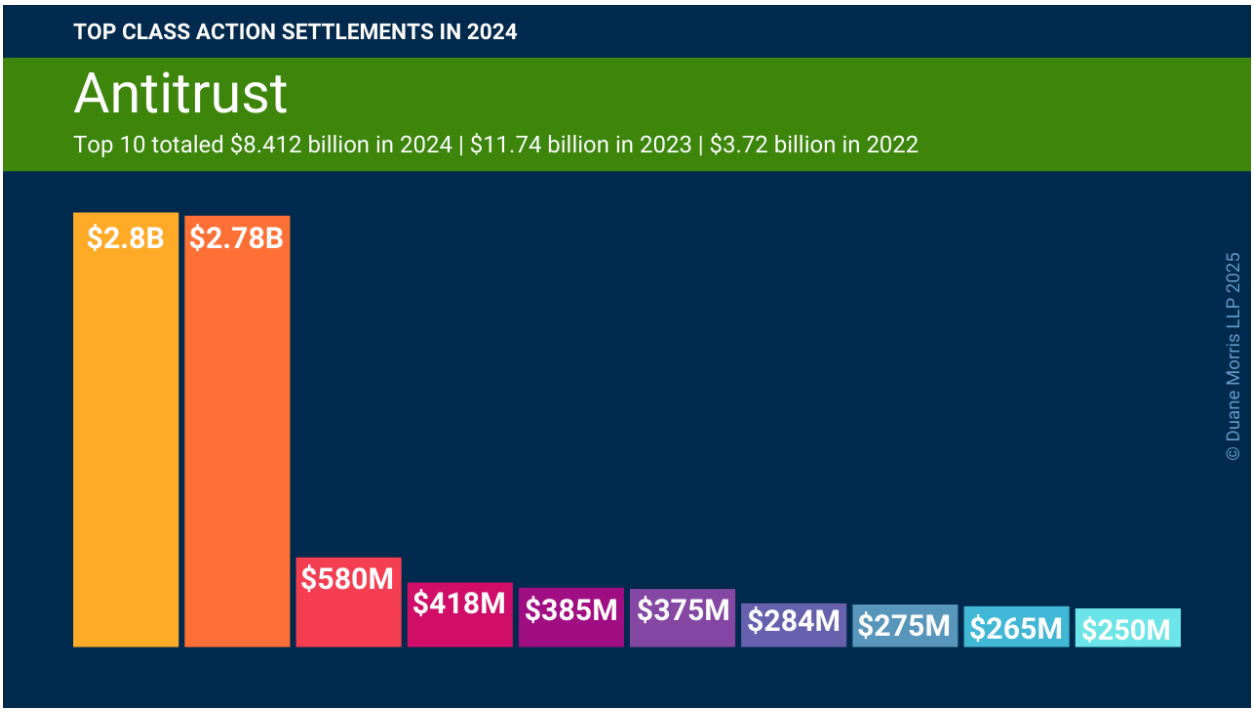
during the class period, that there are no barriers to enter the fight promotion market, and that it did not prevent competitors from signing and promoting fighters. The court found that the fact that the raw numbers of fighters, bouts, and compensation increased was not dispositive and credited the plaintiffs' evidence that their wages were still suppressed. The court also noted that it expressly rejected the defendant's arguments regarding barriers to entry and completion in the class certification decision.

Subsequently, on March 20, 2024, a regulatory filing by UFC parent company, TKO Group Holding Inc., revealed that TKO will pay $375 million to settle a class action brought by MMA fighters who alleged that the UFC engaged in anticompetitive conduct to suppress the fighters' wages in *Le, et al. v. Zuffa, LLC*, Case No. 15-CV-1045 (D. Nev. Mar. 20, 2024). The parties had engaged in mediation prior to the start of trial scheduled for April 15, 2024. The settlement, which will be paid out over an unspecified amount of time, resolves all of the antitrust wage-suppression claims against the UFC and avoids the risks associated with trial. The parties will still need to present the settlement to the court for preliminary and final approval pursuant to Rule 23.

On January 19, 2024, the Illinois Supreme Court unanimously held the Illinois Antitrust Act does not allow staffing agencies to avoid allegations that they suppressed wages and agreed not to hire each other's workers in *The State Of Illinois ex rel. Kwame Raoul, et al. v. Elite Staffing, Inc*., Case No. 2024 IL 128763 (Ill. Jan. 19, 2024). The Illinois Supreme Court rejected defense arguments that the complaint failed to state a cause of action because the Illinois Antitrust Act provides that services otherwise subject to the Act "shall not be deemed to include labor which is performed by natural persons as employees of others." *Id.* at 3. It concluded that reading the Illinois Antitrust Act so broadly would contradict the entire purpose of the Act, therefore it found that the Act does not exclude all agreements concerning labor services, including the conduct alleged.

III. Top Antitrust Class Action Settlements In 2024

In 2024, the top ten antitrust class action settlements totaled over $8.42 billion, a decrease as compared to the prior year. By comparison, the top ten settlements for antitrust class actions in 2023 totaled $11.74 billion.



1. **$2.8 billion – *In Re Blue Cross Blue Shield Antitrust Litigation*, Case No. 13-CV-20000 (N.D. Ala. Dec. 5, 2024)** (preliminary settlement approval granted to resolve claims with Blue Cross Blue Shield operating companies by healthcare providers claiming that the payors conspired to reduce competition by, among other things, allocating geographic markets, resulting in lower reimbursement amounts to providers).

2. **$2.78 billion – *In Re College Athlete NIL Litigation*, Case No. 20-CV-3919 (N.D. Cal. Oct. 7, 2024)** (preliminary settlement approval granted to resolve claims with former college athletes who filed an antitrust class action seeking compensation allegedly denied to them for decades before the Supreme Court overturned the NCAA's compensation ban).

3. **$580 million – *Iowa Public Employees' Retirement System, et al. v. Bank Of America Corp. Litigation,* Case No. 17 Civ. 6221 (S.D.N.Y. Sept. 4, 2024)** (final settlement approval granted in a class action to resolve claims alleging that the defendants conspired to block and boycott new offerings that would have increased competition and improved the efficiency and transparency of the market).

4. **$418 million – *Burnett, et al. v. the National Association Of Realtors*, Case No. 19-CV-332 (W.D. Mo. Nov. 26, 2024)** (final settlement approval granted in a group of class actions to resolve claims that broker commission rules caused home sellers across the country to pay inflated fees).

5. **$385 million – *In Re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*, Case No. 13-MD-2445 (E.D. Pa. Feb. 27, 2024)** (final settlement approval granted in a class action to resolve claims brought by states, insurers, and buyers of a new dissolvable strip version of Suboxone to the market, encouraging the move from tablets to strips by misrepresenting to the U.S. Food and Drug Administration that the tablets posed a risk to children of accidental consumption).

6. **$375 million – *Le, et al. v. Zuffa LLC*, Case No. 15-CV-1045 (D. Nev. Mar. Oct. 22, 2024)** (preliminary settlement approval granted in a class action to resolve claims that fighters' wages were suppressed by up to $1.6 billion).

7. **$284 million – *Henry, et al. v. Brown University, et al.,* Case No. 22-CV-125 (N.D. Ill. July 19, 2024)** (final settlement approval granted to settle six related class actions resolving claims that the universities colluded to limit the amount of need-based financial aid provided to undergraduates).

8. **$275 million – *In Re Generic Pharmaceuticals Pricing Antitrust Litigation*, Case No. 16-MD-2774 (E.D. Penn. Dec. 17, 2024**) (settlement reached in a class action to resolve claims from consumers, insurers and benefit funds that allegedly overpaid for generic prescription drugs between 2009 and 2019).

9. **$265 million – *In Re Generic Pharmaceuticals Pricing Antitrust Litigation*, Case No. 16-MD-2724 (E.D. Penn. June 21, 2024)** (preliminary settlement approval granted for a class action to resolve claims by direct purchasers, end-payors and states alleging that multiple makers of generic drugs conspired to keep the prices on their products high, in violation of state laws and the federal Sherman Act).

10. **$250 million – *Burnett, et al. v. The National Association Of Realtors*, Case No. 19-CV-332 (N.D. Ill. Aug. 8, 2024)** (preliminary settlement approval granted with defendant Berkshire Hathaway in a class action to resolve claims that broker commission rules caused home sellers across the country to pay inflated fees).

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