



Corporate Plaintiff Affirmative Recovery

PRACTICE CONTACTS

- James Robertson Martin
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Zelle attorneys were at the forefront of the affirmative recovery “opt-out” practice as it was first developing. In 1999, Zelle attorneys filed individual Sherman Act claims on behalf of over 150 individual plaintiffs in the *In re Vitamins Antitrust Litigation*, MDL No. 1285, and ultimately secured them settlements of \$2 billion. Since then, our team has successfully represented, through trial, numerous individual plaintiffs that have opted out of the class action to aggressively pursue single damages in the tens to hundreds of millions each. Zelle’s clients operate across a broad range of markets, including packaged foods, paper products, industrial products, financial instruments, and pharmaceuticals.

With a robust corporate recovery practice, we help clients recover losses suffered because of antitrust violations by their suppliers, competitors or other industry participants. We identify and assess the anticompetitive conduct, determine the scope of a client’s injury and the value of a potential claim, and recommend strategies to maximize recovery. In some cases, that might mean monitoring an existing class action and working with the claims administrator to maximize the value of the client’s claim in the settlement distribution process. In other situations, we might recommend that clients file individual actions (by “opting out” of the class action) when it is cost-effective to do so. The opt-out plaintiffs we represent typically recover two to three times what they would have recovered had they stayed in the class action and shared in the class recovery.

REPRESENTATIVE MATTERS

United HealthCare Services, Inc. v. Jazz Pharmaceuticals plc, et al., No. 5:21-cv-02710-RS (N.D. Cal.)

Represents United HealthCare Services, Inc. in an individual antitrust matter against the manufacturers of the branded pharmaceutical drug, Xyrem, and its generic equivalents, alleging they entered into unlawful pay-for-delay and market share-allocation agreements to maintain artificially inflated supracompetitive prices of Xyrem for several years. (*United HealthCare Services, Inc. v. Jazz Pharmaceuticals plc, et al.*, No. 5:21-cv-02710-RS (N.D. Cal.))

El Pollo Loco, Inc. v. Tyson Foods, Inc., et al., No. 1:20-cv-01943 (N.D. ILL.)



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Represented El Pollo Loco, Inc. in an individual antitrust matter against the nation's major broiler chicken suppliers, alleging a capacity-reduction and price-fixing conspiracy; this matter has been consolidated with *In re Broiler Chicken Antitrust Litigation*, No. 1:16-cv-08637.

United HealthCare Services, Inc. v. Actavis Holdco U.S., Inc., et al., No. 2:19-cv-00629-CMR (E.D. Pa.).

Represents United HealthCare Services, Inc. in three individual antitrust matters against the makers of more than 200 generic pharmaceutical drugs, alleging a widespread price-fixing and market allocation conspiracy; this matter has been consolidated with *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724. (*United HealthCare Services, Inc. v. Actavis Holdco U.S., Inc., et al.*, No. 2:19-cv-00629-CMR (E.D. Pa.))

In re LIBOR-Based Financial Instruments Antitrust Litigation, MDL No. 2262, No. 1:11-md-02262 (S.D.N.Y.).

Representing Freddie Mac and the FDIC as Receiver for 39 Closed Banks and serves as liaison counsel for more than two dozen DAPs). Freddie Mac and the FDIC allege, among other things, that defendants' horizontal conspiracy reduced product quality in the market for interest-rate benchmarks.

United HealthCare Services, Inc. v. Celgene Corp., 0:20-cv-00686-DSD-ECW (D.N.J.)

Represents United HealthCare Services, Inc. in an individual antitrust matter against Celgene, alleging it engaged in generic exclusion tactics to maintain its monopoly pricing of the drugs Revlimid and Thalomid.

United HealthCare Services, Inc. v. Cephalon, Inc., et al., No. 2:17-cv-00555(E.D. Pa.).

Represented United HealthCare Services, Inc. in an individual antitrust matter against the makers of the branded pharmaceutical drug Provigil and its generic equivalents. The suit alleged a successful pay-for-delay scheme that kept lower-priced generics off the market for several years, allowing the brand manufacturer to continue charging inflated monopoly prices that caused United HealthCare Services, Inc. substantial damages.

In re Vitamins Antitrust Litigation, MDL No. 1285, Misc. No. 99-197 (D.D.C.).

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Represented more than 150 direct action plaintiffs, including Kraft Foods and GNC, alleging a 15-year international cartel covering more than a dozen vitamins. The case involved German Defendants BASF, Degussa, and Merck. Recoveries exceeded \$2 billion. Served as liaison counsel for DAPs.

ZF Meritor LLC v. Eaton Corp., No. 06-623-SLR (D. Del.).

Represented a manufacturer of heavy-duty transmissions in a case alleging the dominant producer excluded it from the relevant market. The case went to trial and resulted in a liability verdict for violations of Sections 1, 2, and 3 of the Sherman Act. The Third Circuit upheld the verdict and the case settled for \$500 million prior to the damages trial.

In re Urethane Antitrust Litigation, MDL No. 1616, No. 2:08-cv-05169 (D.N.J.). Represented 11 plaintiff families in an international price-fixing case involving three chemicals. The case involved German Defendants BASF and Bayer. Despite a lack of direct evidence, successfully defeated summary judgment motions challenging the existence of a conspiracy and its duration (the parallel class action alleged a shorter conspiracy period). Defeated three *Daubert* motions and handled all experts at trial. Defendant Dow settled during the defense case for \$400 million.

In re Methionine Antitrust Litigation, MDL No. 1311, No. 3:00-md-01311 (N.D. Cal.).

Represented, as liaison counsel, more than three dozen DAPs, including Tyson Foods, alleging an international cartel involving, *inter alia*, German Defendant Degussa AG. Recoveries exceed \$400 million.

In re Linerboard Antitrust Litigation, MDL No. 1261, No. CIV.A. 98-5055 (E.D. Pa.).

Represented more than 50 Fortune 500 companies, including names such as PepsiCo and Coca-Cola, in a conspiracy among containerboard producers to take “market downtime” to restrict output and cause price increases. Successfully defeated summary judgment motions despite the lack of direct evidence. Served as liaison counsel for direct action plaintiffs. Recoveries exceeded \$200 million.