

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
CHICAGO DIVISION**

FILED: APRIL 16, 2009
09CV2321
JUDGE PALLMEYER
MAGISTRATE JUDGE ASHMAN
AO

**STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

vs.

Case No.:

**CHAMPION LABORATORIES, INC.,
PUROLATOR FILTERS NA, LLC,
HONEYWELL INTERNATIONAL INC.,
WIX FILTRATION CORP LLC,
CUMMINS FILTRATION INC.,
DONALDSON COMPANY, INC., BALDWIN
FILTERS, INC., AFFINIA GROUP INC.,
and ARVINMERITOR, INC.**

Defendants.

COMPLAINT

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs (the “Attorney General”), sues Champion Laboratories, Inc., Purolator Filters NA, LLC, Honeywell International Inc., Wix Filtration Corp LLC, Cummins Filtration Inc., Donaldson Company, Inc., Baldwin Filters, Inc., Affinia Group Inc., and ArvinMeritor, Inc. (collectively, “Defendants”) and alleges as follows:

INTRODUCTION

1. This case involves a conspiracy among the largest manufacturers of aftermarket vehicle oil, air, and fuel filters (“Filters”) to fix, raise, maintain or stabilize prices for Filters in the United States from at least March 1999 until the present (“Relevant Period”).

2. Many of the allegations contained herein, particularly with respect to the specifics of collusive meetings and agreements between and among the Defendants and their co-conspirators, are based on recorded conversations and the personal knowledge of, and information provided by, a senior industry sales executive formerly employed by two of the named Defendants at different times during the Relevant Period (“Former Employee”).

3. Through meetings at industry events and elsewhere, and the exchange of confidential pricing materials, Defendants unlawfully conspired and agreed to coordinate the magnitude and timing of price increases, among other things, throughout the Relevant Period.

4. Florida governmental entities (“Florida Entities”) and Florida consumers purchased millions of dollars of Filters that were manufactured by Defendants during the Relevant Period.

5. Due to Defendants’ unlawful conduct, Florida Entities and Florida consumers have been forced to pay supracompetitive prices for Filters manufactured by Defendants during the Relevant Period.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the federal law claims under 28 U.S.C. §§ 1331 and 1337 and has pendent jurisdiction over the state law claims under 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form part of the same case or controversy.

7. The Court has personal jurisdiction over each of the Defendants.

8. Venue is proper because each of the Defendants transact business in this district, within the meaning and scope of 15 U.S.C. § 22.

INTERSTATE COMMERCE

9. The activities of the Defendants and their co-conspirators, as described herein, were within the flow of, were intended to, and did have a substantial effect on the foreign and interstate commerce of the United States.

10. During the Relevant Period, Defendants manufactured, sold and/or distributed substantial quantities of Filters in a continuous and uninterrupted flow of interstate commerce to customers located throughout the United States.

PARTIES

Plaintiff

11. The Attorney General is the chief legal officer of the State of Florida and brings claims pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, Chapter 542, Florida Statutes, and Chapter 501, Part II, Florida Statutes.

Defendants

12. Champion Laboratories, Inc. (“Champion”) is a corporation with a business address of 200 S. Fourth St., Albion, Illinois 62806. Champion manufactured and sold Filters in the United States during the Relevant Period.

13. Purolator Filters NA, LLC (“Purolator”) is a limited liability corporation with a business address of 3200 Natal St., Fayetteville, NC 28306. Purolator manufactured and sold Filters in the United States during the Relevant Period. Since April 2006 Purolator has been a joint venture between Bosch U.S.A. and Mann + Hummel U.S.A., Inc.

14. Honeywell International Inc. (“Honeywell”) is a corporation with a business address of 100 Columbia Road, Morristown, New Jersey 07962. Honeywell manufactured and sold Filters in the United States during the Relevant Period. Honeywell

International Consumer Products Group is a division of Honeywell located in Danbury, Connecticut, and is responsible for the manufacture and sale of Filters, principally under the FRAM brand.

15. Wix Filtration Corp LLC (“Wix”) is a limited liability company with a business address of One Wix Way, Gastonia, North Carolina 28054. Wix manufactured and sold Filters in the United States during the Relevant Period.

16. Cummins Filtration Inc. (“Cummins”), is a corporation with a business address of 2931 Elm Hill Pike, Nashville, Tennessee 37214. Cummins manufactured and sold Filters in the United States during the Relevant Period.

17. Donaldson Company, Inc. (“Donaldson”) is a corporation with a business address of 1400 West 94th St., Minneapolis, Minnesota 55431. Donaldson manufactured and sold Filters in the United States during the Relevant Period.

18. Baldwin Filters, Inc. (“Baldwin”) is a corporation with a business address of 4400 E. Hwy. 30, Kearney, Nebraska 68848. Baldwin manufactured and sold Filters in the United States during the Relevant Period.

19. Affinia Group Inc. (“Affinia”) is a corporation with a business address of 1101 Technology Drive, Ann Arbor, Michigan 48108. Affinia operates Wix Filtration Products through its Affinia Global Filtration Division and Wix, a wholly owned subsidiary.

20. ArvinMeritor, Inc. (“ArvinMeritor”) is a corporation with a business address of 2135 West Maple Road, Troy, Michigan 48084. Prior to April 2006 ArvinMeritor owned Purolator.

CO-CONSPIRATORS

21. Wherever in this Complaint reference is made to any act, deed or transaction of any Defendant, the allegation means that the Defendant engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the Defendant's business affairs.

22. Various other persons, firms, and corporations not named as Defendants have participated as co-conspirators in the violations alleged, and have aided, abetted, performed acts, and made statements in furtherance of the conspiracy.

FACTUAL ALLEGATIONS

23. An oil filter is a device used to remove small particles of metal and other debris from engine oil, which is essential for enhancing engine longevity and performance.

24. A fuel filter is a device found in a vehicle's fuel line that screens out contaminants such as dirt and rust particles from the fuel, preventing them from entering the engine.

25. An air filter is a device that screens contaminants out of the air brought into the engine through the air intake for use in the combustion process, preventing engine damage.

26. Filters are typically detachable units that require periodic replacement and are fungible products.

27. Filter manufacturers, such as Defendants, sell oil, air, and fuel filters primarily to original equipment manufacturers (*i.e.*, vehicle manufacturers for installation of filters into new vehicles on the production floor) and "aftermarket" sellers (*i.e.*, sellers

for professional or self-installation of replacement filters). The allegations contained herein involve the filters aftermarket.

28. Defendants are the primary manufacturers of Filters in the United States.

29. During the Relevant Period, Defendants and their co-conspirators conspired, contracted or combined to fix, raise, maintain or stabilize prices for Filters in the United States. They accomplished this through, among other things, face-to-face meetings at industry trade shows and other locations and through the exchange of confidential communications regarding pricing.

30. The purpose of these secret, conspiratorial meetings, discussions, and communications was to ensure that all of the Defendants agreed to participate in and implement an unlawful, continuing price-fixing and customer allocation scheme.

31. This conspiratorial conduct resulted in an unlawful agreement to fix, raise, maintain and/or stabilize prices for Filters in the United States.

32. Throughout the Relevant Period, and in furtherance of their conspiracy, Defendants and their co-conspirators engaged in numerous unlawful activities, including but not limited to:

(a) Agreeing with each other to charge prices for Filters at specified levels and otherwise fix, increase, maintain and/or stabilize the prices of Filters sold in the United States;

(b) Attending meetings or otherwise engaging in discussions and communications with each other by telephone, facsimile, and electronic mail regarding the sale of Filters;

(c) Communicating with each other to discuss, *inter alia*, the prices, customers, markets, and price levels of Filters sold in the United States;

(d) Selling Filters in the United States and elsewhere at collusive and non-competitive prices pursuant to the unlawful agreement reached;

(e) Accepting payment for Filters sold in the United States and elsewhere at collusive and non-competitive prices;

(f) Directing, authorizing or consenting to the participation of employees in the conspiracy; and,

(g) Concealing the conspiracy and conspiratorial contacts through various means.

33. In furtherance of their unlawful agreement, Defendants implemented at least four (4) coordinated price increases for Filters during the Relevant Period.

34. Beginning at least as early as March 1999 and continuing throughout the Relevant Period, Defendants and their co-conspirators met on numerous occasions, had confidential discussions, and exchanged competitively-sensitive information regarding pricing and customers for Filters. Defendants used their meetings, discussions, and exchanges of information to agree to further their conspiracy to fix, raise, maintain and/or stabilize prices for Filters in the United States.

35. On or about February 26, 1999, ArvinMeritor acquired Purolator. Marlen Silverii, an ArvinMeritor senior vice-president formerly employed by Purolator, was instrumental in completing the acquisition.

36. At the time ArvinMeritor acquired Purolator, Former Employee was a national accounts manager at Purolator.

37. Shortly after the acquisition, in or around March 1999, Mr. Silverii met with certain Purolator senior employees, including Former Employee, to discuss

Purolator's profit margins, which, in the view of ArvinMeritor's executives, were too low.

38. During the meeting, Mr. Silverii explained that to increase profit margins, ArvinMeritor's executives wanted to implement a price increase. To do so successfully, and to avoid losing market share or business, Mr. Silverii said that Purolator would need the other Defendants to agree to raise prices along with Purolator. Mr. Silverii told the assembled Purolator senior personnel to contact their counterparts at the other Defendants for the express purpose of obtaining each Defendant's agreement to implement a coordinated, industry-wide Filters price increase.

39. A number of Purolator's senior personnel who attended the meeting complied with Mr. Silverii's directive. These individuals contacted and communicated with their counterparts at the other Defendants regarding a coordinated Filters price increase.

40. As part of their collusive agreement to increase Filters prices, Defendants met, discussed, and otherwise communicated with each other to coordinate the timing, amount, and purported justifications of the price increase.

41. One such series of meetings took place in or around May 1999 at the Jiffy Lube Association of Franchisees Show ("JLAF Show") in Nashville, Tennessee, where Defendants discussed increasing Filters prices.

42. At the JLAF Show, Mr. Silverii and at least one other senior Purolator employee met with a senior employee from Honeywell and discussed increasing Filters prices.

43. A fellow Purolator employee told Former Employee that Purolator had spoken with Honeywell at the JLAF Show in Nashville and told them to raise prices.

That same Purolator employee also told Former Employee that "FRAM know [*sic*] we're going up."

44. In the middle of 1999, Mr. Silverii met with Tom Mallett, Champion's President. Mr. Silverii and Mr. Mallett discussed fixing and coordinating Filters prices in the United States.

45. In June of 1999, Former Employee, then with Purolator, had a conversation with Purolator's vice-president of sales, Larry Curtis, where Mr. Curtis acknowledged that he and Mr. Silverii had agreed to a 4% price increase with Honeywell's senior vice-president of sales, Brad Hays, at the May 1999 JLAF Show in Nashville, Tennessee.

46. On or about June 28, 1999, Mr. Silverii directed Mr. Curtis to fax Mr. Hays a draft letter that Purolator intended to send to its customers, informing them about an impending price increase on all of Purolator's Filters. The draft letter was back-dated to June 21, 1999 and announced a price increase that Purolator planned to implement on August 15, 1999. The letter also provided the following pretextual reasons for the price increase: increases in costs for labor, health care, freight, and raw materials.

47. Pursuant to Mr. Silverii's directive, on June 28, 1999 Mr. Curtis faxed the draft price increase letter to Mr. Hays. Notably, as of June 28, 1999, Purolator had not sent the price increase letter to any of its customers. In fact, Purolator did not send it to its customers until two weeks later.

48. Filters prices increased as a result of the agreement.

49. Upon information and belief, the conspiracy to fix the price of Filters continued after the 1999 price increase and was successfully maintained throughout the Relevant Period.

50. In the summer of 2003, in furtherance of the continuing conspiracy to fix prices and allocate customers, Champion informed Purolator and Honeywell prior to bidding on an oil filters supply contract for Shell Oil Company that it would intentionally place an uncompetitive high bid, allowing the successful bidder to win the business at a higher price than if Champion had bid competitively. In exchange, Champion would then be able to justify a price increase on the Filters it sold to Valvoline, an important customer.

51. In 2004, Defendants took additional steps in furtherance of the continuing conspiracy.

52. Prior to February 22, 2004, John Evans, president of Champion, received notice from Mr. Silverii of a planned increase in Filters prices. Former Employee, now employed by Champion, contacted Purolator's national accounts manager, Jim Burnham, prior to March 2, 2004 and confirmed the Purolator price increase.

53. Following the discussion described in paragraph 52, and additional conversations between and among the Defendants, price increase notification letters were sent to customers by Champion, Honeywell, Donaldson, ArvinMeritor, Baldwin, and Wix between March 2 and April 22, 2004, with price increases effective between April 1 and June 5, 2004.

54. During the September 2004 Filter Manufacturers Council trade association meeting in Nashville, Tennessee, Mr. Evans and Champion's vice-president of sales and marketing, Ty Nilsson, agreed with Purolator, Wix, and other competitors to increase Filters prices by 2-4% when Champion increased its Filter prices.

55. Filters price increases were again announced by Defendants in October 2004 as a result of the agreement.

56. Upon information and belief, the conspiracy to fix the price of Filters continued after the 2004 price increases and was successfully maintained throughout the Relevant Period.

57. Defendants' conduct during the Relevant Period in collusively fixing, increasing, maintaining and/or stabilizing prices was for the sole purpose of foreclosing price competition in order to maintain artificially high prices for their Filters.

58. By coordinating pricing activities and allocating customers, Defendants removed the ability of their customers, including Florida Entities and Florida consumers, to constrain Defendants' pricing by moving or threatening to move their Filters business to another manufacturer in response to a price increase.

59. Absent their coordinated activity, Defendants would have been forced to price Filters competitively or risk losing the business of their Filter customers, including Florida Entities and Florida consumers. With unrestrained competition, Defendants would have been forced to forego price increases altogether, implement smaller ones or decrease prices to retain Florida Entities and Florida consumers as customers.

60. Absent the conspiracy, it is likely that Defendants would have also moderated their price increases or decreased prices in light of Champion's technology developments, which reduced the amount of steel used in Filters.

61. As a result of Defendants' unlawful conspiracy, Florida Entities and Florida consumers were forced to pay supracompetitive prices for Filters manufactured by Defendants and their co-conspirators during the Relevant Period, the effects of which are still felt today.

FRAUDULENT CONCEALMENT

62. From at least as early as March 1999 until at least 2008, when the Attorney General began his investigation, Defendants actively, effectively, affirmatively, and fraudulently concealed their unlawful combination and conspiracy, as well as the resulting injuries and claims, from the Attorney General.

63. Defendants' wrongful conduct was carried out in part through means and methods designed and intended to avoid detection, including public announcements that price increases were due to increases in the price of steel and other misrepresentations that Filter price increases were to meet the price increases of their competitors. In addition, throughout the Relevant Period numerous telephone calls and in person meetings among the Defendants successfully precluded detection.

64. The Attorney General has exercised due diligence by promptly investigating the facts giving rise to the claims asserted herein, upon having reasonable suspicion of the existence of Defendants' conspiracy.

65. As a result of the active concealment of the conspiracy by Defendants and their co-conspirators, any and all applicable statutes of limitation otherwise applicable to the allegations herein have been tolled.

ASSIGNMENT CLAUSES

66. The State of Florida, Department of Management Services, Procurement Division ("DMS"), requires vendors contracting through DMS for provision of products and/or services to Florida agencies, political subdivisions, universities, and community colleges to assign claims those vendors may accrue relating to violations of federal and/or state antitrust laws to the State of Florida when the claims relate to Florida Entity purchases.

67. As a result of the requirement described in paragraph 66, the State of Florida has contractual agreements with certain distributors assigning any accrued claims relating to violations of federal and/or state antitrust laws to the State of Florida, when the claims relate to Florida Entity purchases.

68. The distributors of Filters to Florida Entities referenced in paragraph 67 commonly purchased Filters directly from Defendants.

69. The Filters distributors paid higher-than-competitive prices for Filters as a result of Defendants' unlawful conduct.

70. Purchases by Florida Entities of Filters from distributors, pursuant to DMS bid documents, contracts and/or purchasing agreements, assign to the State of Florida all of the distributors' accrued claims for violations of federal and/or state antitrust laws relating to the Filters that the distributors purchased and then resold to Florida Entities.

71. The assignment clause entitles the State of Florida to the direct and indirect purchaser claims of the Filters distributors that purchased Filters directly from Defendants when the claims relate to Florida Entity purchases.

72. The direct purchaser claims assigned to the State of Florida retain their original character as direct purchaser claims. With the assignment of these direct purchaser claims, the State of Florida received all right, title, and interest that the Filters distributors had in those claims against Defendants.

VIOLATIONS ALLEGED

Count One

Violation of Section 1 of the Sherman Act

73. The Attorney General incorporates and realleges, as though fully set forth herein, each and every general allegation of this Complaint.

74. Certain distributors have assigned to the State of Florida their claims as

direct purchasers of Filters from Defendants, for Filters purchased by Florida Entities under a contract with DMS, including the right to recover damages flowing from Defendants' unlawful conduct. The Attorney General asserts claims for damages under Section 1 of the Sherman Act on behalf of the State of Florida.

75. Defendants are jointly and severally liable for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, *et seq.*, to the State of Florida, as assignee of the direct purchaser claims that relate to the Filters purchased by Florida Entities.

76. As described in paragraphs 23 through 61 above, Defendants combined and conspired to fix prices in the market for Filters, in restraint of trade and commerce.

77. Defendants' acts violate Section 1 of the Sherman Act, 15 U.S.C. § 1, *et seq.*, and the Attorney General is entitled to relief, including treble damages, under Section 4 of the Clayton Act, 15 U.S.C. § 15, for all direct purchases made pursuant to contracts containing assignment clauses.

78. The Attorney General is entitled to recover its costs and attorneys' fees pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15.

79. The Attorney General is entitled to an injunction against Defendants, preventing and restraining further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future.

Count Two
Violation of the Florida Antitrust Act

80. The Attorney General incorporates and realleges, as though fully set forth herein, each and every general allegation of this Complaint.

81. Certain distributors have assigned to the State of Florida their claims as direct purchasers of Filters from Defendants, for Filters purchased by Florida Entities under a contract with DMS, including the right to recover damages flowing from Defendants' unlawful conduct. The Attorney General asserts claims for damages and penalties under the Florida Antitrust Act on behalf of the State of Florida, pursuant to

section 542.27(2), Florida Statutes.

82. As described in paragraphs 23 through 61 above, Defendants combined and conspired to fix prices in the market for Filters, in restraint of trade and commerce.

83. Defendants are jointly and severally liable for violations of section 542.18, Florida Statutes, to the State of Florida, as assignee of the direct purchaser claims that relate to the Filters purchased by Florida Entities.

84. Defendants' acts violate section 542.18, Florida Statutes, and the Attorney General is entitled to relief, including damages, under section 542.22, Florida Statutes, for all direct purchases made pursuant to contracts containing assignment clauses.

85. The Attorney General is entitled to a civil penalty of up to the maximum amount permitted by section 542.21, Florida Statutes, for each violation of section 542.18, Florida Statutes.

86. The Attorney General is entitled to recover its costs and attorneys' fees pursuant to section 542.22(2), Florida Statutes.

87. The Attorney General is entitled to an injunction against Defendants, preventing and restraining further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future.

Count Three
Violation of the Florida Deceptive and Unfair Trade Practices Act

88. The Attorney General incorporates and realleges, as though fully set forth herein, each and every general allegation of this Complaint.

89. Florida Entities and Florida consumers directly and/or indirectly purchased Filters from Defendants. The Attorney General asserts claims for damages under the Florida Deceptive and Unfair Trade Practices Act on behalf of such entities and natural persons, pursuant to section 501.207(1)(c), Florida Statutes.

90. Moreover, certain distributors have assigned to the State of Florida their

claims as direct or indirect purchasers of Filters from Defendants, for Filters purchased by Florida Entities under a contract with DMS, including the right to recover damages flowing from Defendants' unlawful conduct. The Attorney General asserts claims for damages under the Florida Deceptive and Unfair Trade Practices Act on behalf of the state of Florida, pursuant to section 501.207(1)(c), Florida Statutes.

91. As described in paragraphs 23 through 61 above, Defendants' unfair methods of competition and unconscionable acts and practices in the conduct of trade and commerce offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to Florida Entities and Florida consumers. Thus, Defendants' unfair methods of competition and unconscionable acts and practices in the conduct of trade and commerce violate section 501.204, Florida Statutes.

92. Defendants are jointly and severally liable for violations of section 501.204, Florida Statutes, to the State of Florida.

93. The sale of Filters involves the conduct of "trade or commerce" within the meaning of section 501.203(8), Florida Statutes.

94. The Attorney General of Florida has reviewed this matter and determined that an enforcement action serves the public interest.

95. The Attorney General is entitled to relief, including damages, under section 501.207, Florida Statutes, for all direct and indirect purchases from Defendants by Florida Entities and Florida consumers, as well as direct and indirect purchases made pursuant to contracts containing assignment clauses.

96. The Attorney General is entitled to a civil penalty of up to the maximum amount permitted by sections 501.2075 or 501.2077, Florida Statutes, as applicable, for each violation of section 501.204, Florida Statutes.

97. The Attorney General is entitled to recover its costs and attorneys' fees pursuant to section 501.2105, Florida Statutes.

98. The Attorney General is entitled to an injunction against Defendants, preventing and restraining further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future.

WHEREFORE, the Attorney General prays for judgment:

A. As to Count One: (1) awarding treble damages; (2) restraining Defendants from further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future; and, (3) awarding the Attorney General his reasonable attorneys' fees and costs.

B. As to Count Two: (1) awarding treble damages; (2) imposing a civil penalty on each Defendant of \$1,000,000 for each violation of section 542.18, Florida Statutes; (3) restraining Defendants from further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future; and (4) awarding the Attorney General his reasonable attorneys' fees and costs.

C. As to Count Three: (1) awarding damages; (2) imposing a civil penalty on each Defendant of at least \$10,000 for each violation of section 501.204, Florida Statutes; (3) restraining Defendants from further violations of the conduct alleged herein as well as enjoining the Defendants from engaging in similar conduct in the future; and, (4) awarding the Attorney General his reasonable attorneys' fees and costs.

D. Awarding such other and further such additional relief as the Court deems just and proper, including equitable relief.

Demand for Jury Trial

The Attorney General hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 16th day of April, 2009.

BILL McCOLLUM
Attorney General

/s/ Eli A. Friedman

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