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Ashley Furniture Alleges Cardboard Price-Fixing Plot

By **Bonnie Eslinger**

Law360, Los Angeles (July 5, 2016, 4:38 PM EDT) -- Ashley Furniture Inc. sued Packaging Corporation of America and other manufacturers of corrugated cardboard in Wisconsin federal court on Thursday, alleging that the purported competitors conspired for years by "calls to arms and pledges" to drive up prices for their products in violation of the Sherman Act.

The action brought by Ashley Furniture seeks under the antitrust laws of Wisconsin and the United States undisclosed damages against 10 companies, including International Paper, claiming that they colluded to fix prices for corrugated cardboard board products from 2005 through at least 2010.

The conspiracy, the suit said, "was effected, in part, by calls to arms and pledges by and between defendants that were followed by actions that resulted in massive and unprecedented idling of production capacity, reduced production and near simultaneous across-the-board price increases."

Ashley, which purchased the products, claims in its complaint that the "anticompetitive conduct cannot be explained away as independent parallel behavior" and notes that as of 2010, the defendants controlled 80 percent of the corrugated cardboard market, which is also called containerboard.

Market demand for containerboard products remained stable or was expected to increase in the five-year period, according to the defendant companies' quarterly reports, the suit said. A competitive market with similar demand conditions — including no significant, lasting changes in production costs — should have seen increased production, but each defendant "refrained," the suit said. And from 2005 to 2010 price increases outpaced cost increases for the industry by more than 50 percent.

Such conduct, "evidences a restriction of freedom and sense of obligation associated with an agreement," Ashley Furniture states.

As a result, the suit claims, Ashley Furniture and other purchasers were forced to pay "substantially higher prices" than they would have spent in a competitive market.

While historically the containerboard product industry has been concentrated, a series of mergers and acquisitions in the last decade have made it even more so, the suit said.

The defendants have attempted to blame the increasing prices for their products on mill closures and cost increases, the suit said, but the justifications don't align with publicly known facts.

For example, the president of Norampac, another defendant, said in 2006 that the closure of the company's Ontario mill was due to growing fiber supply and energy costs, along with the strengthening of the Canadian dollar. The explanation "does not comport with the relevant market data," Ashley Furniture said. "It serves as little more than a pretense for collusive activity."

Even when demand plummeted as a result of the economy's downturn in 2008, the suit alleges, the containerboard manufacturers raised their prices an "unprecedented three times in one year to all-time highs."

Ashley Furniture's suit noted that in recent decades containerboard manufacturers, including several

of the suit's defendants, have been subject to government investigation and civil lawsuits related to anticompetitive conduct.

In 2014, Packaging Corp. of America agreed to **pay \$17.6 million** to settle putative price-fixing claims.

Additionally, U.S. **antitrust regulators in 2012** required International Paper Co. and Temple-Inland Inc, defendants in Ashley Furniture's suit, to divest of three containerboard mills before moving forward with a planned \$4.3 billion merger. In a statement about the settlement, the attorney general's office said corrugated boxes made from containerboard are used to ship more than 90 percent of all goods nationwide.

In addition to Packaging Corporation of America, International Paper, Temple-Inland Inc. and Norampac Industries Inc., the other defendants are Cascades Inc., Domtar Corporation, Weyerhaeuser Company, Georgia Pacific LLC, WestRock RKT Company, WestRock Company, WestRock CP LLC and Tin Inc.

Ashley Furniture is represented by John Franke and Michael B. Brennan of Gass Weber Mullins LLC and William D. Beil and Brandon J.B. Boulware of German May PC.

Representatives for the parties were not immediately reachable for comment on Tuesday.

Attorney information for the defendants was not immediately available on Tuesday.

The case is Ashley Furniture Industries Inc. v Packaging Corporation of America et al., case number 3:16-cv-00469, in the U.S. District Court for the Western District of Wisconsin.

-- Editing by Marjorie Backman.