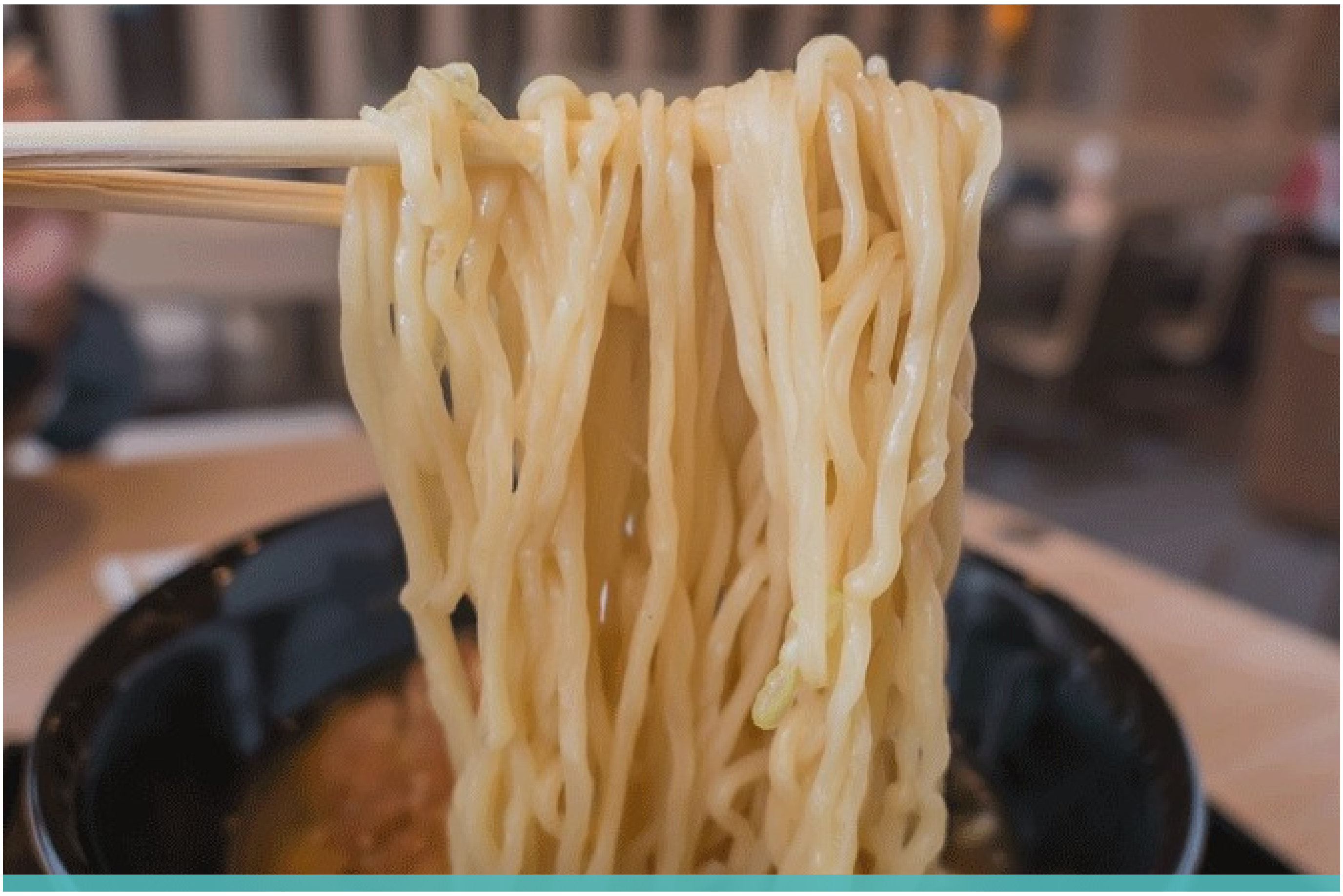
Court denies summary judgment in ramen noodle class action, price-fixing claim



Christopher G. Dean | Friday, January 12, 2018

The U.S. District Court for the Northern District of California recently denied summary judgment to two Korean companies (and their American subsidiaries) that attempted to use the Sherman Act's statute of limitations to escape a class action, price-fixing claim concerning ramen noodles. The court concluded that the evidence showing the defendants fraudulently concealed the conspiracy was sufficient to toll the Sherman Act's four-year statute of limitations.

The case, *In re Korean Ramen Antitrust Litigation*, involved an alleged conspiracy to raise the prices of ramen noodles in Korea and the United States among several makers of ramen noodles. Both direct and indirect purchasers of the ramen noodles brought a class action lawsuit against the defendants asserting a Sherman Act claim and several state law claims. The purchasers came forward with evidence that the defendants:

1. Made public, pretextual statements about the price increase of ramen noodles.
2. Altered or destroyed relevant documents.
3. Shared sensitive information about the alleged conspiracy in a way that would go undetected.

The plaintiffs initially argued the statute of limitations should be tolled under the discovery rule. Under the discovery rule, the statue of limitations does not begin to run until an injured party discovers or reasonably should have discovered his or her injury. Although a majority of circuits hold that federal antitrust claims are not subject to the discovery rule, the district court noted that the Ninth Circuit had not directly addressed the issue and that the Seventh Circuit actually applies the discovery rule to federal antitrust claims.

The district court ultimately declined to weigh in on the split regarding the discovery rule, and instead evaluated the tolling issue within the fraudulent concealment framework. Fraudulent concealment can toll an otherwise applicable statute of limitations where:

1. Defendants conceal their conduct from the plaintiffs through affirmative acts
2. The plaintiffs are actually ignorant of the wrongful conduct
3. The plaintiffs were reasonably diligent in attempting to discover the misconduct in response to information they may have received about it.

Applying this standard, the court found that the purchasers' evidence (noted above) was sufficient to demonstrate fraudulent concealment of the alleged price-fixing conspiracy, and thus the Sherman Act's statute of limitations was tolled rendering the claim timely filed.

This decision is notable for two reasons. First, it highlights the circuit split on the issue of whether the discovery rule can toll the statute of limitations for Sherman Act claims. Second, it shows that antitrust plaintiffs can, in some circumstances, use fraudulent concealment to achieve the same tolling effect. Antitrust plaintiffs faced with a statute of limitations issue therefore would be well advised to focus their investigations and discovery not just on their own lack of knowledge of the claim but also on any acts by the defendants to fraudulently conceal it.

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