

Private Equity Firm Pays \$13 Million to Resolve Allegations of Liability for Antitrust Violations by its Portfolio Company

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Private equity firms that actively manage the operations of their portfolio companies risk direct liability for the conduct of those companies. A recent multi-million-dollar class action settlement demonstrates that this risk includes potential liability for violations of the antitrust laws.

On April 18, 2019, private equity firm American Securities LLC (“American Securities”) agreed to pay \$13 million to settle antitrust claims against it as part of the *In re Liquid Aluminum Sulfate Antitrust Litigation* class action. Those claims related to allegations of fixing prices for liquid aluminum sulfate (“Alum”), a water treatment chemical.

American Securities did not itself make or sell Alum, but between 2009 and 2014 it owned General Chemical, which allegedly participated in an Alum price-fixing conspiracy with other chemical suppliers. The plaintiffs in the litigation based their claims against American Securities on the private equity firm’s allegedly active management of its portfolio company’s bidding process. Specifically, plaintiffs alleged that American Securities required General Chemical to obtain its approval for bids over a threshold amount.

American Securities moved to dismiss the complaint, but the Court denied the motion on the basis of allegations that the private equity firm was “intimately involved with the water chemical business” of General Chemical, including by reviewing and authorizing General Chemical’s bids for Alum sales. As a result, American Securities remained in the litigation, and, as discussed above, has now paid \$13 million to resolve its potential liability.

The American Securities settlement should be a warning for private equity firms that they may face direct liability for their portfolio companies’ antitrust violations if they fail to appropriately respect the corporate form. Antitrust violations can result in large corporate fines and significant civil liability, including treble damages and attorneys’ fees, as well as joint and several liability. Moreover, even when successfully defended, antitrust class actions are disruptive and expensive, with defendants frequently incurring millions of dollars in litigation costs.

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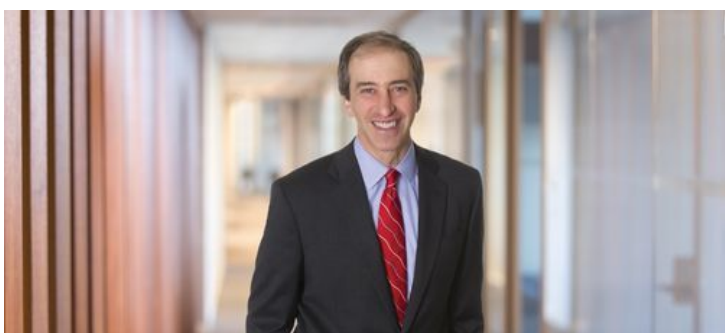
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