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# Vertical Restraints:
# Federal and State Enforcement of Vertical Issues

Written Materials
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## I. INTRODUCTION

Two events during the last year have reinforced my belief[1] that much more work needs to be done in the area of vertical enforcement, especially regarding the underlying economics.

The first event was the convening of the Antitrust Modernization Commission ("AMC"),[2] which has a somewhat uncalibrated mandate to reassess the antitrust laws.[3] It is my hope that the AMC will explore the need, and ultimately express its support, for empirical studies of the actual market impact of vertical restraints.

The second event was my participation in an American Antitrust Institute program dedicated to the works of Robert Steiner.[4] The Steiner symposium strengthened my view that there is still far too much we do *not* know about the real-world effects of vertical restraints. The program also heightened my understanding that the federal-level reluctance to engage in aggressive vertical enforcement may be attributed to an absence of actual knowledge about the harms that might be caused by vertical restraints, rather than to any actual knowledge about the benefits of vertical restraints.

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[1]Pamela Jones Harbour is a Commissioner of the Federal Trade Commission. The views expressed within these written materials are the views of the Commissioner and do not reflect the views of any other Commissioner or the Commission as a whole.

[2]Ronan P. Harty, *The Antitrust Modernization Commission: An Introduction*, ANTITRUST SOURCE (Nov. 2004), *available at* http://www.abanet.org/antitrust/source/nov04/Nov04-Harty1129.pdf.

[3]Albert A. Foer, *Putting the Antitrust Modernization Commission in Perspective*, 51 BUFFALO L. REV. 1029, 1031 (2003) (" First, the statute gives almost no direction to the focus of the AMC. It will be up to the Commission itself to define its scope and priorities.").

[4]AAI Symposium, "Combining Horizontal and Vertical Analysis in Antitrust: Implications of the Work of Robert L. Steiner" (June 21, 2004), *described at* http://www.antitrustinstitute.org/recent2/305.cfm.

[5]It is interesting to note that Congress repealed our "fair trade laws" based, in part, on findings that legally-sanctioned resale price maintenance resulted in an 18-20% increase in the prices of fair traded goods and that business failures in fair trade states were 55% higher than in non-fair trade states. SENATE COMM. ON THE J

For these reasons, I believe consumers will be better off when the antitrust laws are effectively enforced against vertical restraints of trade that might artificially foreclose legitimate consumer options.[16]

## III. VARIABILITY OF FOCUS AND OUTCOME

Product distribution is a continually evolving area of antitrust policy and legal doctrine. Tensions frequently arise because channel participants, with their inherently different views of the market, have differing expectations of what types of competition best serve their economic self-interests. Federal and state enforcers, courts and legislatures must take these differing perspectives into account whenever they deal with distribution issues and participants. At various times, any of these policymakers may make decisions that favor certain channel participants and not others. For example, legislatures have been known to attempt to tip the scales in favor of one or another set of market players.[17] The courts, in turn, have been equally inconsistent in their approach to vertical issues.[18]

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[16]*E.g.*, Grimes, *supra* note 11, at 853 ("Vertical restraints are frequently harmful to competition."). *But see* Elzinga, *supra* note 8, at 86 ("Most of the history of antitrust against vertical arrangements . . . has had no connection to promoting competition. Thus, consumers have seen little benefit from this kind of antitrust effort and often have been harmed.").

[17]*See, e.g.*, Robinson-Patman Act, Act of June 19, 1936, Ch. 592, 49 Stat. 1526, 15 U.S.C. §§ 13, 13a, 13b, 21a (prohibits discrimination in price); Petroleum Marketing Practices Act, Act of June 19, 1978, Pub. L. 95-297, 92 Stat. 322, 15 U.S.C. § 2801, (governs the creation, renewal and termination of franchises to sell motor fuels); Miller-Tydings Act and McGuire Fair Trade Act, *see supra* note 5 (exempted from federal antitrust law prohibitions certain state fair trade laws allowing resale price maintenance); New Jersey Unfair Cigarette Sales Act, NJ Stat. Ann. 56:7-18, *et seq.* (prohibits sales below costs, rebates or concessions in price in the sale of cigarettes in New Jersey); NJ Stat. Ann. 56:10-27 (prohibits automobile manufacturers from making direct sales of automobiles to New Jersey consumers).

[18]*Compare* White Motor Co. v. United States, 372 U.S. 253 (1963) (non-price vertical restraints subject to rule of reason) *with* United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967) (non-price vertical restraints *per se* illegal) *and with* Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977) (non-price vertical restraints subject to rule of reason).

## A. Manufacturers, Retailers, and Consumers

Manufacturers typically wish to focus the distribution network on the competing products of other manufacturers; in the process, they seek to eliminate, insofar as permitted, competition between their own distributors with

[25]"As to diseases, make a habit of two things – to help, or at least, to *do no harm*." Hippocrates, E

Steiner's insights also resonate affirmatively with practitioners looking to actual market realities, rather than mere formalistic differences.[28] The lack of any substantial body of economic literature and scholarship on distribution issues is both troubling and curious. At a time when economic input and insights are becoming increasingly important to the contours of the law and the decisional processes of antitrust enforcement officials, this inattention to detail seems somewhat counterintuitive.

[28] *See* Eastman Kodak Co. v. Image Tech. Svcs., 504 U.S. 451, 466-67 (1992).

[29] *See, e.g.*, Robert L. Steiner, *Marketing Productivity in Consumer Good Industries – A Vertical Perspective*, 42 J. MARKET. 60, 61-62 (1978) (describing early formulation of Steiner's "single stage error").

perfectly competitive. Under that assumption, distribution can be characterized as an undifferentiated pass-through for manufacturing costs, competitive conditions, and similar characteristics. One might assume, for example, that a change in manufacturing cost would be fully reflected in the retail price paid by end-users of a consumer good. This view reflects what Steiner would label as the "single-stage" model.

imperfect competition from their counterparts, and therefore often are able to

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retailers engage in "vertical competition," by competing to perform functions such as product certification or the provision of product information.

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posits that firms at successive stages of an industry should be def-0.d as vertical competitors "when they can take sales, margins or market shares from each other."

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[30]*E.g.*, *id*. For a more recent formulation see Robert L. Steiner, *A Dual-Stage View of the Consumer Goods Economy*, 35 J. ECON. ISS. 27 (2001) [hereinafter *A Dual Stage View*].

[31]*See, e.g.*, Steiner, *Vertical Restraints*, *supra* note 27, at 157-58.

[32]*See* Comanor, *supra* note 26, at 9 (noting, after examining Steiner's contributions to antitrust scholarship, that "[t]he essential point here is that providing product information is an important economic function that demands a substantial return . . . and [that therefore] higher margins accrue to those providing the information").

[33]Steiner, *Intrabrand Competition*, *supra* note 27, at 161; Steiner, *Vertical Restraints*, *supra* note 27, at 158-60; Steiner, *Third Relevant Market*, *supra* note 27, at 721-25. *See also id.* at 724 (describing vertical competition as "the contest between a manufacturer and his retailers to obtain a larger share of a brand's retail price").

[34]*E.g.*, Steiner, *A Dual-Stage View*, *supra* note 30.

Unlike advocates for the Chicago School,[35] Steiner believes that certain vertical restraints, particularly non-price distribution restraints, frequently result in anticompetitive effects. He claims that vertical restraints and the elimination of intrabrand competition can be economically harmful, especially when done by manufacturers with market power. He also suggests that manufacturers may voluntarily adopt harmful vertical restraints without reaching agreement with their distributors.[36] Additionally, he claims that the conjunction of price and non-price restraints – such as a combination of exclusive dealing and resale price maintenance – may be especially anticompetitive. Pervasive exclusive dealing may lead to a diminution of interbrand competition, such that attendant resale price maintenance would substantially raise consumer prices. Steiner posits an effect whereby retailer margins would increase and retail price-cutting would be eliminated via resale price maintenance, while the pervasive exclusive dealing would suppress competition from existing brands and also impede entry opportunities for new entrants.[37]

There are fundamental differences between the views of Steiner and the Chicago School. Steiner believes in the concept of intrabrand "vertical competition" between retailers and manufacturers,[38] in contrast to current economic thinking, which tends to view firms at successive stages of the

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[35]The Chicago School has long held the position that vertical restraints generally are efficient. For some representative statements of this view see ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 288 (revised ed. 1993) ("Analysis shows that every vertical restraint should be completely lawful"); RICHARD A. POSNER, ANTITRUST LAW 171-89 (2d ed. 2001) (arguing that distribution restraints are generally efficient); Richard A. Posner, *The Next Step in the Antitrust Treatment of Restricted Distribution: Per Se Legality*, 48 U. CHI. L. REV.6 (1981).

[36]*E.g.*, Steiner, *Intrabrand Competition, supra* note 27.

[37]Robert L. Steiner, *Exclusive Dealing + Resale Price Maintenance: A Powerful Anticompetitive Combination* (2004) (unpublished manuscript on file with author).

[38]*See* Steiner, *Intrabrand Competition, supra* note 27, at 161; Steiner, *Vertical Restraints, supra* note 27, at 158-60; Steiner, *Third Relevant Market, supra* note 27, at 721-25. *See also id.* at 724 (describing vertical competition as "the contest between a manufacturer and his retailers to obtain a larger share of a brand's retail price").

[39]*See, e.g.*, Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717, 730 n. 4 (1988) (stating that "all anticompetitive effects are by definition horizontal effects"); Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 56 (1977) (citing various Chicago School proponents for the proposition that, as a general matter, the interests of manufacturers and retailers are aligned); William F. Baxter, *The Viability of Vertical Restraints Doctrine*, 75 CALIF. L. REV. 933, 937-38 (noting that, because of the complementary nature of vertical relationships, "scenarios that involve a firm or firms at one level of activity using vertical restraints deliberately to confer market power on firms at an adjacent level are inherently suspect"). *See also* Steiner, *Third Relevant Market, supra* note 27, at 722 (recognizing his fundamental divergence from the accepted economic wisdom and noting that "[t]he complementary nature of firms at successive stages is a given in law and economics. The competitive dimension of the relationship is not generally recognized and is often flat out denied . . .").

[40]*See* Robert L. Steiner, *The Inverse Association Between the Margins of Manufacturers and Retailers*, 8 REV. INDUS. ORG. 717 (1993) (citing empirical evidence from his own and others' studies in the food, toys, prescription drugs, and apparel industries. *See also* Michael P. Lynch, The "Steiner Effect": A Prediction from a Monopolistically Competitive Model Inconsistent with any Combination of Pure Monopoly or Competition, Working Paper 141, FTC

> The biggest danger presented by post-Chicago antitrust economics is . . . that antitrust tribunals will be confronted with antitrust solutions that they are not capable of administering. Indeed, the major shortcoming of post-Chicago antitrust analysis is its failure to take seriously problems of judicial or agency administration.

Herbert Hovenkamp, *Post-Chicago Antitrust: A Review and Critique*, 2001 COLUM. BUS. L. REV. 257, 269 (2001).

[42]*See supra* note 35.

[43]The Type I/Type II terminology has been borrowed by antitrust scholars from the behavioral sciences, where it is used to define possible errors in determining whether there is a relationship between variables in the population from which sample data are drawn. *See, e.g.*, ROBERT ROSENTHAL & RALPH L. ROSNOW, ESSENTIALS OF

vertical enforcement will remain uncertain unless and until antitrust scholars make an affirmative effort to intensify and refine their empirical study of vertical effects.[45] This debate needs to be moved from the theoretic, the assumed and presumed into the world of the known. For that to happen, considerable scholarship and effort needs to be invested into this area. I, for one, believe that this task would be greatly aided by well-focused public law enforcement efforts. It is also an area of concern which I have asked the AMC to address.

If public antitrust enforcement is going to live up to the charge given by Hippocrates we need to know a great more than we do today. Regardless of outcome, at the end of the day, I want to be able to say that the Federal Trade Commission had an effective program of vertical restraint enforcement during my tenure. I also want to be able to say, with a good deal of conviction, that we did "no harm" in the process.

## V. PUBLIC ENFORCEMENT CASES THIS PAST YEAR

If peaks and valleys or pendulum swings are apt descriptions of the cyclical nature of things, then it would be fair to say that, in the world of public vertical enforcement, 2004 represented a valley and/or a downswing. There were no new public enforcement actions in the last year.

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harmful to competition."). *See also* Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs To Achieve Power Over Price*, 96 YALE L. J. 209 (1986) (describing, *inter alia*, vertical techniques that competitors successfully can employ to raise their rivals' costs and the circumstances under which success may confer on them the power to raise price); Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 ANTITRUST L. J. 513, n. 15 (1995) (citing some of the extensive literature on the related topic of the possible harmful effects of vertical mergers).

[45]A related requirement is that antitrust economists develop formal, testable models that incorporate such findings in a tractable way. *See, e.g.*, Lynch, *supra* note 26, at 25-27 (discussing this problem in the specific context of Steiner's ideas, from the point of view of a sympathetic economist).

The United States and the Federal Trade Commission filed a brief recommending that the Supreme Court deny *certiorari* in the *LePage's* case,[46] and the Court took that advice.[47] Thus, *LePage's* will not provide further insights into the legal treatment of bundled discounts.

The joint report of the FTC and the U.S. Department of Justice, summarizing the findings of the agencies' joint health care hearings,[48] reviewed the testimony relating to group purchasing organizations' contracting practices and concluded that it is unnecessary to modify the safety zone in Statement #7 of the agencies' joint Statements of Antitrust Enforcement Policy in Health Care (relating to joint purchasing arrangements among health care providers).[49] The report notes that the safe harbor only addresses potential monopsony issues and does not purport to address other alleged abuses such as tying, exclusive dealing or bundling concerns addressed by many of the hearing participants. Nor does that provision excuse price fixing, market allocation or mergers from antitrust purview. Since nothing contained in Statement #7 would limit the agencies' ability to challenge such restraints in appropriate cases, the agencies did not see any need to modify this policy statement. *Id*. at ch. 4, 46.

The states' settlement with the largest U.S. distributors of music compact discs became final and the cash and product distributions provided for in the settlement agreements were made to class members. Cash disbursements to

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[46]3M *Company v. LePage's Inc., et al.*, Dkt. No. 02-1865 (Sup. Ct. 2003).

[47]The brief urged the Court to allow the law further time to develop in the lower courts. Further details on the brief are available at http://www.ftc.gov/opa/2004/06/fyi0435.htm. 124 S. Ct. 2932 (2004) (denying *certiorari*).

[48]Fed. Trade Comm'n & Dep't of Justice, Improving Health Care: A Dose of Competition at ch. 4, 34-46 (July 2004), *available at* http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf.

[49]Dep't of Justice & Federal Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (1996), Statement 7 (Joint Purchasing Arrangements Among Health Care Providers), *available at* http://www.ftc.gov/reports/hlth3s.htm.

consumers who filed valid claims were mailed on February 20, 2004,[50] and distribution of the free CDs occurred during the summer of 2004.[51] This distribution brings closure to the $140 million dollar settlement of resale price maintenance claims against the music distributors.

## VI. CONCLUSION

On the federal side of next year's ledger, I hope to see cutting-edge initiatives that clarify the law and impose appropriate remedies. From antitrust scholars, I hope to see new empirical work emerging to inform the decisional processes of law enforcement in the vertical area. From my former state colleagues and friends, I will look eagerly for new cases with substantial recoveries, as well as, perhaps, revisions to the NAAG Vertical Restraints Guidelines, reflecting changes that have occurred since their last revisal.[52]

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[50]*See* http://www.musiccdsettlement.com/english/mainpage.htm (Feb. 19, 2004).

[51]Karin Bruilliard, *For Libraries, an Influx of Outmoded CDs: Settlement in States' Suit Against Music Industry Yields Baffling Array*, WASHINGTON POST, Sept. 5, 2004, at C1.

[52]National Association of Attorneys General, Vertical Restraints Guidelines, *available at* http://www.naag.org/issues/pdf/at-vrest_guidelines.pdf.

employers. Delta's participating dentist agreements contained MFN clauses that required each dentist to charge Delta the lowest price the dentist charged any patient or competing dental care plan. If dentists wished to reduce their fees for dental services to any other plan or patient, the MFN required them to reduce their fees to Delta as well. Before the MFN was enforced, many Arizona dentists chose to reduce their fees to participate in various competing managed-care and other discount plans. For example, at one point a competing discount plan claimed to have contracts with over 1000 participating dentists. After Delta began enforcing the MFN clauses, participating dentists refused to discount their fees to non-Delta patients or competing discount dental plans because, if they did, the MFN would require them to also lower all of their fees to Delta. The consent judgment enjoined the defendant from maintaining, adopting, or enforcing a clause in dentists' contracts that would require a dentist to give the defendant the lowest fees offered to any person or dental plan.

*United States v. California SunCare, Inc.*, 1994-2 Trade Cas. (CCH) ¶ 70,843 (C.D. Cal. 1994) (final judgment).

DOJ brought charges against California SunCare, an indoor tanning products manufacturer, alleging that, from November 1992 through April 1994, the defendant entered into agreements with certain dealers to fix and maintain the resale prices of its products. California SunCare settled with DOJ and agreed to refrain from price-fixing, announcing a pricing policy, or threatening to terminate or actually terminating for non-compliance with suggested retail prices for a period of five years.

*Keds Corporation,* 117 F.T.C. 389 (1994) (consent order).

The Commission settled charges that Keds Corporation allegedly had agreed with some dealers to maintain resale prices on certain types of athletic and casual shoes, solicited commitments from dealers regarding pricing, and encouraged dealers to report noncomplying dealers. The consent order required Keds to refrain from: fixing the prices at which any dealer may advertise or sell the product; coercing any dealer to adopt or adhere to any resale price; attempting to secure commitments from dealers

about the prices at which they would advertise or sell the products; or requiring or even suggesting that dealers report other dealers who advertise or sell any Keds products below a suggested resale price. The order also required Keds to inform its dealers that they were free to advertise and sell Keds products at prices of their own choosing. For five years, the order required Keds to incorporate a similar statement in any materials sent to dealers suggesting resale prices.

*Baby Furniture Plus Association, Inc.*, 119 F.T.C. 96 (1995) (consent order).

The Commission entered a consent order with a trade association, a buying cooperative and its members for allegedly threatening to boycott children's furniture manufacturers who sold their products to discount catalog merchants. The consent order prohibited coercion of baby furniture manufacturers by means of actual or threatened refusals to deal.

*Reebok International*, 120 F.T.C. 20 (1995) (consent order).

The FTC alleged that Reebok and Rockport fixed the resale prices of their products. The settlement prohibited both companies from fixing the prices at which dealers advertised or sold athletic or casual footwear products to consumers. The settlement also prohibited the companies from coercing or pressuring any dealer to maintain or adopt any resale price, or from attempting to secure their commitment to any resale price. The order required Reebok and Rockport to inform their dealers in writing that dealers were free to advertise and sell Reebok and Rockport products at any price they chose, despite any suggested retail price established by the companies.

*United States v. Playmobil USA, Inc.*, 1995-1 Trade Cas. (CCH) ¶ 71,000 (D.D.C. 1995) (final judgment).

Playmobil USA had maintained a Retailer Discount Policy that provided for the termination of any Playmobil dealer that failed to adhere to certain Playmobil suggested price ranges. In January 1995, DOJ filed a civil suit that alleged that Playmobil enforced this policy in a manner that violated the antitrust laws by reaching agreements with some of its retailers about what their retail prices would be. DOJ and Playmobil entered a settlement

decree prohibiting Playmobil from reaching agreements with its dealers on retail price levels, and also from threatening dealers with termination for discounting off the retail price.

*Onkyo U.S.A. Corporation*, 1995-2 Trade Cas. (CCH) ¶ 71,111 (D.D.C. 1995) (final judgment).

Onkyo U.S.A. Corporation, a manufacturer of audio components, agreed to settle FTC charges that it violated a 1982 FTC order under which it agreed not to fix prices or engage in unlawful resale price maintenance. The complaint alleged that Onkyo sales representatives violated the terms of the order by: agreeing with a dealer to establish resale prices for the Onkyo products the dealer outlets sold to consumers; requesting that the dealer adhere to specified resale prices or price levels, informing the dealer that its prices were too low; directing the dealer to raise those prices, asking retailers to report other dealers who deviated from Onkyo's pricing policy; and responding to such deviations with threats and intimidation. Under the settlement, Onkyo paid $225,000 in civil penalties for violation of the original order.

*RxCare of Tennessee, Inc.*, 121 F.T.C. 762 (1996) (consent order).

The Commission settled charges involving the use of an MFN clause by RxCare, the leading pharmacy network in Tennessee. The Commission concluded that a most-favored-customer clause in RxCare's contracts with participating pharmacies tended to keep reimbursement rates high by discouraging selective discounting and the development of rival networks. The primary theory of the case was that the most-favored-customer provisions facilitated horizontal coordination by the pharmacists. This "facilitating practices" theory is distinct from the equally interesting"raising rivals' costs" theory behind some recent DOJ cases involving most- favored-customer provisions.

*New Balance Athletic Shoe, Inc.*, 122 F.T.C. 137 (1996) (consent order).

The Commission charged that New Balance entered into RPM agreements with some of its retailers, in which such dealers agreed to raise retail prices on New Balance’s products, maintain certain prices or price levels

set by New Balance, or refrain from discounting New Balance's products for a certain period of time. New Balance induced dealers to enter into these agreements by monitoring retailer prices, threatening to terminate or suspend shipments to discounting retailers, and demanding that retailers raise their prices. New Balance also assured retailers that New Balance would secure similar price agreements from other competing retailers or otherwise prevent unapproved discounting of New Balance athletic shoes. The settlement prohibited New Balance from fixing or controlling the prices at which retailers could sell the company's athletic footwear.

*American Cyanamid Corp.*, 123 F.T.C. 1257 (1997) (consent order).

*In the Matter of Capitol Records, Inc., d.b.a. "EMI Music Distribution" et al.*, 65 Fed. Reg. 31319 (May 17, 2000) (proposed consent agreements).

The Commission settled charges that the five largest manufacturers of CDs and the three largest distributors of CDs entered into MAP agreements to fix CD prices at higher than competitive levels, thereby forcing retailers to charge higher CD prices to consumers.

*Toys R Us, Inc. v. FTC*, 221 F.3d 928 (7th Cir. 2000).

A major toy retailer unlawfully enforced multiple vertical agreements in which each manufacturer promised the retailer that it would restrict distribution of its products to low-priced warehouse club stores, on the condition the other manufacturers would do the same.

## II. STATE CASES

*New York, et al v. Nintendo of America, Inc.*, 775 F.Supp. 676 (S.D.N.Y. 1991).

RPM suit against the manufacturer of Nintendo game machines, filed by all states, was settled with $5 rebate coupons distributed to over five million consumers.

*In re Clozapine Antitrust Litigation*

Fifty states and the District of Columbia obtained *parens patriae* damages and injunctive relief against an electronics manufacturer that engaged in resale price maintenance. Defendant was enjoined for five years from fixing resale prices, and also paid $7 million to settle damages and litigation cost claims.

*New York, et al v. The Keds Corp.*, 1994-1 Trade Cases (CCH) ¶ 70,549 (S.D.N.Y. 1994).

Settlement of RPM claims by 50 states and the District of Columbia against manufacturer of women's athletic shoes. Defendant was enjoined from RPM for five years, and also paid $5.7 million for states to use *cy pres* to fund charitable programs benefitting women ages 15-44. Another $1.5 million went to costs of investigation and fees.

*Pennsylvania, et al. v. Playmobil USA, Inc.*, 1995-2 Trade Cases (CCH) ¶ 71,215 (M.D. Pa. 1995).

*Texas, et al v. Zeneca, Inc.*, 1997-2 Trade Cases (CCH) ¶ 71,888 (N.D. Tx. 1997).

Settlement by 49 states and the District of Columbia of *parens patriae* damage claims for RPM by a manufacturer of crop protection chemicals. In addition to injunctive relief, the states received $3.9 million dollars, of which $1.2 was reimbursement of costs and fees and the remainder was a contribution to the states.

*In re Toys "R" Us Antitrust Litigation*

*New York et al v. Salton, Inc.*, 265 F. Supp. 2d 310 (S.D.N.Y. 2003). Settlement between 45 states, the District of Columbia and Puerto Rico of resale price maintenance charges against the manufacturer of George Foreman grills. The court-approved settlement includes injunctive provisions requiring dealers to refrain from carrying competing products and from fixing resale prices (that latter includes a five-year ban on suggesting resale prices). Additionally, the defendant will pay $8 million in consumer damages to be distributed with court approval to otherwise unfunded state-specific health and nutritional programs.

*In re Compact Disc Minimum Advertised Price Antitrust Litigation*, MDL No. 1361 (D. Me.). Settlement of state *parens patriae* claims by 43 states, as well as various private class actions, alleging resale price maintenance in the distribution of music recorded on compact discs. On June 12, 2003, the court approved a settlement of $64.3 million in cash, $75.7 million in music recordings, and an injunction substantially similar to that obtained by the FTC in its action, reported at 65 Fed. Reg. 31319 (May 17, 2000). The settlement became final and distribution occurred during 2004.