

Pressure Sensitive Labelstock Antitrust Litigation: Case Timeline

Excerpted from the “Declaration of Ira Neil Richards in Support of Motion for Final Approval of Settlements with Defendants Avery Dennison Corporation and Morgan Adhesives Company and Class Counsel’s Petition for Attorneys’ Fees, Reimbursement of Expenses and Incentive Awards,” and the court docket. Richard L. Creighton, Jr., Co-Lead Class Counsel, Keating Muething & Klekamp PLL.

FILING & CONSOLIDATION OF CASES AGAINST DEFENDANTS	
April 2003	U.S. Department of Justice announces that it has filed a complaint against Morgan Adhesives Company (“MACtac”) and its parent company, Bemis Company, Inc. (“Bemis”), UPM-Kymmene Corporation (“UPM”) and Raflatac, Inc., seeking to enjoin the sale of MACtac to UPM (the “Merger Case”).
May – June 2003	Private Plaintiffs, seeking to represent similarly-situated purchasers of pressure sensitive labelstock (“PSL”), file complaints in five different federal district courts alleging that the Defendants violated federal antitrust law.
Fall 2003	The filings in multiple districts result in motion practice before the Judicial Panel on Multidistrict Litigation (“JPML”).
November 2003	After considering the arguments made in briefs and after hearing oral arguments, the JPML issues an order transferring all related actions to the United States District Court, Middle District of Pennsylvania for coordinated pretrial proceedings.
November 2003	The Court issues an order setting a status conference and requires counsel to develop and submit a proposed case management plan and an agenda for the case management conference.
December 2003	The Court issues an order appointing lead and liaison counsel for Plaintiffs and establishes a schedule for Plaintiffs to file a consolidated complaint and for Defendants to move for bifurcation or a stay of discovery.
January 2004	The Defendants file a Motion for Bifurcation and Stay of Merits-Based Discovery Pending Resolution of Grand Jury Proceedings. Plaintiffs’ Lead Counsel oppose this motion, arguing that discovery should go forward on all issues and that “class” and “merits” issues in this case do not lend themselves to easy separation.
February 2004	Plaintiffs file a Consolidated Amended Complaint asserting claims on behalf of a class of PSL purchasers during a class period beginning on January 1, 1999 and ending in 2003.
March 2004	Defendants Raflatac and Avery answer the Amended Complaint; Defendants Bemis and MACtac move to dismiss the Amended Complaint.
April 2004	The Court orders discovery on class certification and merits be partially bifurcated, but refuses to stay discovery pending resolution of an ongoing grand jury investigation into Defendants’ conduct.
May 2004 – April 2005	Parties engage in a lengthy discovery process; Plaintiffs’ Counsel review more than four million pages of documents produced by Defendants and third parties. Class Representatives submit to depositions.

May 2005	Plaintiffs file a Motion for Leave to File a Second Amended Complaint based on facts discovered to-date. The amended complaint extends the class period back to Jan. 1, 1996, and provides detailed allegations concerning Defendants' alleged anticompetitive conduct, particularly the alleged agreement concerning Avery's agreement to purchase UPM's label papers in return for delaying Raflatac's U.S. expansion plans. Defendants subsequently oppose the motion to amend the complaint, arguing, among other things, that the proposed amendments materially change Plaintiffs' claims and impose discovery burdens on Defendants.
January 3, 2006	The Court approves the filing of a Second Amended Complaint.
CLASS CERTIFICATION	
July 2006	All discovery related to the issue of class certification closes.
August 2006	Plaintiffs' Lead Counsel file their motion for class certification asking the Court to certify a class of all direct purchasers of PSL from Defendants for a class period from Jan. 1, 1996 to July 25, 2003. The motion also asks the Court to certify as class representatives Scranton Label, Inc., Bertek Systems, Inc., McCarty Printing Corporation, Glenroy Inc., and Pamco Printed Tape & Label Co.
November 2006	Defendants file papers opposing class certification.
December 2006	Plaintiffs file a reply brief in support of class certification.
January 2007	Defendants file a sur-rebuttal brief.
February 2007	Plaintiffs respond to Defendants' sur-rebuttal brief.
March 2007	The parties present oral argument on the class certification issue.
September 2007	Defendants Bemis and MACtac file another motion to dismiss and seek to delay a ruling on class certification while the Court considers the new motion to dismiss.
April 11, 2007	Court grants the motion. Consistent with the Court's order and with the order the same day preliminarily approving the settlement with UPM and Raflatac, notice in the Court-approved form was mailed and published.
SETTLEMENT WITH UPM & RAFLATAC	
November 2007	After extensive negotiations, Plaintiffs and UPM and Raflatac entered into a settlement agreement. Under the terms of the settlement agreement, UPM paid \$8.25 million into an escrow fund for the benefit of the Class, agreed to provide significant cooperation to the Class, and withdrew from Defendants' then-pending Rule 23(f) petition.
CLASS CERTIFICATION	
November 2007	The Court issues an order certifying a class of direct purchasers of paper-based and film-based PSL from Defendants from January 1, 1996 to July 25, 2003.
November 2007	Defendants file a petition with the Third Circuit Court of Appeals seeking immediate appellate review of the Court's class certification order.
March 2008	Third Circuit denies Defendants' petition for appeal of class certification.

June 2008	The Court issues an order dismissing the claims against Defendant Bemis (the parent company of MACtac) but not the claims against MACtac. MACtac immediately files a motion asking the Court to reconsider its order or alter it so that MACtac can pursue an immediate appeal. The Court denies MACtac's motion.
July 2008	The Court enters an order setting a schedule for merits discovery extending into June 2009.
August 2008	The Court gives final approval to the settlement with Defendants UPM and Raflatac.
January 2009	Defendants Avery and MACtac file a motion to decertify the Class and to stay merits of discovery while the motion to decertify remains pending. The Court quickly denies the request to stay discovery and sets a briefing schedule for the motion to decertify.
March 2009	Lead Counsel file Plaintiffs' opposition to the decertification motion.
SETTLEMENTS WITH AVERY & MACTAC	
March 2009	Despite several earlier failed efforts at settlement, the Plaintiffs and Avery agree to participate in mediation, retaining Kenneth R. Feinberg, a mediator with substantial experience in complex disputes, including antitrust matters.
March 2009	Kenneth Feinberg conducts an in-person mediation in Washington, D.C. Initially, the mediation meetings are extremely contentious and terminate without agreement. However, Mr. Feinberg conducts additional separate discussions with Lead Counsel and with Avery which eventually produce an agreement that Avery will pay \$36.5 million to settle.
April 2009	Plaintiffs arrange for UPM to produce a key witness from Finland for a deposition in Washington, D.C.
April 2009	Plaintiffs reach a settlement agreement with MACtac for \$1.25 million.
June 2009	The Court preliminarily approves the Settlements and authorizes Lead Counsel to disseminate notice of the Settlements to the Class.
Summer 2009	Plaintiffs' Lead Counsel arrange for notice of the proposed Settlements to be given to the Class along with the advice that Class members can object to any portion of the Settlements or Counsel's request for attorneys fees.
COURT APPROVES FINAL SETTLEMENTS	
September 17, 2009	After a hearing in Scranton, the Court, noting that no Class member objects to any aspect of the Settlements or the requests for attorneys' fees and expenses, gives its final approval to the Settlements with Avery and MACtac. A few days later, the Court approves the request for attorneys' fees and costs.