Opt-Out Antitrust Litigation

Class action notices are appearing on the desks of corporate counsels with increasing frequency. Some of the notices may involve products or services that are a small part of a corporation’s business and promise little tangible return. Others may represent substantial revenue enhancing opportunities, particularly in antitrust class actions.

When an important business relationship or significant dollars are at stake, a corporation should not just sit on the sidelines and allow class counsel to represent its interests. Collaboration with experienced antitrust counsel who will look out for the company’s unique interests and maximize its return on the litigation above and beyond any class settlement is imperative.

For many years, Butler Rubin has helped corporate counsel and their organizations assess opt-out risks and rewards, and make well-informed decisions about whether or not to opt-out of antitrust class litigation.

Opt-Out Assessment

Many opt-out decisions need to be made quickly and without complete information. Using its expertise, Butler Rubin helps clients make accurate assessments of the potential upside to opting out of an antitrust class action. Key questions in this stage of the process include: How much of the product did your company purchase during the period of alleged conspiracy? Were the purchases from the defendants or from other suppliers? What happened to the prices your company paid for the product during the alleged conspiracy? What business relationships does the company have with the defendants that may impact your decision to sue rather than remain in the relative anonymity of the class?

Risk/Reward Review

Conducting a quick-look analysis, often with evaluating the assistance of economic experts, is critical to the risk/reward in proceeding as an opt-out plaintiff. Butler Rubin helps clients analyze: Is the proposed class settlement fair to you given what is known about the merits of the case? How much will it cost in terms of attorney’s fees, litigation expenses and company time to litigate the case on your own or as part of a direct action plaintiff group? What is the likely recovery in the class versus as an opt-out?

Experienced Counsel

Butler Rubin has served as trial counsel in some of the most significant opt-out antitrust litigation to date, including In Re: Linerboard Antitrust Litigation and In Re: Vitamins Antitrust Litigation. We work with industry experts to provide a look at what damages and recoveries are possible. We closely monitor antitrust enforcement efforts and class action litigation to spot revenue enhancing opportunities for clients.

For more information about opt-out antitrust litigation, contact Butler Rubin partner Jim Morsch at 312-696-4457 or jmorsch@butlerrubin.com.