The Effect of *Twombly/Iqbal* & Newly Rigorous Class Certification Standards on the Substantive Viability of Class Actions in Federal Court

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RAISING THE BAR TO FEDERAL COURT RELIEF:

THE EFFECT OF *TWOMBLY/IQBAL* AND NEWLY RIGOROUS CLASS CERTIFICATION STANDARDS ON THE SUBSTANTIVE VIABILITY OF CLASS ACTIONS IN FEDERAL COURT

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The modern class action in federal court is of relatively recent vintage. It was born with the 1966 amendments to the Federal Rules of Civil Procedure. Congress had approved the first Federal Rules of Civil Procedure in 1938, and those rules contained a precursor to the current Rule 23. But 30 years of experience with the first Rule 23 convinced the drafters of the 1966 amendments to the Federal Rules to overhaul the class action rule completely.

There were certainly many reasons to reform the first Rule 23. For example, it created three kinds of class actions denominated as "true," "hybrid" and "spurious." The categorization of a particular class action into one of these types depended upon opaque definitions of the rights at issue on the substantive claim. Perhaps the most problematic of these categories was the "spurious" class action. A plaintiff could bring a spurious class action on behalf of all potential class members who had a similar claim against a common defendant, but the judgment bound only the named parties in the litigation. Thus, potential class members could await developments in the case before deciding whether to join it. If the named plaintiffs won the case, other putative members of the spurious class could intervene under Rule 24; that rule provides a right of intervention (even after judgment) to any person "that has a claim or defense that shares with the main action a common question of law or fact." But, if the named plaintiffs lost the case, absent class members were not bound by the adverse judgment. The Supreme Court described this inequity as "one-way intervention" and said that it was a "recurring source of abuse" that led to the amendments to Rule 23 in 1966.[2] Since most class actions are filed against corporations, a principal impetus for reform of the class action device in 1966 was the limitation of corporate liability. The business community largely supported the reform.[3] With the benefit of hindsight, one can describe this circumstance as an illustration of the law of unintended consequences.

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2 Am. Pipe & Constr. Co. v. Utah, 414 U.S. 538, 547 (1974).

3 The plaintiffs' side of the bar also supported the 1966 amendments to Rule 23; it is generally agreed that the amendments were intended to provide more open access to the courts for victims of discrimination (Congress had enacted the Civil Rights Act of 1964, Pub. N. No. 88-352, 78 Stat. 241, two years earlier) and a greater likelihood of recovery to consumers whose claims were too small to pursue separately. *See*, *e.g.*, Deborah R. Hensler, *Revisiting the Monster: New Myths and Realities of Class Action and Other*

Within five years of the effective date of the Rule 23 amendments, class actions had become a major aspect of antitrust enforcement. In 1971, Professor Handler noted that "class action allegations have become the boilerplate of many, if not most, private antitrust complaints."[4] In the ensuing decades, the number of class action filings has waxed and waned within a narrow statistical band; these fluctuations in filings appear to be related to the nature and extent of government antitrust enforcement, which typically triggers class actions, and substantive developments in antitrust law that disfavor plaintiffs' cases and may have discouraged plaintiffs' lawyers from filing them.[5]

The number of antitrust class actions filed in federal court is now in decline. One account notes that, while there were 209 class action filings in 1999, that number increased to 766 by 2008, dropped to 375 in 2009 and will return to 1999 levels in 2010.[6] The question is whether this drop in filings may be caused, not by some change in antitrust law that renders the substantive claim itself less viable, but by procedural roadblocks that (for better or worse) may eliminate the claim before an adjudication on the merits.

This note examines the evidence that relatively recent changes in the rules that govern litigation practice have affected the sustainability of antitrust class actions in federal courts. The first issue is a familiar one: whether the Supreme Court's recent interpretations of Rule 8 of the Federal Rules of Civil Procedure in *Twombly* and *Iqbal* have killed federal class actions in their infancy and thus contributed to a subsequent reduction in filings. The second issue relates to the viability of the class action at its core, after it has survived the *Twombly* motion. We examine the effect on class certification decisions from two other procedural events: the 1998 amendments to Rule 23 that authorize appeals from denials of class certification decisions, and the Class Action Fairness Act, 28 U.S.C. 1332 (d),[7] which brought most indirect purchaser class actions into federal court.

The *Twombly/Iqbal* Hurdle

Large Scale Litigation, 11 DUKE L.J. COMP. & INT'L LAW 179 n.3 (2001) (citing the Working Papers of the 1966 Rules Advisory Committee on Civil Rules on Proposed Amendments to Rule 23 to the effect that the amendments to Rule 23 were designed to affect social reform).

4 Milton Handler, *The Shift from Substantive to Procedural Innovations in Antitrust Suits*, 71 COLUM. L. REV. 1, 6 (1971).

5 For an interesting examination of this topic, see Stephen Calkins, *An Enforcement Official's Reflections on Antitrust Class Actions*, 39 ARIZ. L. REV. 413 (Summer 1997).

6 Donald W. Hawthorne, *Recent Trends in Antitrust Class Action Cases*, 24 ANTITRUST 3, 58 (Summer 2010).

7 28 U.S.C. § 1332(d).

Prior to the Supreme Court's opinion in *Twombly,*[8] federal courts assessed the allegations of a plaintiff's complaint under Rule 8 of the Federal Rules of Civil Procedure, as the Supreme Court interpreted it in *Conley v. Gibson.*[9] There, the Supreme Court construed Rule 8 to prohibit dismissal of a plaintiff's complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[10] Thus, an antitrust plaintiff could force the defendants to engage in lengthy and expensive discovery without regard to whether its factual allegations, even if true, would get it to a jury.

The Supreme Court's *Twombly* opinion changed this dynamic. The Court held there that an antitrust complaint under Section 1 of the Sherman Act "must contain enough factual matter (taken as true) to suggest that an agreement was made," thus rendering such a complaint "plausible on its face" and entitling the pleader to discovery. The Court made no attempt to conceal its view that the aim of its decision was to prohibit plaintiffs who ultimately could not survive summary judgment from wasting the parties' and the courts' limited resources in years of costly discovery.[11] Two years later, in *Iqbal,*[12] the Supreme Court strengthened its directive to district courts to act as federal court gatekeepers, holding that an assessment of the plausibility of a claim for relief "requires the reviewing court to draw on its judicial experience and common sense."[13] Thus, a district court judge may decide whether a plaintiff can proceed with a case based, in part, upon the judge's own internal compass and not solely on whether a plaintiff has alleged facts that, if taken as true, state a claim. So, the question is whether these new standards have enhanced the rate of dismissals of antitrust class actions on 12(b)(6) motions.

It is difficult to obtain complete data specific to antitrust class actions but we can draw some conclusions from more general studies of the disposition of cases post-*Twombly* and *Iqbal*. Patricia Hatamyar has recently published an extensive empirical study of the *Twombly/Iqbal* effect.[14] Professor Hatamyar selected a sample of 1,039 cases in which defendants filed Rule 12(b)(6) motions between May 2005 (two years before *Twombly*) and August 2009 (two years after *Twombly* and three months after *Iqbal*), and developed a multinomial regression (using the ruling on the motion as the dependent variable). The regression results show that the rate of

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8 Bell Atl. Corp. v. Twombly, 550 U.S. 554 (2007).

9 355 U.S. 41 (1957).

10 *Id*. at 46-47.

11 See *Twombly*, 550 U.S. at 558-59, discussing increases in judicial caseload and the costs of antitrust discovery.

12 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009).

13 *Iqbal* was a civil rights case, and, as such, settled the question whether the Court intended *Twombly*'s construction of Rule 8 of the Federal Rules of Civil Procedure to apply to all federal claims or only to antitrust claims under Section 1 of the Sherman Act. Prior to *Iqbal*, federal courts had applied *Twombly*'s plausibility standard to all aspects of an antitrust complaint. *See*, *e.g*., Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc., 129 S. Ct. 1109, 1123 (2009) (requiring Section 2 complaint to meet the plausibility standard).

14 Patricia W. Hatamyar, *The Tao of Pleading: Do* Twombly *and* Iqbal *Matter Empirically?*, 59 AM. U. L. REV. 553 (2010).

granting such motions increased 4% after *Twombly* (from 46% to 48% of rulings), but 21% after *Iqbal* (from 46% to 56%). The results also show that the odds that a court will grant a 12(b)(6) motion were 1.81 times greater under the *Twombly* standard than under the *Conley* standard, holding all other variables constant. Under the *Iqbal* standard, the odds that a court will grant 12(b)(6) motion were over four times greater than under the *Conley* standard, again, holding all other variables constant. The results are statistically significant.

The regression results reflect the rates of dismissals of all types of federal claims. But Professor Hatamyar also presents raw data regarding the dismissals of cases on the basis of their subject matters. She concludes that the percentage of motions granted in antitrust cases is above the average of the grants of such motions across all types of suits[15]

A study that focused solely on antitrust cases reached similar results.[16] This study examined rulings on 12(b)(6) motions in 170 antitrust cases between May 2007 and January 2010. It concludes that the rate of the granting of such motions in antitrust cases generally is almost 2:1 (65.3%) since *Twombly*. Courts of Appeal affirmed these dismissals in 86% of the cases that reached them. Finally, a study that focused solely on the rate of dismissal among 121 antitrust class action clusters since *Twombly* and *Iqbal* between May 2007 and January 2010 found that courts granted them in about half of the pending cases.[17]

An Informal Survey Of Results

We also examined *Twombly* decisions from May 2007 to the present. The results are set forth in Appendix A. We found that court granted these motions, in whole or in part, in slightly more than 50% of the cases.

These studies all point in the same direction: the Supreme Court's deliberate decision to make it more difficult for antitrust plaintiffs to pursue their claims has had its intended result.

Class Certification and "Rigorous Analysis"

There have been two substantive changes to class certification rules that may have affected the availability of class certification to plaintiffs who have survived the *Twombly* hurdle. The first was the 1998 amendment to Rule 23 that permitted discretionary appeals of class certification rulings. This new Rule 23(f) provided appellate courts with reviewing power over district court class certification decisions, and has led to extensive appellate jurisprudence as to the appropriate standards to use in judging such motions. Prior to this amendment, courts had struggled for over two decades with the question of the appealability of class certification orders. In 1978, the Supreme Court rejected the holdings of several circuit courts that plaintiffs could appeal the denial of a class certification motion as a final order under 28 U.S.C. § 1291 upon a

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15 *Id*. at 627, App. Table B.

16 Heather Lamberg Kafele & Mario M. Meeks, *Antitrust Digest: Developing Trends and Patterns in Federal Antitrust Cases after* Bell Atlantic Corp. v. Twombly *and* Ashcroft v. Iqbal (April 2010), http://www.shearman.com/files/upload/AT-041910-Antitrust-Digest.pdf.

17 *See* Hawthorne, *supra* note 6, at 58.

finding that the denial would sound the "death knell" to the case, or under the "collateral order" doctrine.[18] As a result, appeals of class certification orders arose very rarely; they either required satisfaction of the interlocutory appeal standard of 28 U.S.C. § 1292(b) or the grant of a mandamus petition. Rule 23(f) gives courts of appeal unfettered discretion to accept appeals from either the grant or the denial of class certification.

The increased appellate consideration of class certification motions has resulted in a change in the standards employed to determine class certification motions. In the decades following the 1966 amendments to Rule 23, courts generally granted motions to certify classes in antitrust cases, especially those involving allegations of horizontal price fixing.[19] District courts interpreted the Supreme Court's holding in *Eisen v. Carlisle-Jacquelin*[20] that Rule 23 does not permit a preliminary inquiry into the merits at the class certification motion to preclude them from considering defendants' evidence that a plaintiff class had not identified any methodology of proving impact and damages using common proof.[21] However, the *Eisen* holding, so interpreted, conflicted with a later Supreme Court pronouncement in a class certification case in *General Telephone Co. of the Southwest v. Falcon*[22] that courts must apply a "rigorous analysis" to class certification motions. As more circuit courts considered class certification appeals following the adoption of Rule 23(f), more of them have embraced the "rigorous analysis" test. This change was predicted to result in a greater rate of denial of class certification motions even in direct purchaser cases.[23]

CAFA and Indirect Purchaser Cases

The second development that may affect the viability of class certifications in antitrust cases was the 2005 passage of the Class Action Fairness Act ("CAFA"), now codified as 28 U.S.C. 1332 (d) *et. seq*. CAFA was enacted to reduce "abuses of the class action device" that "harme[d] class members," "adversely affected interstate commerce," and "undermined public respect" for the judicial system.[24] Among other problems, Congress found that settlements involve "little or no recovery for the class members themselves," while the class lawyers "receive excessive attorneys' fees."[25] Congress also found that plaintiffs' use of state—rather than federal—courts to prosecute class actions harmed defendants because, among other reasons,

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18 *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978).

19 *See, e.g.,* ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS 901 n.543 (6th ed. 2007) (collecting cases).

20 417 U.S. 156 (1974).

21 Ian Simmons et al., *Without Presumptions: Rigorous Analysis in Class Certification Proceedings*, 21 ANTITRUST 3 (Summer 2007).

22 457 U.S. 147 (1982).

23 Simmons, *supra* note 21, at 64; *see also* Ian Simmons, *Rigorous Analysis in Antitrust Class Certification Rulings: Recent Advances on the Front Line*, 23 ANTITRUST 1 (Fall 2008).

24 S. Rep. No. 109-14, at 29 (2005).

25 *Id*. at 14.

state courts sometimes act in ways that demonstrate bias against out-of-state defendants.[26] Congress sought to cure these perceived ills by giving the federal courts original jurisdiction over most class actions.

CAFA was significant in antitrust cases because of the growth of antitrust class actions in state courts after the Supreme Court's holding in *Illinois Brick v. Illinois*[27]. There, the Court held that only direct purchasers could sue antitrust defendants under Section 4 of the Clayton Act. This ruling had the effect of eliminating consumer class actions against antitrust defendants under the Sherman Act. As a result, many states adopted so-called *Illinois Brick* repealers, providing their citizens with a right to sue their remote sellers under state antitrust law. The Supreme Court (somewhat surprisingly) legitimized these repealers in *California v. Arc America Corp*.[28]

Initially, state courts confronted with class certification motions in antitrust indirect purchaser cases largely denied them, even in cases in which the federal courts, consistently with class certification standards at the time, had certified them. A seminal study of indirect purchaser lawsuits in state court by William H. Page in 1999 concluded that most state courts denied class certification motions, finding that issues common to the class did not predominate over individualized questions of impact and damages.[29] He attributed this difference to the fact that "the problem of proof in an indirect purchaser case is intrinsically more complex, because the damages model must account for the action of innocent intermediaries who allegedly passed on the overcharge."[30]

However, the same commentator observed a substantial change in the rate of state court class certifications after the government's successful monopolization case against Microsoft.[31] Following that ruling, plaintiffs filed consumer suits against Microsoft in most states. Professor Page found that state courts had overwhelmingly certified these indirect purchaser cases against Microsoft, even if they had denied them in other contexts.[32] While his earlier study showed a 37% rate of class certifications in indirect purchaser cases, those same courts certified almost 80% of the cases against Microsoft. Perhaps it is not a coincidence that these certifications directly preceded CAFA's passage.[33]

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26 *Id.* at 8.

27 431 U.S. 720 (1977).

28 490 U.S. 93 (1989).

29 William H. Page, *The Limits of State Indirect Purchaser Suits: Class Certification in the Shadow of* Illinois Brick, 67 ANTITRUST L.J. 1 (1999).

30 *Id*. at 12.

31 William H. Page, *Class Certification in the Microsoft Indirect Purchaser Litigation*, 1 J. OF COMPETITION L. & ECON. 2, 303 (June 2005).

32 *Id*. at 12.

33 See, for example, Judge Alsup's discussion of this coincidence in *In re GPU Antitrust Litigation*, 253 F.R.D. 478 (N.D. Cal. 2008).

An Informal Survey Of Results

We examined class certification decisions in direct and indirect purchaser cases from 2005 through 2010 in an effort to determine whether federal court application of the rigorous analysis standard in assessing class certification motions has had a differential effect on the two types of putative class motions. The results are displayed in Appendix A. We found fourteen cases that considered motions to certify direct and indirect purchaser putative classes. In four of those cases, the courts certified the direct class and denied certification to the indirect class. In another four cases, the court denied both certification motions. Three other cases (*Intel, Flash Memory* and *New Motor Vehicles)* involved only motions to certify indirect purchaser classes and the courts denied two of those; also, a Special Master has recommended denial of class certification in the *Intel* case. Thus, courts have denied eleven of the seventeen indirect purchaser certification motions (64.7%) that we have identified in the years since CAFA has brought them into federal court. In contrast, courts granted direct purchaser certification in twenty-one out of the thirty cases that presented such motions, or 70% of them.

These results directionally support the theory that indirect purchaser class certification motions are more vulnerable to denial in federal courts because of the application of the federal rigorous analysis standard. They are even more vulnerable than they were when state courts considered indirect purchaser class certification motions before the Microsoft certifications changed the balance there.

In addition, the results support the findings of others that the application of the "rigorous analysis" standard to class certification motions in direct purchaser cases has not significantly affected the willingness of courts to certify them. Our informal survey results are consistent with the policy considerations that supported *Illinois Brick*, particularly the conclusion that an antitrust violation injures the direct purchasers most directly and that therefore the judicial system is best equipped to deal with that injury on a broad basis.

APPENDIX A
ANTITRUST CLASS ACTIONS IN FEDERAL COURT

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
1.	**In Re Fresh Del Monte Pineapples Antitrust Litig.,** 2008 U.S. Dist. LEXIS 18388 (S.D.N.Y. Feb. 20, 2008) **MDL** - 1628	Certification **DENIED**	Certification **GRANTED**	N/A*
2.	**In Re K-Dur Antitrust Litig.**, 2008 U.S. Dist. LEXIS 71771 (D.N.J. Mar. 27, 2008) **MDL** - 1652	Certification **DENIED**	Certification **GRANTED**	N/A
3.	**Howard Hess Dental Labs., Inc. v. Dentsply Int'l, Inc.**, 516 F. Supp. 2d 324 (D. Del. 2007), Aff'd 602 F.3d 237 (3rd. Cir. 2010)	N/R**	None	MTD **GRANTED**
4.	**California v. Infineon Technologies, AG**, No. C 06-4333 PJH, 2008 U.S. Dist. LEXIS 81251 (N.D. Cal. Sept. 5, 2008)	Certification **DENIED**	Certification **DENIED**	N/A
5.	**In Re New Motor Vehicles Canadian Exp. Antitrust**	Certification	MTD **GRANTED** on *Illinois Brick* grounds.	N/A

* This designation means that any Rule 12 Motion decision pre-dated Twombly.

** This designation means that the Court had not reached a decision on the class certification motion, or did not reach it before case terminated.

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	Litig., 2006 U.S. Dist. LEXIS 10240 (D. Me. Mar. 10, 2006); 243 F.R.D. 20 (D. Me 2007 rev'd, 522 F.3d 6 (1st. Cir. 2008).**MDL** - 1532	**REVERSED**	307 F. Supp. 2d 136 (D. Me. 2004)	
6.	**In Re Pressure Sensitive Labelstock Antitrust Litig.**, 2007 U.S. Dist. LEXIS 85466 (M.D. Pa. Nov. 19, 2007); 566 F. Supp. 2d 363 (M.D. Pa. 2008) **MDL** - 1556	None	Certification **GRANTED**	MTD **GRANTED**
7.	**In Re Travel Agent Commission Antitrust Litig.**, 2007 U.S. Dist. LEXIS 79918 (N.D. Ohio Oct. 29, 2007); aff'd, 583 F.3d 896 (6th Cir. 2009) **MDL** - 1561	None	N/R	MTD **GRANTED**
8.	**In re Wellbutrin S.R. Antitrust Litigation,** 2008 U.S. Dist LEXIS 36719 (E.D. Pa. May 2 2008); 2010 U.S. Dist. LEXIS 93520 (E.D. Pa. Sept. 7, 2010)	Certification **DENIED**	Certification **GRANTED**	N/A
9.	**Columbus Drywall & Insulation, Inc. v. Masco Corp.**, 258 F.R.D. 545 (N.D. Ga. 2007)	N/R	Certification **GRANTED**	N/A
10.	**Teva Pharms. USA, Inc. v.**	Certification	Certification **GRANTED**	N/A

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	Abbott Labs., 252 F.R.D. 213 (D. Del. 2008)	**GRANTED**		
11.	**In Re Plastics Additives Antitrust Litig**., 2010 U.S. Dist. LEXIS 90135 (E.D. Pa. Aug. 31, 2010)	N/R	Certification **DENIED**	N/A
12.	**In Re Parcel Tanker Shipping Servs. Antitrust Litig**., 541 F. Supp. 2d 487 (D. Conn. 2008) **MDL** - 1568	None	N/R	MTD **GRANTED**
13.	**In Re EPDM Antitrust Litigation 256 F.R.D. 82 (D. Conn. 2009)**	N/R	Certification **GRANTED**	N/A
14.	**Somers v. Apple, Inc**., 258 F.R.D. 354, 2009 U.S. Dist. LEXIS 61703 (N.D. Cal. 2009); *Apple iPod iTunes Anti-Trust Litig. v. Apple, Inc*., 2010 U.S. Dist. LEXIS 64772 (N.D. Cal. June 29, 2010))	Certification **DENIED**, but **GRANTED** IP class leave to file an amended complaint	Certification **GRANTED**	MTD **DENIED**
15.	**In Re Hydrogen Peroxide Antitrust Litig**., 552 F.3d 305 (3d Cir. Pa. 2008 **MDL**-1682	N/A	Certification **REVERSED**	
16.	**In Re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,** 2010 U.S. Dist. LEXIS 89275 (E.D.N.Y. Aug. 27, 2010);	N/R	N/R	MTD **GRANTED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	MDL- 1720			
17.	**Jabo's Pharm., Inc. v. Becton Dickinson & Co. (In Re Hypodermic Prods. Antitrust Litig.)**, Case No. 05-CV-01602, 2007 U.S. Dist. LEXIS 47438 (D.N.J. June 29, 2007) (Motion to Dismiss); Case No. 05-CV-01602 (D.N.J. Sept. 30, 2010) (D.I. 392) (Motion to Certify)	N/R	Certification **DENIED.**	MTD **DENIED**
18.	**In Re Insurance Brokerage Antitrust Litigation** MDL-1663, j2010 U.S. App. LEXIS 17107 (3rd Cir. Aug. 16, 2010)	N/R	N/R	MTD **DENIED**
19.	**Am. Seed Co. v. Monsanto Co.,** 238 F.R.D. 394, 397 (D. Del. 2006); aff'd, 271 Fed. Appx. 138 (3d Cir. Del. 2008) (affirming district court's denial of class certification)	Certification **DENIED**	Certification **DENIED**	N/A
20.	**In Re Air Cargo Shipping Servs. Antitrust Litig.,** 2008 U.S. Dist. LEXIS 107882 (E.D.N.Y. Sept. 26, 2008); MDL- 1775);	N/R	N/R	MTD **GRANTED** re: foreign plaintiffs and indirect purchasers. MTD **DENIED** re: direct purchasers
21.	**In Re Rail Freight Fuel Surcharge Antitrust Litig.,** 587 F. Supp. 2d 27 (D.D.C. 2008);	N/R	N/R	First MTD **GRANTED**, second MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	MDL- 1869			
22.	**In Re Vitamin C Antitrust Litig**., 584 F.Supp. 2d 546 (E.D.N.Y. 2008). MDL- 1738			MTD **GRANTED**.
23.	**Temple v. Circuit City Stores, Inc.,** 2007 U.S. Dist. LEXIS 70747 (E.D.N.Y. Sept. 25, 2007)	N/R	None	MTD **GRANTED**
24.	**In Re Live Concert Antitrust Litigation,** 247 F.R.D. 98 (C.D. Cal. 2007). MDL- 1745.	None	Certification **GRANTED**	N/A
25.	**In Re Elevator Antitrust Litig**., 502 F.3d 47 (2d Cir. 2007), MDL-1644	N/R	N/R	MTD **GRANTED**
26.	**In Re Intel Corp. Microprocessor Antitrust Litig.,** MDL-1717 (D. Del. July 28, 2010, D.I. 2471)	Special Master recommended that the court reject a motion to certify a class of indirect purchasers.	AMD direct purchaser case settled	N/A
27.	**McDonough v. Toys "R" Us, Inc.,** 558 F.Supp. 2d 575 (E.D. Pa. 2008)(motion to dismiss denied); 638 F.Supp. 2d 461 (E.D. Pa. 2009) (class cert granted)	None	Certification **GRANTED**	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
28.	**In re Short Sale Antitrust Litig.**, 527 F. Supp. 2d 253 (S.D.N.Y. 2007)	N/R	N/R	MTD **GRANTED**
29.	**In Re Graphics Processing Units Antitrust Litig.,** 253 F.R.D. 478 (N.D. Cal. 2008) **MDL** - 1826	Certification **DENIED**	Certification **DENIED** for primary class of direct purchasers; **GRANTED** for limited direct-purchaser class	First MTD **GRANTED**, second MTD **DENIED**
30.	**In Re Flash Memory Antitrust Litig.**, 2010 U.S. Dist. LEXIS 59491 (N.D. Cal. Mar. 31, 2010) **MDL** - 1852	Certification **DENIED**	Certification pending (2010 U.S. Dist. LEXIS 66466 (N.D. Cal. June 9, 2010))	N/A
31.	**In Re Static Random Access Memory Antitrust Litig.**, 264 F.R.D. 603 (N.D. Cal. 2009) **MDL** - 1819	Certification **GRANTED**	Certification **GRANTED**	MTD **DENIED**
32.	**Meijer, Inc. v. Warner Chilcott Holdings Co. III**, 246 F.R.D. 293 (D.D.C. 2007)	Certification **GRANTED**	Certification **GRANTED**	N/A
33.	**In Re OSB Antitrust Litig.**, 2007 U.S. Dist. LEXIS 56617 (E.D. Pa. Aug. 3, 2007)	Certification **GRANTED** in part	Certification **GRANTED** in part	N/A
34.	**In Re Ditropan XL Antitrust Litig.,** No. M:06-CV-1761, 2007 WL 2978329 (N.D. Cal.	N/R	N/R	MTD **GRANTED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	Oct. 11, 2007) **MDL** – 1761			
35.	**Meijer, Inc. v. Abbott Laboratories,** 544 F.Supp. 2d 995 (N.D. Cal. 2008)	None	N/R	MTD **DENIED**
36.	**Rochester Drug Co. v. Braintree Lab.,** 07-142-SLR (D. Del.)	None	N/R	MTD **DENIED**
37.	**Dahl v. Bain Capital Partners, LLC**, 589 F.Supp.2d 112 (D. Mass. 2008)	None	N/R	MTD **DENIED**
38.	**In Re LTL Shipping Servs. Antitrust Litig.,** 2009 U.S. Dist. LEXIS 14276 (N.D. Ga. Jan. 28, 2009) **MDL** - 1895	None	N/R	MTD **GRANTED**
39.	**In Re Late Fee & Over-Limit Fee Litig.,** 528 F. Supp. 2d 953 (N.D. Cal. 2007)	None	N/R	MTD **GRANTED**
40.	**Behrend v. Comcast Corp.,** 532 F. Supp. 2d 735 (E.D. Pa. 2007)	None	Certification **GRANTED**	MTD **DENIED**
41.	**In Re Netflix Antitrust Litig**., 506 F. Supp 2d 308 (N.D. Cal. 2007)	None	N/R	MTD **GRANTED**
42.	**Schafer v. State Farm Fire & Cas. Co.,** 507 F. Supp. 2d 587 (E.D. La. 2007). Decided on	None	Certification **DENIED**	MTD **GRANTED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	August 22, 2007.			
43.	**Sheridan v. Marathon Petroleum Co. LLC,** 2007 U.S. Dist. LEXIS 74022 (S.D. Ind. Sept. 28, 2007); 530 F.3d 590 (7th Cir. 2008) aff'd	None	N/R	MTD **GRANTED**
44.	**In Re Household Goods Movers Antitrust Litigation,** 2009 U.S. Dist. LEXIS 108828 (D.S.C. Nov. 20, 2009); **MDL**-1865	None	N/R	MTD **DENIED**
45.	**In re Compensation of Managerial, Prof'l & Technical Employees Antitrust Litig.,** Nos. **MDL** 1471, 02-CV-2924, 2008 WL 3887619 (D.N.J. Aug. 20, 2008)	None	Certification **DENIED** twice	MTD **GRANTED**
46.	**In Re TFT-LCD Antitrust Litig.**, 267 F.R.D. 583 (N.D. Cal. 2010) **MDL** - 1827	Certification **GRANTED**	Certification **GRANTED**	MTD **DENIED**
47.	**In Re Aftermarket Filters Antitrust Litig.,** 2009 U.S. Dist. LEXIS 104114 (N.D. Ill. Nov. 5, 2009) **MDL**- 1957	N/R	N/R	MTD **DENIED**
48.	**In Re Korean Air Lines Co., Ltd. Antitrust Litig.**, 567 F. Supp. 2d 1213 (C.D. Cal. 2008);	N/R	N/R	MTD **DENIED** in part and **GRANTED** in part

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	MDL- 1891			
49.	**In Re Transpacific Passenger Air Transp. Antitrust Litig**., 536 F. Supp. 2d 1366 (J.P.M.L. 2008); **MDL**- 1913	None	N/R	MTD **DENIED**
50.	**In Re Marine Hose Antitrust Litigation (No. II) ,** No. 08-MDL-1888 (S.D. Fla. May 22, 2009) (D.I. 463) (MTD); 2009 U.S. Dist. LEXIS 71020 (S.D. Fla. Jul. 31, 2009) (class certification); **MDL**- 1888	None	Certification **GRANTED**	MTD **DENIED**
51.	**In Re Municipal Derivatives Antitrust Litigation,** 700 F.Supp. 2d 378 (S.D.N.Y. 2010); **MDL**- 1950	None	N/R	MTD **DENIED**
52.	**In Re Flat Glass Antitrust Litigation (No. II),** MDL No. 1942, 2009 U.S. Dist. LEXIS 10329 (W.D. Pa. Feb. 11, 2009); **MDL**- 1942	None	N/R	MTD **DENIED**
53.	**In Re Hawaiian and Guamanian Cabotage Antitrust Litigation**, 647 F.Supp. 2d 1250 (W.D. Wash. 2009). **MDL**- 1972	None	N/R	MTD **GRANTED**
54.	**In Re Southeastern Milk Antitrust Litig.,** 555 F. Supp.	None	Certification **GRANTED**	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	2d 934, 936 (E.D. Tenn. 2008) (MTD); 2010 U.S. Dist. LEXIS 94223 (E.D. Tenn. Sep. 7, 2010) (class certification) **MDL** - 1899			
55.	**In Re: Webkinz Antitrust Litigation,** 695 F.Supp.2d 987 (N.D. Cal. 2010); **MDL**- 1987	None	N/R	MTD **GRANTED** with leave to amend
56.	**In Re Time Warner Inc. Set-Top Cable TV Box Antitrust Litigation**, 2010 U.S. Dist. LEXIS 22369 (S.D.N.Y. 2010); **MDL** 1995	None		MTD **GRANTED** with leave to amend
57.	**In Re Digital Music Antitrust Litig.,** No. 06-**MDL**-1780, 2008 WL 4531821 (S.D.N.Y. Oct 9, 2008), rev'd, 592 F3d 314 (2nd Cir. 2010)	N/A		MTD **DENIED**
58.	**Spahr v. Leegin Creative Leather Prods. Inc.,** No. 2:07-CV-187, 2008 WL 3914461 (E.D. Tenn. Aug. 20, 2008)	N/A		MTD **GRANTED**
59.	**Thermal Techs., Inc. v. UPS, Inc.,** No. 08-CV-102, 2008 WL 4838681 (N.D. Okla. Nov. 5, 2008)	N/A		MTD **GRANTED**
60.	**In re Steel Antitrust Litigation/ Std. Iron Works v.**	None	N/R	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	Arcelormittal, 639 F.Supp. 2d 877 (N.D. Ill. 2009); Case. No. 08-5214			
61.	**Penn. Ave. Funds v. Borey,** 569 F. Supp. 2d 1126 (W.D. Wash. 2008)	None	N/R	MTD **GRANTED**
62.	**Stearns v. Select Comfort Retail Corp.,** No. 08-2746, 2010 WL 2898284 (N.D. Cal. Jul. 21, 2010)	None	Class certification **DENIED**	MTD **GRANTED**
63.	**LaFlamme v. Societe Air France**, 08-CV-1079, 2010 WL 1292262 (E.D.N.Y. Apr. 5, 2010)	None	N/R	MTD **GRANTED**
64.	**In re Currency Conversion Fee Antitrust Litig., No.** MDL 1409, 2009 WL 151168 (S.D.N.Y. Jan. 21, 2009)	None	N/R	MTD **DENIED**
65.	**Booklocker.com, Inc. v. Amazon.com, Inc.,** 650 F. Supp. 2d 89 (D. Me. 2009)	None	N/R	MTD **DENIED**
66.	**All Star Carts & Vehicles, Inc. v. BFI Can. Income Fund, IESI Corp.,** 596 F. Supp. 2d 630 (E.D.N.Y. 2009)	None	N/R	Motion **GRANTED** in part and **DENIED** in part
67.	**Wanachek Mink Ranch v. Alaska Brokerage Int'l, Inc.,**	None	N/R	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	No. C06-089, 2009 WL 1342676 (W.D. Wash. May 5, 2009)			
68.	**O'Bannon, Jr. v. National Collegiate Athletic Association, No.** 4:09-CV-03329, 2010 U.S. Dist. LEXIS 19170 (N.D. Cal. Feb. 8, 2010)	None	N/R	MTD **GRANTED** in part and **DENIED** in part
69.	**Warren Gen. Hospital v. Amgen,** Civ Act. No. 09-4935 (SRC), 2010 WL 2326254 (D.N.J. June 7, 2010)			MTD **GRANTED**
70.	**Superior Offshore International v. Bristow Group,** 1:09-CV-00438 (D. Del.)	None	N/R	MTD **GRANTED**
71.	**Johnson v. Ariz. Hosp. & Healthcare Ass'n,** 2009 U.S. Dist. LEXIS 122807 (D. Ariz. July 14, 2009); (2009 U.S. Dist. LEXIS 42871 (D. Ariz., Mar. 19, 2009)) (discussing nature of purchasers)	**GRANTED** in part	Certification **GRANTED**	MTD **DENIED**
72.	**In Re AndroGel Antitrust Litig.,** 687 F. Supp. 2d 1371 (N.D. Ga. 2010); **MDL**- 2084	N/R	N/R	MTD **GRANTED** as to indirect purchasers; **DENIED** as to direct purchasers
73.	**Allen v. Dairy Farmers of America, Inc.,** No. 5:09-cv-230	N/R		MTD **GRANTED** in part and **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	(D. Vt. Aug. 30, 2010) (D.I. 95)			in part
74.	**In Re Flonase Antitrust Litig.,** 692 F. Supp. 2d 524 (E.D. Pa. 2010) 08-CV-3301	N/R	N/R	MTD **GRANTED** in part and **DENIED** in part
75.	**In Re Packaged Ice Antitrust Litig.,** 2010 U.S. Dist. LEXIS 77645 (E.D. Mich. Aug. 2, 2010); **MDL** - 1952	N/R	N/R	MTD **DENIED**
76.	**In Re Wholesale Grocery Products Antitrust Litigation,** No. 09-MD-2090, 2010 WL 2710680 (D. Minn. Jul. 7, 2010). **MDL**- 2090	N/R	N/R	MTD **DENIED**
77.	**In Re Delta/AirTran Baggage Fee Antitrust Litigation**, Civ. Act. No. 1:09-MD-2089, 2010 WL 3290433 (N.D. Ga. Aug. 2, 2010); **MDL**- 2089	None	N/R	MTD **DENIED**
78.	**In Re Blood Reagents Antitrust Litigation**, MDL No. 09-2081, 2010 WL 3364218 (E.D. Pa. Aug. 23, 2010); **MDL**- 2081	None	N/R	MTD **GRANTED** as to Johnson and Johnson; **DENIED** as to other parties. (August 23, 1010)
79.	**In re Cox Enters., Set-Top Cable TV Box Antitrust Litig.,** 2010 U.S. Dist. LEXIS 58417	None	N/R	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	(W.D. Okla. 2010); **MDL** - 2048			
80.	**In Re Urethane Antitrust Litig.,** Nos. 04-1616-JWL, 08-2617-JWL, 09-2026-JWL, 2009 WL 3337247 (D. Kan. Aug. 14, 2009); **MDL** - 1616	None	N/R	MTD **GRANTED**
81.	**In Re Online DVD Rental Antitrust Litig.,** No. M. 09-2029, 2009 WL 4572070 (N.D. Cal. Dec. 1, 2009); **MDL** - 2029	None	N/R	MTD **GRANTED**, then **DENIED**
82.	**In Re Cal. Title Ins. Antitrust Litig.,** No. 08-01341, 2009 WL 3756686 (N.D. Cal. Nov. 6, 2009); **MDL**-1951	N/R	N/R	MTD **GRANTED**
83.	**In Re Text Messaging Antitrust Litig.,** No. 08-7082, 2009 WL 5066652 (N.D. Ill. Dec. 10, 2009); **MDL** - 1997	N/R	N/R	MTD **GRANTED**
84.	**Meyer v. Qualcomm Inc.,** No. 08-CV-655, 2009 WL 539902 (S.D. Cal. Mar. 3, 2009)	None	N/R	MTD **GRANTED**
85.	**Parsons v. Bright House Networks**, 2010 U.S. Dist. LEXIS 55277 (N.D. Ala. 2010)	None	N/R	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
86.	**Martrano v. Quizno's Franchise Co.,** No. 08-0932, 2009 WL 1704469 (W.D. Pa. June 15, 2009) (Motion to dismiss); No. 08-0932 (W.D. Pa. Dec. 23, 2008) (D.I. 23) (Motion to Certify)	None	Certification **DENIED,**	MTD **GRANTED**
87.	**Downs v. Insight Communs. Co., L.P.,** 2010 U.S. Dist. LEXIS 54577 (W.D. Ky. June 3, 2010)	None	N/R	MTD **GRANTED** with leave to amend
88.	**Bodet v. Charter Communs. Inc.,** 2010 U.S. Dist. LEXIS 87088 (E.D. La. July 26, 2010)	None	N/R	MTD **DENIED**
89.	**Scott v. Cable One, Inc.,** 2010 U.S. Dist. LEXIS 76392 (S.D. Miss. July 28, 2010)	None	N/R	Motion for summary judgment **DENIED**
90.	**In Re Apple & ATTM Antitrust Litig.,** 2010 U.S. Dist. LEXIS 98270 (N.D. Cal. July 8, 2010)	Certification **GRANTED**	Certification **GRANTED**	MTD **DENIED**
91.	**In Re Puerto Rican Cabotage Antitrust Litig.,** 2010 U.S. Dist. LEXIS 90338 (D.P.R. July 12, 2010); **MDL**- 1960	None	Class certification **GRANTED**	MTD **DENIED**
92.	**In Re Cathode Ray Tube (CRT) Antitrust Litig.,** 2010	N/R	N/R	MTD **DENIED**

NO.	CASE	IP PURCHASERS MOTION	DIRECT PURCHASERS MOTION	*TWOMBLY* MOTION
	U.S. Dist. LEXIS 98739 (N.D. Cal. Mar. 30, 2010); **MDL**-1917			
93.	**In Re Chocolate Confectionary Antitrust Litig.,** (602 F.Supp. 2d 538 (M.D. Pa. 2009) **MDL**- 1935	N/R	N/R	MTD **DENIED**
94.	**In Re Potash Antitrust Litig.,** 667 F. Supp. 2d 907 (N.D. Ill. 2009) **MDL** - 1996	N/R	N/R	MTD **DENIED**
95.	**Mayor v. Citigroup, Inc.,** 2010 WL 430771 (S.D.N.Y.)	None	N/R	MTD **GRANTED**
96.	**Marchese v. Cablevision Systems Corp**, 2010 U.S. Dist. LEXIS 85752 (D.N.J. 2010)	None	N/R	MTD **GRANTED**