

ANTITRUST LAW: CASE DEVELOPMENT AND LITIGATION STRATEGY

LW.11043.001
NYU School of Law
Spring 2018

Mondays, 4:10-6:00 pm
FH 318
Dale Collins
dale.collins@shearman.com
www.appliedantitrust.com

Class 1: Introduction to Price Fixing ([Unit 1](#))

Welcome again to the course. Links to the required reading and the class notes for the first day of class are embed in this note and also may be found on AppliedAntitrust.com. This memorandum gives you my thoughts of how you should approach these materials.

Required reading. The [required reading](#) starts with the major substantive provisions of the federal antitrust statutes (pp. 5-6). If you are used to reading modern statutes, you should find the form of the federal antitrust statutes quite interesting. The antitrust statutes enable one of the economy's most significant types of regulation, yet instead of taking 1000s of pages of text as do many modern statutes the substantive provisions of the antitrust laws take a little more than a page. You might also note that they do not give you a clue about what activities are prohibited.

In class, after some introduction to the overall structure and aims of the course, we will discuss the Indianapolis ready-mix concrete conspiracy. The Seventh Circuit's *Beaver* opinion covers the facts of the conspiracy in an unusual level of detail (pp. 7-29). In addition to being convicted of price fixing, Chris Beaver was convicted of making false statements to the FBI in violation of 18 U.S.C. § 1001 (p. 30), one of the several obstruction of justice statutes that comes up all the time in federal criminal cases and is one of several important mechanisms to ensure truthfulness and evidence integrity in federal investigations. This, by the way, is the statute to which former National Security Advisor Michael Flynn recently pleaded guilty (pp. 31-32).

Other than Section 1001, do not worry too much about the law in the opinion for the first class; we will go back and cover that in the next two classes. In this class, we will examine what the conspirators were trying to do, why they were trying to do it, and what difficulties they faced in executing their cartel agreement. The map shows the locations of the defendant ready-mix concrete plants (p. 33). The Vondrak presentation is both a quick read and a good summary of the conspiracy (pp. 34-54). (Frank Vondrak, by the way, was one of the lead Justice Department attorneys in the criminal investigation.) Be forewarned, however: the Vondrak presentation is no substitute for a careful reading of the *Beaver* opinion.

I also have included the affidavit from the FBI agent in support of the search warrants that were executed near the beginning of the investigation (pp. 55-91) as well as the FBI interview notes for Scott Hughey of Carmel Concrete (pp. 92-98). The search warrants were executed on May 25, 2004, Although Hughey was interviewed at home on that date, the notes are from a later interview in the Antitrust Division Midwest Field Office in Chicago on August 20, 2004. They are both fun reads and give some additional facts about the conspiracy.¹

¹ The interview notes of most of the other participants in the Indianapolis Ready Mix Concrete conspiracy may be found [here](#) on the Unit 3 web page.

I have included some materials on antitrust criminal investigations and search warrants (pp. 99-124). Most of the material comes from the chapter in the Antitrust Division Manual on conducting investigations, but there are also some forms Antitrust Division attorneys use for requesting FBI assistance and applying for a search warrant. There is no need to read this material in detail and you may just skim it.

Finally, I have included some selected rules from the Federal Rules of Evidence (pp. 125-29). These are worth a careful read. Be prepared to discuss in class what admissible evidence the Antitrust Division had just from Gary Matney (the cooperating witness) prior to the execution of the search warrants.

Class notes. The class notes are usually very important, since they summarize of the technical points I would like you to know, whether or not we actually discuss them in class. Sometimes the class discussion will adhere closely to the notes, while other times there will be less connection. Hopefully, you will find the notes self-explanatory, so even when we do not discuss a particular topic in class you should be able to understand it. But if you have any questions, send me an email or bring it up in class, and I will see if I can do a better job.

The [class notes](#) for the first class are a little different. The only slides you have to read are 2-3, 28-58. The slides I have excluded address the basic economics of price-fixing conspiracies, which I cover in the survey course. As many of you will recall (hopefully not too painfully), economists like to use a little math and the economics of price-fixing conspiracies is no different. If you remember your economics or your math, these slides will be straightforward and I encourage you to read them. If you don't remember your economics or math, I still encourage you to read the slides—you can ignore the math and just read the words. But again, slides 4-27 are not required. If you have questions about the economics, we can discuss them in class.

Preparing for class. In preparing for the class, keep in mind the following questions (not all of which may be answered by the materials and the class notes):

On the economics:

What were the *Beaver* conspirators trying to do?

What did they agree to do?

What was their plan to implement their agreement (and why did they implement when they did)?

What does economic theory say about the likelihood that the conspirators will be successful over the long-run in implementing their agreement? Do we see that problem in the *Beaver* conspiracy?

How successful were the conspirators in implementing their agreement?

On the public policy:

Why should society be concerned about what the *Beaver* conspirators were trying to do?

How does the Sherman Act address these policy concerns?

On the investigation process (which we may not reach in the first class):

How did the DOJ learn about the existence of the Indianapolis conspiracy? Who told the DOJ? What motivated them? What happened to the informant and his company?

What did the DOJ do after it found out about the conspiracy?

What was the involvement of the FBI?

To what extent can Gary Matney of Prairie Materials testify about what Scott Hughey of Carmel Concrete told him about Hughey' involvement in the conspiracy? About what Hughey told him about the involvement of others in the conspiracy?

You can find all of the required reading and the class notes for Unit 1 on AppliedAntitrust.com.² Take a look at the page and note the supplemental and reference materials that are included. I suspect that you will not have the time to read any of the extra materials, but you may it helpful at some point to know that they exist. In particular, I am trying to collect the important court filings for each of the cases we will discuss in class, but this is a work in progress.

Finally, if you have a moment, take a look at the [basic antitrust reference materials page](#) on AppliedAntitrust.com. It contains numerous links you might find of interest.

If you have any questions or comments, send me an e-mail. See you on Tuesday, January 16.

Dale

P.S. You might also take a look at a short note on what I think is important in [reading cases](#), which you might find helpful as the course proceeds. Finally, I have a couple of PowerPoint slides for a [refresher on U.S. antitrust institutions](#).

² They will also be posted on Canvas.