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## International Paper, Others Can't Dodge Antitrust Suit

By **Bibeka Shrestha**

Law360, New York (April 11, 2011) -- An Illinois federal judge refused Friday to throw out a putative class action accusing International Paper Co. and a host of other containerboard manufacturers of colluding to drive up prices in the industry since 2005.

Judge Milton Shadur of the U.S. District Court for the Northern District of Illinois denied seven motions to dismiss by the defendants, including Packaging Corp. of America, Norampac Industries Inc., Cascades Canada Inc., Weyerhaeuser Co., Georgia Pacific LLC, Smurfit-Stone Container Corp. and Temple-Inland Inc.

The judge said that plaintiffs, including floor care products company Kleen Products LLC, Ferraro Food Inc. and others, sufficiently alleged violations of the Sherman Act by the defendants.

Judge Shadur said the plaintiffs' most persuasive evidence was the coincidental timing of the defendants' price increases and capacity reductions. In the suit, the plaintiffs accuse the containerboard companies of using trade association meetings to organize the scheme.

"It is striking that all defendants repeatedly — twice in each of 2005 and 2006 and once in each of 2007 and 2008 — raised their prices soon after an industry event," Judge Shadur said

While the defendants correctly pointed out differences in the amount and timing of capacity reductions within the companies, Judge Shadur found that the variations were not substantial enough to overcome suspicion.

The plaintiffs had also accused the defendants of cutting capacity despite favorable economic conditions, showing the alleged conspiracy was plausible.

Facing declining profit margins, rising demand and a promising economic environment in 2005, many of the defendants reduced their production capacity, according to the suit. They closed plants, idled capacity and scheduled production downtime despite high demand for containerboard, the plaintiffs alleged.

According to the suit, the consolidated nature of the containerboard industry, barriers to entry as well as inelasticity of demand makes collusion more likely. Extensive antitrust litigation and other charges of unfair competition have plagued the industry since the 1930s.

Many of the named defendants, including International Paper and Smurfit-Stone, were part of a price-fixing cartel in the mid-1990s that resulted in numerous class actions and the

eventual payout of over \$200 million to their customers, according to the suit.

Attorneys for the plaintiffs and the defendants did not immediately respond to requests for comment Monday.

Kleen is represented by Freed Kanner London & Millen LLC, the Mogin Law Firm PC, Lockridge Grindal Nauen PLLP and Gustafson Gluek PLLC, among others.

Packaging Corp. of America is represented by Kirkland & Ellis LLP. International Paper is represented by Gibson Dunn & Crutcher LLP and Eimer Stahl Klevorn & Solberg LLP. Cascades and Noramnpac Holdings U.S. Inc. are represented by K&L Gates LLP. Weyerhaeuser is represented by McDermott Will & Emery LLP. Georgia Pacific is represented by Quinn Emanuel Urquhart & Sullivan LLP and Figliulo & Silverman PC. Temple-Inland is represented by Mayer Brown LLP. Smurfit-Stone Container Corp. is represented by Winston & Strawn LLP.

The case is Kleen Products LLC et al. v. Packaging Corp. of America et al., case number 1:10-cv-05711, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lance Duroni. Editing by Jonathan Jacobson.

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