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## Judge Denies Class Cert. In Funeral Home Cases

By Erin Coe

Law360, New York (March 30, 2009) -- A federal court has adopted a magistrate judge's recommendations to deny class certification in two antitrust lawsuits against Batesville Casket Co. Inc. and other companies alleging funeral homes and casket makers conspired to fix prices.

The plaintiffs had objected to the magistrate judge's November findings that their suits did not warrant class status, but Judge Kenneth M. Hoyt of the U.S. District Court for the Southern District of Texas on Thursday shot down their objections and rejected their bids for class certification.

In one of the cases, the Funeral Consumers Alliance and several consumers who had bought Batesville caskets filed suit in 2005 against the Hillenbrand Inc. unit, as well as against Hill-Rom Holdings and three of Batesville's funeral home customers alleging "concerted efforts to restrict casket price competition."

The consumer group claims the funeral homes and their "co-conspirators" broke antitrust laws by restricting the business of independent casket discounters or third-party casket sellers unaffiliated with funeral homes.

A related suit was filed by four current and former independent casket retailers, including Pioneer Valley Casket Co. Inc., asserting similar antitrust violations.

Gordon Schnell, a lawyer representing the plaintiffs in the Funeral Consumers case, said they planned to petition the U.S. Court of Appeals for the Fifth Circuit for leave to challenge Judge Hoyt's decision.

He said the magistrate judge employed a merit-based test and reviewed substantive issues that had nothing to do with class certification. He also said the court performed a one-sided

review of evidence.

"This ruling was very frustrating. We were not given a fair shake, and we hope the Fifth Circuit will accept the appeal and set the record straight," Schnell said.

Thomas E. Bilek, an attorney representing Pioneer Valley and plaintiffs in the other case, said they were deeply disappointed by the ruling and were considering an appeal.

Kenneth A. Camp, Hillenbrand's president and chief executive officer, said: "We are pleased with the rulings in these lawsuits, which are a major step forward in the court's recognizing the legitimacy of our century-old policy of selling only through licensed funeral homes."

In November, U.S. Magistrate Judge Calvin Botley found in the Funeral Consumers case that "highly individualized factors" affected the prices of their caskets, so the consumers couldn't pursue a common claim.

"Many factors such as religion, ethnicity, age and community traditions influence, and can dictate, the selection of caskets and other funeral products and services," Judge Botley wrote at the time.

The complaint claims that the funeral homes coordinated a campaign to disparage independent casket discounters. By shutting independent casket discounters out of the market, the funeral home defendants were then able to conspire to fix artificially high casket prices, the complaint alleges.

But the magistrate judge cited a lack of evidence for either a price-fixing conspiracy or coordinated disparagement of independent casket discounters, both of which are required for class certification.

The magistrate judge also shot down Pioneer Valley and other competitors' bid for class certification, finding that common issues did not predominate and that plaintiffs failed to prove fact of damage on a classwide basis.

In the consumer case, the plaintiffs are represented by Emery Celli Brinckerhoff & Abady LLP, Ball & Scott, Keller Grove LLP, The Bilek Law Firm LLP, Constantine Cannon PC, Miller Faucher and Cafferty, Schubert Jonckheer, Cafferty Faucher LLP, Gibbs & Bruns, Green Welling LLP, Zwerling Schachter & Zwerling LLP, Finkelstein Thompson LLP and Labaton Sucharow LLP, among others.

The defendants are represented by Edison McDowell & Hetherington LLP, Frost Brown, Bracewell & Giuliani LLP, Susman Godfrey LLP, Boies Schiller & Flexner LLP, Jones Walker, Beck Redden, Howrey LLP and Gurnee & Daniels LLP.

The case is Funeral Consumers Alliance et al. v. Service Corp. et al., case number 4:05-cv-03394, in the U.S. District Court for the Southern District of Texas.

In the current case, Pioneer Valley Casket Co. Inc. is represented by Green Welling LLP, Finkelstein Thompson LLP and the Bilek Law Firm LLP. The other plaintiffs are represented by the Bilek Law Firm LLP.

The defendants are represented by Edison McDowell & Hetherington, Bracewell & Giuliani, Jones Day, Iverson Yoakum Papiano & Hatch, Jones Walker, Beck Redden, Howrey LLP, Boies Schiller & Flexner LLP and Susman Godfrey LLP.

The case is Pioneer Valley Casket Co. Inc. v. Service Corp. International et al., case number 4:05-cv-03399, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Erin Fuchs

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