

Choice of Law and the Geographic Limits of State Antitrust Claims in Texas Courts

In a decision that curtails the scope of state antitrust claims in Texas courts, the Texas Supreme Court held that the Texas Free Enterprise and Antitrust Act of 1983 (TFEAA) does not afford a cause of action to recover for injuries suffered outside Texas. See *Coca-Cola Co. v. Harmar Bottling Co.*, 2006 WL 2997436 (Tex. Oct. 20, 2006). The Supreme Court further held that Texas courts, as a matter of interstate comity, may not entertain claims based on the antitrust statutes of other states.

Coca Cola uses calendar marketing agreements (CMAs), which require soft drink retailers to give various promotional preferences to Coke products. The *Harmar* plaintiffs, a group of bottling companies that distributed Royal Crown Cola in parts of Arkansas, Louisiana, Oklahoma and Texas, alleged that Coke had engaged in an unreasonable restraint of trade by using CMAs, and had monopolized, attempted to monopolize, and conspired to monopolize the market for carbonated soft drinks in violation of the TFEAA. The jury found for the plaintiffs, and the trial court awarded damages and injunctive relief. The court of appeals affirmed.

The Supreme Court reversed, holding that “[t]he TFEAA does not, in clear language, afford a cause of action for injury outside the state, and we will not imply one.” Thus, “the TFEAA will not support extraterritorial relief in the absence of a showing that such relief promotes competition in Texas or benefits Texas consumers.”

The Court also declined the plaintiffs’ invitation to apply the antitrust laws of neighboring states, which they contended—and Coke did not dispute—were identical to Texas law. The Court acknowledged that comity generally requires a state to enforce the laws of other states. But, in a move that could have an impact beyond the antitrust arena, the Court held that interstate comity bars Texas courts from enforcing other states’ antitrust laws because those laws are “so policy-laden so as to affect the economy of another state.”

Having concluded that the Texas courts may not adjudicate and remedy anticompetitive injuries that occur in other states, the Court found no evidence that Coke’s CMAs had any “demonstrable economic effect” in any relevant market. The court of appeals judgment was reversed, and the Court rendered judgment that the plaintiffs take nothing.

Four Justices dissented from the Supreme Court’s holding in *Harmar*, rejecting the invitation to adopt an “abstention doctrine” for disputes that cross state lines and accusing the majority of conflating choice-of-law with subject-matter jurisdiction. The dissent noted that choice-of-law issues, unlike jurisdictional issues, can be waived, and that Coke had never requested the application of other states’ laws. The dissent argued that Texas courts should presume that the laws of the other states are identical to the laws of Texas in the absence of proof to the contrary.

Although *Harmar* will undoubtedly force many antitrust plaintiffs into federal court or require them to file separate lawsuits in other states, the impact of the opinion beyond the antitrust arena is unclear. The Court’s refusal to apply the antitrust laws of other states invites future litigants to argue that Texas courts should abstain from enforcing any “policy-laden” laws that could affect the economies of other states. How receptive Texas courts will be to such arguments remains to be seen.

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Carrington Coleman's competition and intellectual property practice group has significant experience with antitrust matters, as well as non-competition agreements, trade secret concerns, and intellectual property issues. In addition to counseling clients in these areas, our attorneys have litigated these issues in state and federal courts around the country.

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