NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

MERCEDES-BENZ USA, LLC, Plaintiff, v. NIPPON YUSEN KABUSHIKI KAISHA; NYK LINE (NORTH AMERICA), INC.; WALLENIUS WILHELMSEN LOGISTICS AS, a/k/a WALLENIUS WILHELMSEN OCEAN AS; WALLENIUS WILHELMSEN LOGISTICS AMERICAS, LLC; MITSUI O.S.K. LINES, LTD.; MITSUI O.S.K. BULK SHIPPING (USA), LLC; KAWASAKI KISEN KAISHA, LTD.; and "K" LINE AMERICAS, INC. Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-6325-18**

Civil Action

OPINION

Argued: March 1, 2019
Decided: March 29, 2019

THE HONORABLE ROBERT C. WILSON, J.S.C.

Thomas J. Herten, Esq. and Nicole G. McDonough, Esq. appearing for plaintiff Mercedes-Benz USA, LLC (from Archer & Greiner, P.C.).

Ethan Glass, Esq., Michael Bonanno, Esq., and Kristin Starr, Esq. appearing for plaintiff Mercedes-Benz USA, LLC (from Quinn, Emanuel, Urquhart & Sullivan, LLP).

Eric R. Fish, Esq., John R. Fornicari, Esq., and Thomas E. Hogan, Esq. appearing for defendants Nippon Yusen Kabushiki Kaisha and NYK Line (North America), Inc. (from Baker & Hostetler, LLP).

Roberto A. Rivera-Soto, Esq. appearing for defendants Wallenius Wilhelmsen Logistics AS, a/k/a Wallenius Wilhelmsen Ocean AS, and Wallenius Wilhelmsen Logistics Americas, LLC (from Ballard Spahr LLP).

Scott B. McBride, Esq. and Rasmeet K. Chahil, Esq. appearing for defendants Mitsui O.S.K. Lines, Ltd. and Mitsui O.S.K. Bulk Shipping (USA), LLC (from Lowenstein Sandler, LLP).

Christopher L. Weiss, Esq. and Russell T. Brown, Esq. appearing for defendants Kawasaki Kisen Kaisha, Ltd. and "K" Line Americas, Inc. (from Ferro, Labella & Zucker, LLC).

Steven J. Kaiser, Esq., Mark W. Nelson, Esq., Jeremy J. Calsyn, Esq., and James K. Hunsberger, Esq. appearing for defendants Kawasaki Kisen Kaisha, Ltd. and "K" Line Americas, Inc. (from Cleary, Gottlieb, Steen & Hamilton, LLP).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

THIS MATTER arises from allegations of antitrust and price-fixing activities related to roll-on, roll-off cargo shipping. Plaintiff Mercedes-Benz USA, LLC ("MBUSA") filed this action on August 30, 2018 against four separate sets of defendants: (1) Nippon Yusen Kabushiki Kaisha and NYK Line (North America), Inc. (collectively, the "NYK Defendants"); (2) Wallenius Wilhelmsen Logistics, AS, a/k/a Wallenius Wilhelmsen Ocean AS, and Wallenius Wilhelmsen Logistics Americas, LLC (collectively, the "WWL Defendants"); (3) Mitsui O.S.K. Lines, Ltd. and Mitsui O.S.K. Bulk Shipping (USA), LLC (collectively, the "MOL Defendants"); and (4) Kawasaki Kisen Kaisha, Ltd. and "K" Line Americas, Inc. (collectively, the "K Line Defendants") (the NYK Defendants, WWL Defendants, MOL Defendants, and K Line Defendants are collectively referred to in this Opinion as "Defendants").

MBUSA purchased roll-on, roll-off shipping services from Defendants to ship new Mercedes-Benz automobiles to or from the United States. Between 1997 and 2013, Defendants agreed not to compete for MBUSA's business or agreed to fix the prices they would charge for MBUSA services. This agreement was unknown until September 6, 2012 when the press reported that antitrust authorities from the United States, European Union, and Japan raided Defendants' corporate offices as part of an ongoing criminal price-fixing investigation. Sometime afterwards, Defendants entered into guilty pleas and admitted to their illegal conduct. However, MBUSA was not compensated for the damages it suffered as a result of Defendants' antitrust activities.

On July 26, 2013, direct purchasers of roll-on, roll-off shipping services filed a class action complaint in federal court against Defendants, asserting federal antitrust claims under

Section 1 of the Sherman Act, 15 U.S.C. § 1, relating to Defendants' agreements to fix, stabilize, or maintain the prices of, and allocate the market for, vehicle carrier services. In that case, the putative class purported to represent all persons and entities in the United States that purchased vehicle carrier services directly from any one of the Defendants (or any current or former subsidiary or affiliate thereof) or any of their co-conspirators during the class period.

After the direct purchaser case was consolidated for discovery with the indirect purchaser cases, the direct purchasers amended their complaint. The direct purchasers' substantive claims and factual allegations were similar to those in their initial complaint, and the putative class was defined as all persons and entities that purchased vehicle carrier services for shipments to or from the United States directly from any of the Defendants or any current or former predecessor, subsidiary, or affiliate of each, at any time during the period from January 1, 2000 to December 31, 2012. While MBUSA was included in the class definition, no class notice was sent, no class was certified, no class settlement notice was sent, and MBUSA did not have the opportunity to opt of out of the class.

On August 28, 2015, the United States District Court for the District of New Jersey dismissed the direct purchasers' amended complaint. That dismissal was affirmed by the Third Circuit Court of Appeals on January 18, 2017, and the United States Supreme Court denied certiorari on October 2, 2017. MBUSA filed this case in the Superior Court of New Jersey on August 30, 2018 asserting claims under the New Jersey Antitrust Act. MBUSA also asserted claims against each individual defendant for breach of contract, breach of the implied duty of good faith and fair dealing, and tortious interference. Those contract-related claims are allegedly based on different law and different facts than the federal antitrust claims asserted by the putative direct purchaser class.

Defendants removed MBUSA's case to the United States District Court for the District of New Jersey on September 11, 2018. MBUSA subsequently moved to remand the case on October 11, 2018. MBUSA's motion to remand was granted on December 12, 2018 and this matter was remanded to the Superior Court of New Jersey and reopened that same day.

Defendants now jointly move to dismiss Plaintiff's complaint. Defendants argue that the Superior Court of New Jersey lacks jurisdiction to adjudicate this matter, because the Federal Maritime Commission is the proper and exclusive forum for any claims based on the conduct alleged above. The claim that the Shipping Act reflects Congress's clear intent to create a uniform, comprehensive federal regulatory scheme for ocean common carriers, and the same law of conflict preemption that led to the District of New Jersey and the Third Circuit to dismiss the putative class plaintiffs' claims under various states' laws requires the dismissal of MBUSA's virtually identical claims under New Jersey law. Plaintiffs oppose the motion, stating that the Shipping Act does not preempt any of MBUSA's claims.

For the reasons set forth below, Defendants' renewed consolidated joint motion to dismiss is **GRANTED**.

RULE OF LAW

I. Conflict Preemption and the Supremacy Clause of the United States Constitution

"The preemption doctrine is based on the Supremacy Clause, which provides that 'the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." In re Vehicle Carrier Servs. Antitrust Litig., 846 F.3d 71, 83 (3d Cir. 2017) (quoting U.S. Constitution art. VI, cl. 2); accord Hous. Auth. & Urban Redev. Agency of the City of Atl. City v. Taylor, 171 N.J. 580, 587 (2002). "Under the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." Gade v.

Nat'l Solid Wastes Mgmt. Ass'n., 505 U.S. 88, 108 (1992); accord Estate of Brust v. ACF Indus., LLC, 444 N.J. Super. 103, 113 (App. Div. 2015). Because conflict preemption is rooted in the Supremacy Clause of the United States Constitution, New Jersey courts must apply the same standards as the Supreme Court of the United States and other federal courts.

"[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with federal statute." Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000). Federal law is not required to contain an express preemption clause to displace state law. Id. (under the doctrine of implied preemption, "[e]ven without an express provision for preemption . . . state law must yield to a congressional Act"). Conflict preemption occurs where "compliance with both federal and state regulations is a physical impossibility" or whenever "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Arizona v. United States, 567 U.S. 387, 399 (2012).

When Congress creates an exclusive cause of action before a specialized administrative body, the most minor obstacle will not be tolerated. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 236 (1947). "The test, therefore, is whether the matter on which the State asse[r]ts the right to act is in any way regulated by the Federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State." Id. Therefore, whether any federal legislation preempts state law claims requires an examination of Congress's intent in passing the legislation, including its purpose, language, structure, and legislative history.

II. The Shipping Act of 1984

The Third Circuit has provided a thorough analysis of Congress's intent in passing the Shipping Act of 1984 (the "Shipping Act") in the related federal litigation, In re Vehicle Carrier Services. 846 F.3d at 84. Both the federal courts and New Jersey state courts apply the same

principles for conflict preemption. Focusing on the purpose of the Shipping Act, the Third Circuit explained the following:

> One purpose of the Act is to 'establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.' [] A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.
>
> Id. at 85 (citing 46 U.S.C. §§ 40101(1), 40101(2).

To help achieve these goals, the Shipping Act broadened the antitrust immunity provisions in the Shipping Act of 1916 that had eroded over time through what Congress viewed as overly narrow judicial interpretations. Specifically, the Shipping Act expressly provides for complete federal antitrust immunity, including immunity from criminal prosecution by the Department of Justice under the Sherman Act and civil suits by private plaintiffs under the Clayton Act, for various agreements between ocean carriers, including those that are filed with the Federal Maritime Commission (the "FMC"). 46 U.S.C. § 40307(a) ("The antitrust laws do not apply to . . . an agreement (including an assessment agreement) that has been filed and effective under this chapter"); In re Vehicle Carrier Servs., 846 F.3d at 80-81.

Agreements between or among ocean common carriers covered by this grant of immunity specifically include, among others, agreements to: (1) "discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;" (2) "engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator," (3) "control, regulate, or prevent competition in international ocean transportation," and (4) "discuss and agree on any matter related to a service contract." 46 U.S.C. § 40301(a)(1)-(7).

Even when an agreement is not filed and effective with the FMC, the Shipping Act expressly provides immunity from private antitrust suits under the Clayton Act for any alleged damages resulting from an unfiled agreement. Id. at 40307(d) ("A person may not recover damages under section 4 of the Clayton Act (15 U.S.C. § 26), for conduct prohibited by this part."); In re Vehicle Carrier Servs., 846 F.3d at 81 (explaining that "[i]f an agreement has not been filed, it cannot become effective and thus operating under such an unfiled agreement is prohibited" and that "[a] party injured by activities occurring under such an unfiled, and hence, not effective, agreement may not obtain Clayton Act relief.")

The Shipping Act provides an exclusive remedy for violations of the Shipping Act through administrative proceedings before the FMC. H.R. Rep. No. 98-53(I), at 12. The Shipping Act provides detailed procedures by which the FMC, on its own accord or based on an action commenced by a private party, may investigate, decide, and if appropriate issue relief for violations of the Shipping Act. 46 U.S.C. §§ 41301-41309. The Third Circuit provides a clear overview of these procedures:

> [The Shipping Act] does provide an avenue for relief before the FMC. Either on a complaint filed by a private party, 46 U.S.C. § 41301(a), or its own motion, the FMC may investigate alleged violations of the Shipping Act. In such proceedings, the parties may engage in discovery, and request hearings before the FMC. If a plaintiff shows the Act has been violated, the FMC may assess penalties, award damages of up to double the amount of the actual injury, grant attorneys' fees, and provide a means to obtain equitable relief . . . . Congress gave the FMC this broad authority to, among other things, provide a deterrent effect which has previously been available only by invoking the antitrust laws.
>
> In re Vehicle Carrier Servs., 846 F.3d at 85.

As the Third Circuit summarized, "the Shipping Act's text, scheme, and legislative history demonstrate Congress's intent to create a comprehensive, predictable federal framework to ensure efficient and nondiscriminatory international shipping practices." Id. at 82.

DECISION

I. MBUSA's State Law Claims are Preempted by the Shipping Act

A. Claims under the New Jersey Antitrust Act

After examining Congress's intent in passing the Shipping Act, the Third Circuit determined that the multi-district litigation ("MDL") plaintiffs' state law antitrust claims were preempted by the Shipping Act in In Re Vehicle Carrier Servs., 846 F.3d at 85. It stated that "Congress sought to limit the application of the antitrust laws to enable U.S.-flag carriers to compete against their foreign counterparts who may not be subject to similar restrictions." Id. Enabling a party to bring state antitrust claims directly conflicts with this goal. Id. ("Put simply, to subject the carriers to potential state antitrust liability would essentially undo Congress's work in expanding antitrust immunity and undermine its efforts to assist U.S.-flag ships avoid a competitive disadvantage.").

The Third Circuit's determination that the MDL plaintiffs' state law antitrust claims were preempted applies directly to the claims brought by MBUSA under the New Jersey Antitrust Act. Therefore, MBUSA's claims must also be dismissed with prejudice as preempted.

B. State Claims Sounding in Contract and Tort Law

After holding that the MDL plaintiffs' state antitrust claims were preempted, the Third Circuit further held that the MDL plaintiffs' remaining state law claims, asserted under various states' consumer protection and unjust enrichment laws, were similarly preempted. "While these state laws reflect the exercise of traditional police powers, applying them here would allow the states to impose rules in an area Congress has historically regulated: maritime commerce." Id. As with the state antitrust claims, allowing these state consumer protection and unjust enrichment claims to be adjudicated would "thwart Congress's goal of ensuring uniform regulation of ocean common carriers' business practices." Id. at 86. The Third Circuit

emphasized that Congress created a specific enforcement mechanism and means for private parties to obtain relief before the FMC, and "allowing state laws to impose different standards would upset this carefully crafted scheme." Id. at 86-87.

The Third Circuit's analysis in In re Vehicle Carrier Services regarding miscellaneous state law claims applies equally to MBUSA's remaining state law claims sounding in breach of contract and tortious interference. While these specific claims were not plead in In re Vehicle Carrier Services, it is of no relevance, because the Third Circuit focused on the *effect* the state claims would have on the ability to achieve the purposes of the Shipping Act, not on the particular causes of action themselves.

Upon closer inspection, MBUSA's breach of contract and tortious interference state law claims are based on the same underlying factual allegations as MBUSA's state antitrust claims. Therefore, they would have the same interference with federal law, and should likewise be preempted. Id. at 85. The gravamen of each of MBUSA's claims is the same as the claims alleged in In re Vehicle Carrier Services – that is alleged harm to purchasers of vehicle carrier services as a result of alleged secret, unfiled agreements among ocean common carriers. All of MBUSA's claims are based on the same underlying factual allegations as alleged by the MDL plaintiffs, and all of which uniquely involved alleged violations of the Shipping Act. As such, MBUSA's claims must be similarly dismissed with prejudice, as they conflict with Congress's objectives in enacting the Shipping Act.

C. State Law Claims Related to Service Contracts are Preempted by the Shipping Act

MBUSA contends that the precedent in In re Vehicle Carrier Services does not apply to claims involving service contracts, and therefore, such claims are not preempted by the Shipping Act. However, the Third Circuit clearly held that the Shipping Act preempts state law claims,

even when such claims relate to service contracts. As explained in the In re Vehicle Carrier Services opinion, under 46 U.S.C. §§ 41102(b) and 40302(a), ocean common carriers are required to file with the FMC certain agreements enumerated in 46 U.S.C. § 40301(a), including, among others, agreements "between and among ocean common carriers" to "discuss, fix, or regulate transportation rates," to "control, regulate, or prevent competition in international ocean transportation," or to "discuss and agree on any matter related to a service contract" in order to comport with the regulatory scheme established by Congress. In re Vehicle Carrier Servs., 846 F.3d at 80 (internal citations omitted).

Furthermore, operating under an unfiled and ineffective agreement is a prohibited act, in which injured parties may not obtain antitrust relief under the Clayton Act. Id. at 81, 83, 85-87. Instead, the Shipping Act provides that the exclusive private remedy for any alleged harm caused by prohibited conduct is a claim for reparations before the FMC.

MBUSA's complaint alleges that Defendants met and conspired with other providers of vehicle carrier services to agree to overcharge customers, like MBUSA and exchanged competitively sensitive information about prices, customers, and routes in order to rig bids, allocate customers or markets, and fix prices for vehicle carrier services. These allegations are precisely the type of conduct that would constitute a violation of the Shipping Act, as operating under unfiled and ineffective agreements to "discuss and agree on any matter related to a service contract" is prohibited by the Shipping Act. 46 U.S.C. § 40301 (a)(7); In re Vehicle Carrier Servs., 846 F.3d at 82 ("There is no dispute that operating under unfiled price fixing and/or market allocation agreements is prohibited under sections 40301 and 40302 of the Shipping Act.").

Because the Shipping Act is clear that Defendants' alleged operation under unfiled agreements related to service contracts is prohibited by the Act, and the exclusive remedy for any

conduct prohibited by the Act is a claim for reparations before the FMC, the result is likewise clear: MBUSA's state law claims are preempted and must be dismissed with prejudice.

Footnote 12 in In re Vehicle Carrier Services also does not lend support to MBUSA's position that the Third Circuit's opinion is inapplicable to service contracts. In the MDL action, plaintiffs argued that service contracts for the shipping of newly assembled motor vehicles should not be barred by the Shipping Act. However, the Third Circuit held that this argument did not change the outcome of the case, because "[t]his exemption from filing service contracts for newly assembled motor vehicles . . . does not relieve Defendants from their obligation to file the other agreements referred to in § 40301(a) or (b) with the FMC." Id. at 83 n. 12. Therefore, Defendants would have been required to file the agreements concerning service contracts with the FMC. Id. This holding directly rebuts MBUSA's position that the aforementioned opinion does not apply to MBUSA's service contract claims.

Finally, MBUSA points to 46 U.S.C. § 40502 to support its assertion that its claims are not preempted and that In re Vehicle Carrier Services does not apply to its claims regarding service contracts. That section provides that "the exclusive remedy for a breach of a service contract is an action in an appropriate court." 46 U.S.C. § 40502(f). Such a suggestion, however, is misplaced, and does not save MBUSA's claims from preemption.

The courts and the FMC have both consistently have explained that 46 U.S.C. § 40502(f) applies only to allegations involving "mere contract disputes" and not instances where the claims involve issues particular to the Shipping Act. See, e.g. In re Containership Co. (TCC) A/S, 466 B.R. 219, 227 (Bankr. S.D.N.Y. 2012) (discussing that the "dividing line between a mere contract dispute and an alleged violation that is 'particular to the Shipping Act'" and noting that "courts have deferred to the FMC to address issues that are specifically and expressly addressed in the Shipping Act, such as whether . . . certain shipping practices are illegal and discriminatory

and in violation of the Act"); CargoOne, Inc. v. COSCO Container Lines, Co., Ltd., 28 S.R.R. 1635, 1645 (FMC 2000) ("[T]he test is whether a complainant's allegations are inherently a breach of contract, or whether they also involve elements peculiar to the Shipping Act."). Courts have retained jurisdiction over mere contract disputes that were not peculiar to the Shipping Act, and did not require the FMC's specialized expertise. See, e.g., Mitsui O.S.K. Lines, Ltd. v. Evans Delivery Co., 948 F. Supp. 2d. 406, 409 (D.N.J. 2013) (exercising jurisdiction over contract claims regarding failure to deliver goods pursuant to transportation order).

MBUSA's claims are premised on alleged conduct that is "particular to the Shipping Act" and of which are not mere contract disputes, making § 40502(f) inapplicable, and leaving a claim for reparations before the FMC as the exclusive private remedy. MBUSA's claims involving alleged secret, unfiled agreements among ocean common carriers are among those that Congress specifically reserved for the specialized expertise of the FMC. In re Vehicle Carrier Servs., 846 F.3d at 86. MBUSA's attempt to disguise such claims in the language of state contract law in order to avoid the exclusive Shipping Act remedies designed by Congress "would essentially undo Congress's work in expanding antitrust immunity" and thus "allowing [such claims] to proceed would pose an obstacle to achieving Congress's objectives in passing the Act." Id. at 85-87.

II. Whether Defendants are U.S.-flag Carriers is Unrelated to Whether the Shipping Act Preempts MBUSA's Claims

MBUSA also argues that its claims are not preempted because Defendants are not U.S.-flag carriers. However, a review of the Shipping Act, as well as the Third Circuit's opinion in In re Vehicle Carrier Services shows that this assertion is also incorrect. Reading the Shipping Act as a whole discloses that, although one of Congress's purposes in passing the Shipping Act was "to ensure that U.S.-flag ships are on a level playing field with foreign vessels," another purpose

of the Act was to "establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs." In re Vehicle Carrier Servs., 846 F.3d at 85 (citing 46 U.S.C. §§ 40101(1)-(2)).

Congress achieved these purposes by enacting a comprehensive statutory scheme that applies to all ocean common carriers within the jurisdiction of the United States, regardless of their flag. See, 46 U.S.C. § 40102(6) (defining "common carrier" as any person, not limited to flag, that "holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation."); see also, H.R. Rep. No. 98-53(I), at 24 (1983) ("[The bill] attempts to provide clearcut rules and procedures applicable to both foreign-flag and U.S.-flag operators within an equitable and competitive commercial environment.").

No relevant provision of the Shipping Act creates a different set of rules for U.S. versus non-U.S. flag carriers, and the Third Circuit has never hinted that the Shipping Act exemptions applied only to U.S.-flag carriers. Therefore, this argument against preemption also fails, and MBUSA's claims must be dismissed with prejudice.

III. MBUSA's Antitrust Claims are Time-Barred by the New Jersey Antitrust Act's Four-Year Statute of Limitations

While the Court has determined that MBUSA's complaint must be dismissed as the claims it sets forth are preempted by the Shipping Act, it also notes that MBUSA's antitrust claims are time-barred by a four-year statute of limitations. Under the New Jersey Antitrust Act, N.J.S.A. 56:9-1, a cause of action "based upon a conspiracy in violation of [the] act" must be commenced "within 4 years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered the facts relied upon for proof of the conspiracy." N.J.S.A.

56:9-14; see, Cetel v. Kirwan Fin. Grp., Inc., 460 F.3d 494, 510 n. 11 (3d Cir. 2006) (noting that "the New Jersey Antitrust Act [has a] four-year statute of limitations.").

MBUSA has waited approximately six years after it either knew or should have known of its potential claims in order to file its complaint. While this case was pending in federal court, MBUSA conceded that its claims accrued no later than September 6, 2012. This date was when the leading news agencies worldwide reported on global antitrust investigations into alleged price fixing and other alleged anticompetitive conduct by defendants and related investigative raids of Defendants' offices by antitrust authorities in the United States, Europe, and Asia. However, MBUSA did not file its complaint until August 30, 2018 – nearly six years later.

A. MBUSA Knew or Should Have Known it had Potential Claims No Later than September 6, 2012

Under the New Jersey Antitrust Act, the accrual date for a cause of action sounding in conspiracy is governed by the "discovery rule." Even under that generous rule, the accrual date is only delayed "until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that [it] may have a basis for an actionable claim." R.L. v. Voytac, 199 N.J. 285, 299 (2009); see also, N.J.S.A. 56:9-14. MBUSA, as the party "claiming the indulgence of the rule," bears the burden of proving that its application is warranted. Yarchak v. Trek Bicycle Corp., 280 F. Supp. 2d 470, 487 (D.N.J. 2002).

In New Jersey, the "application of the discovery rule is objective." Martinez v. Cooper Hosp.-Univ. Med. Ctr., 163 N.J. 45, 52 (2000). Courts seek to determine "whether the plaintiff knew or should have known of sufficient facts to start the statute of limitations running." Id. "[K]knowledge of fault for purposes of the discovery rule has a circumscribed meaning: it requires only the awareness of facts that would alert a reasonable person exercising ordinary

diligence that a third party's conduct may have caused or contributed to the cause of the injury[.]"). Savage v. Old Bridge-Sayreville Medical Group, P.A., 134 N.J. 241, 248 (1993).

In this instance, MBUSA would have or should have known that it may have been injured by Defendants on September 6, 2012, the date of the highly-publicized "dawn raids" of Defendants' offices, and high-profile investigations by antitrust authorities around the world. Therefore, MBUSA either had actual knowledge or must be charged with constructive knowledge of the "dawn raids" of Defendants' offices and global antitrust investigations on September 6, 2012. Moreover, as a significant automotive original equipment manufacturer ("OEM") that imports, distributes, and sells Mercedes-Benz automobiles and light trucks in the United States, and as a purported direct purchaser of vehicle carrier services, MBUSA has close, substantial involvement in the vehicle carrier services market on a day-to-day basis. Therefore, MBUSA either actually knew or should have known of the antitrust investigations receiving widespread attention in the industry.

Against this backdrop, the Court must conclude that MBUSA simply slept on its potential claims while other, similarly situated automotive OEMs with access to the same widely-reported information as MBUSA acted with reasonable diligence, as the law requires, to pursue their claims. Therefore, MBUSA's claims under the New Jersey Antitrust Act are dismissed as time-barred.

B. A Reasonable Plaintiff Would Have Engaged in Further Inquiry Related to the Widely Reported Antitrust Investigations

MBUSA is also charged with inquiry notice of any further knowledge discoverable through a reasonable diligent investigation. County of Hudson v. Janiszewski, 520 F. Supp. 2d, 634, (D.N.J. 2007); Mathews v. Kidder, Peabody & Co., 260 F.3d 239, 255 (3d Cir. 2011); Cetel, 460 F.3d at 508.

The widespread publicity regarding the September 6, 2012 "dawn raids" and the global antitrust investigations, at a bare minimum, triggered MBUSA's duty to investigate its potential claims with reasonable diligence. MBUSA was "plainly on inquiry notice" as a result of the "multiplicity and specificity" of information available to it about Defendants' alleged wrongdoing. See, e.g., GO Computer Inc. v. Microsoft Corp., 507 F.3d 170, 179 (4th Cir. 2007); Isaak v. Trumbull Sav. & Loan Co., 169 F.3d 390, 400 (6th Cir. 1999). Many news reports were widely circulated internationally, and were detailed and specific, identifying Defendants by name and highlighting that the government investigations concerned alleged price fixing and other alleged anticompetitive conduct by Defendants.

Despite these reports, MBUSA ignored them, or failed to conduct a reasonable inquiry, if any inquiry at all, and thus "cannot obtain the benefit that a finding of reasonable diligence will confer." Cetel, 460 F. Supp. At 508. Therefore, MBUSA's claims are untimely and must be dismissed.

C. Class Action Tolling does not Apply, and thus Cannot Save MBUSA's Time-Barred Claims

MBUSA argues that the filing of federal Clayton Act claims by a putative class of direct purchasers in the New Jersey MDL action "tolled" the statute of limitations on MBUSA's putative New Jersey Antitrust Act claim. However, no such class action tolling applies in this instance.

The doctrine of class action tolling that MBUSA seeks to invoke is sometimes referred to as the "American Pipe" rule. Under American Pipe, "the commencement of a class action [that is ultimately not certified due to a lack of numerosity] suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." American Pipe & Constr. Co. v. Utah, 414 U.S. 538,

553-54 (1974). The weight of authority holds that American Pipe tolling is afforded only to subsequent individual causes of actions or claims *identical* to the ones alleged in the earlier putative class action. Johnson v. Ry, Express Agency, Inc., 421 U.S. 454, 467 (1975).

In adopting class action tolling, New Jersey courts have expressly relied on American Pipe and discussed it at length. Staub v. Eastman Kodak Co., 321 N.J. Super. 34, 47-52 (App. Div. 1999). Relying on American Pipe, Staub held that "if the pendency of a putative class action does not toll the statute of limitations for individual claimants who would be members of the class if it is certified, potential class members who have 'discovered' their claims would be compelled to file suit to avoid expiration of the period of limitations." Id. at 56 (internal citations omitted).

MBUSA also misconstrues American Pipe in arguing that the statute of limitations on its state antitrust claim should be tolled because a previous federal court action asserted substantially the same claims as those asserted by MBUSA under the New Jersey Antitrust Act in this case. However, mere similarity in claims is not enough to warrant American Pipe tolling because "the policies underlying American Pipe and like precedents simply do not apply in the cross-jurisdiction context," such as between the federal courts and state courts. In re Cooper Antitrust Litig., 436 F.3d 782, 794-95 (7th Cir. 2006). "However similar or dissimilar the function of federal antitrust law may be with respect to state law, the federal claim is part of a distinct body of law that must be pursued in a wholly different court system. This fact cuts decisively against the application of the policies of American Pipe across jurisdictional lines." Id. at 794.

When considering the foregoing, it is abundantly clear that class action tolling under the American Pipe rule is inappropriate given the circumstances, and MBUSA's state antitrust claims must be dismissed as time-barred.

CONCLUSION

For the reasons stated above, Defendants' motion to dismiss MBUSA's complaint is **GRANTED**.