IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE ASPARTAME ANTITRUST LITIGATION	:	CIVIL ACTION
	:	
	:	
	:	NO. 2:06-CV-1732-LDD

ORDER [*]

AND NOW, on this 11th day of August 2008, upon consideration of Certain Defendants' Motion for Summary Judgment (Doc. No. 138), Plaintiff's Opposition to Certain Defendants' Motion for Summary Judgment (Doc. No. 147) and the Reply in Support of Certain Defendants' Motion for Summary Judgment (Doc. No. 157), it is hereby ORDERED that Certain Defendants' Motion for Summary Judgment (Doc. No. 138) is GRANTED.

I. Factual and Procedural Background

On April 25, 2006, various plaintiffs, including Nog, Inc. ("Nog") and Sorbee International Ltd. ("Sorbee" and together with Nog, the "Plaintiffs") filed separate complaints on behalf of a class of all persons and entities that purchased Aspartame, an artificial sweetener, directly from Defendants[1] in the United States from January 1, 1992 through the present (the "Class Period"). In these complaints, plaintiffs alleged that Defendants had engaged in a worldwide, horizontal antitrust conspiracy with the purpose of allocating the market for Aspartame and setting an artificially high price for the sweetener in violation of Section 1 of the

[1] Defendants are Ajinomoto Co., Inc., Ajinomoto U.S.A., Inc., Ajinomoto Sweeteners Europe S.A.S. (formerly Ajinomoto Euro-Aspartame S.A.), Ajinomoto Food Ingredients LLC, Ajinomoto Switzerland A.G., Daesang Corporation, Daesang America, Inc., Holland Sweetener Company V.O.F., Holland Sweetener North America, Inc., The NutraSweet Company and Euro-Aspartame S.A. This motion is brought on behalf of all Defendants except Daesang Corporation and Daesang America, Inc.

[* 2008 WL 4724094 (E.D. Pa. Aug. 11, 2008), *aff'd*, No. 09-1487, 2011 WL 263647 (3d Cir. Jan. 28, 2011) (unpublished)]

Sherman Antitrust Act (the "Sherman Act"), 15 U.S.C. § 1. The Court ordered these complaints consolidated, and on June 30, 2006 a consolidated amended class action complaint was filed (the "Amended Complaint").[2] In this Amended Complaint, Plaintiffs describe the history and structure of the Aspartame market. Specifically, the Amended Complaint sets forth in chronological order various events related to the development of the Aspartame market including, the cross-licensing agreement between Defendant Ajinomoto and G.D. Searle & Co., the inventor of Aspartame, that provided Defendant Ajinomoto with the exclusive right to sell Aspartame in Japan and provided G.D. Searle & Co. with the exclusive right to sell Aspartame in North America; the joint venture between Defendant NutraSweet[3] and Defendant Ajinomoto in 1984 to manufacture and market Aspartame in Europe; the construction in 1986 of a plant to manufacture Aspartame in Europe by Defendant Holland Sweetener in anticipation of the expiration of Defendant NutraSweet's production patent in Europe; the filing of an anti-dumping complaint in 1990 by Defendant Holland Sweetener in Europe against Defendant NutraSweet and Defendant Ajinomoto; the imposing of anti-dumping duties in 1991 by the European Community against Defendant NutraSweet and Defendant Ajinomoto; the filing by Defendant Holland Sweetener of a successful complaint against Defendant NutraSweet in Canada in connection with Defendant NutraSweet's use of exclusive supplier contracts and other marketing practices; the announcement in early 1992 that Defendant Holland Sweetener planned to enter

[2] Of the five plaintiffs originally named in the Amended Complaint, only Nog and Sorbee remain. Hank's Beverage Company, College Club Beverages Co., Inc. and Andorra Ridge, the three other plaintiffs originally named in the Amended Complaint, have withdrawn as putative class representatives.

[3] In 1982, G.D. Searle & Co. established The NutraSweet Group as a separate operating division responsible for the manufacturing and marketing of Aspartame. In 1985, this Monsato acquired G.D. Searle & Co. Monsanto later sold its interest in the NutraSweet Co. to a group of investors.

the U.S. Aspartame market upon the expiration of Defendant NutraSweet's U.S. patent; the long-term supply agreement entered into in 2003 between Defendant NutraSweet and Defendant Daesang, and Defendant NutraSweet's announced increases in capacity in 2005 and Defendant Ajinomoto's concurrent reduction in exports to the U.S. (Consolidated Am. Class Action Compl. ¶¶ 45, 48, 56, 58, 75, 81).

The Amended Complaint also alleges that "Plaintiffs and other Class members did not discover, and could not have discovered through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as alleged in this Complaint until shortly before this litigation was commenced." (Consolidated Am. Class Action Compl. ¶ 98). Additionally, the Amended Complaint alleges that Plaintiffs "exercised all due diligence during the Class Period including, among other ways, by promptly investigating the facts giving rise to the claims asserted in this Complaint upon having a reasonable suspicion of the existence of Defendants' conspiracy alleged in this Complaint, and by seeking discovery as to the matters asserted herein, to the extent permitted by law." (Consolidated Am. Class Action Compl. ¶ 102).

In this motion for summary judgment, Defendants argue that Plaintiffs' claims are time barred because (a) the four-year statute of limitations on Plaintiffs' claims has run and (b) Plaintiffs are not entitled to the tolling of the statute of limitation pursuant to the doctrine of fraudulent concealment.

A. Nog, Inc.

Nog is a small business that manufactures food ingredients, primarily for the ice cream industry. Nog made only one product that used Aspartame–a sugar-free variegate, or "ripple syrup", which was swirled into ice cream. Nog purchased Aspartame from Defendant

NutraSweet on only three occasions–April 13, 1994, July 8, 1994 and July 17, 1995. These purchases totaled 13.23 pounds at a total cost of $460.05. After July 17, 1995, Nog did not purchase Aspartame from any Defendants.[4]

Nog's corporate designee and President, Bruce Ritenburg III, testified at Nog's Rule 30(b)(6) deposition that when Nog purchased Aspartame from Defendant NutraSweet it thought that NutraSweet "was the only game in town." (Bruce Ritenburg III Dep. 181:23-24, Aug. 29, 2007). Mr. Ritenburg stated that "[w]e never thought there was anybody else that manufactured NutraSweet. And I remember distinctly, that that was the only one. We thought–the only game in town, and so that's what we used." (Ritenburg Dep. 29:3-7). Mr. Ritenburg further noted that Nog "knew the price [of Aspartame] was high, because everybody was talking about NutraSweet, and the price was out of sight, or whatever." (Ritenburg Dep. 29:8-11). Despite the fact that Nog "knew the price was high going right into it," (Ritenburg Dep. 187:1-2), Nog did not make any attempt to negotiate the price of Aspartame or to investigate why the price was allegedly so high. (Ritenburg 126:16-21; 187:3-11).

Nog became aware of the allegations set forth in the Amended Complaint and the facts supporting these allegations from discussions with an attorney. (Ritenburg Dep. 68:15-70:12). Other than information provided by counsel, Nog does not have any firsthand knowledge or information about the allegations set forth in the Amended Complaint. (Ritenburg Dep. 95:17-25). Moreover, during the proposed Class Period, Nog took no steps to investigate the claims set forth in the Amended Complaint. (Ritenburg Dep. 195:9-15). In fact, it did not follow or track

[4] After 1995, Nog purchased Aspartame from another distributor, the Norben Company. In 2004, Nog substituted Sucralose, another artificial sweetener, for Aspartame.

the market for Aspartame at all during the Class Period. (Ritenburg 187:20-22). Nog explained that it did not investigate these claims because its purchases of Aspartame were negligible and relatively unimportant to Nog's business. (Ritenburg Dep. 195: 16-21). The only investigation that Nog has undertaken with respect to its claims was a search its own records for purchases of Aspartame. (Ritenburg Dep. 96:10-16). Other than this search, Nog has taken no steps to investigate its claims since being made aware of its claims by counsel. (Ritenburg Dep. 192:25-193:15).

B. Sorbee International Ltd.

Sorbee is a small business that during the Class Period sold, distributed and manufactured sugar-free products, including hard candies and lollipops, some of which contained Aspartame.[5] From June 1997 through July 1999, Sorbee purchased approximately 1487.99 pounds of Aspartame for a total cost of $47,562.80 directly from Defendant NutraSweet. After July 1999, Sorbee purchased Aspartame from JRS International, a distributor, until it switched to Sucralose in March 2001.

During the Class Period, Sorbee is not aware of any steps that it or any of its employees took to investigate the allegations in the Amended Complaint. (David Wexler Dep. 158:1-159:14, Aug. 30, 2007). Sorbee also has no recollection of the negotiation, price paid, bidding or process of purchasing Aspartame. (Wexler Dep. 76:24-77:7). Additionally, Sorbee is not aware whether it sought to purchase Aspartame from any supplier other than Defendant NutraSweet (Wexler Dep. 145:7-12) or whether any other supplier refused to sell Aspartame to Sorbee.

[5] Sorbee stopped manufacturing sugar-free products in 2002 and thereafter only acted as a distributor of sugar-free products.

(Wexler Dep. 78:16-79:10). Sorbee learned of its potential claims against Defendants from a friend of Sorbee's president's son, who worked for a law firm. It learned of these claims only shortly before it filed its initial complaint in this matter. (Wexler Dep. 44:9-17; 52:17-53:7; 58:8-15). At the time that it filed the Amended Complaint, Sorbee had no independent information or knowledge about the allegations set forth in the Amended Complaint. (Wexler Dep. 159:23-24). Since learning of these claims, besides consultations with its counsel, Sorbee has taken no steps to investigate its claims. (Wexler Dep. 158:18-159:14).

II. Discussion

A. Standard of Review

The granting of a motion for summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In ruling on the motion, the Court must draw all reasonable inferences in the light most favorable to the nonmoving party, and "may not weigh the evidence or make credibility determinations." Boyle v. City of Allegheny, 139 F.3d 386, 393 (3d Cir. 1998); Anderson, 477 U.S. at 255. See id. at 256. Once a moving defendant has demonstrated an absence of genuine issues of material fact, the plaintiff must then establish, through competent evidence, the existence of each element on which he bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990).

B. Statute of Limitation and the Doctrine of Fraudulent Concealment

Plaintiffs allege violations Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and they seek treble damages and injunctive relief pursuant to Sections 1 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26. In relevant part, the Clayton Act provides that "[a]ny action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued." 15 U.S.C. § 15b; see also In re Linerboard Antitrust Litig., 305 F.3d 145, 159 (3d Cir. 2002). In a price-fixing case, a cause of action accrues and the statute of limitation begins to run every time that a person purchases a product at an inflated price. See Klehr v. A.O. Smith Corp., 521 U.S. 179, 189 (1997); Morton's Market, Inc. v. Gustafson's Dairy, Inc., 198 F.3d 823, 828 (11th Cir. 1999) ("[W]hen sellers conspire to fix the price of a product, each time a customer purchases that product at the artificially inflated price, an antitrust violation occurs and a cause of action accrues."). "Although § 15b mandates a four-year statute of limitations for civil antitrust actions, it is well established that the doctrine of fraudulent concealment tolls the limitation period when a plaintiff's cause of action has been obscured by the defendant's conduct." In re Linerboard Antitrust Litig., 305 F.3d 145, 160 (3d Cir. 2002); see also Cetel v. Kirwan Financial Group, Inc., 460 F.3d 494, 508 (3d Cir. 2006) (noting that fraudulent concealment is an equitable doctrine that is read into every federal statute of limitations). To avail themselves of this doctrine, at trial Plaintiffs must establish by a preponderance of evidence "(1) that the defendant actively misled the plaintiff; (2) which prevented the plaintiff from recognizing the validity of her claim within the limitations period; and (3) where the plaintiff's ignorance is not attributable to her lack of reasonable due diligence in attempting to uncover the relevant facts." Cetel v. Kirwan Fin. Group, Inc., 460 F.3d 494, 509 (3d Cir. 2006).

The Third Circuit has noted, however, that

> ordinarily when plaintiffs seek to demonstrate a case for equitable tolling, and defendants seek summary judgment on the issue, a court must determine (1) whether there is sufficient evidence to support a finding that defendants engaged in affirmative acts of concealment designed to mislead the plaintiffs regarding facts supporting their [ ] claim, (2) whether there is sufficient evidence to support a finding that plaintiffs exercised reasonable diligence, and (3) whether there is sufficient evidence to support a finding that plaintiffs were not aware, nor should they have been aware, of the facts supporting their claim until a time within the limitations period measured backwards from when the plaintiffs filed their complaint. Absent evidence to support these findings there is no genuine dispute of material fact on the issue and the defendants are entitled to summary judgment.

Forbes v. Eagleson, 228 F.3d 471, 487 (3d Cir. 2000) (citing Northview Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 87-88 (3d Cir. 2000); see also Prudential Ins. Co. of America v. U.S. Gypsum Co., 359 F.3d 226, 238 (3d Cir. 2004); Matthews v. Kidder, Peabody & Co., Inc., 260 F.3d 239, 256 (3d Cir. 2001).

C. Analysis

Plaintiffs filed their initial complaint on April 25, 2006. Accordingly, for Plaintiffs to have a cause of action that falls within the four-year statute of limitation, Plaintiffs must have purchased Aspartame from Defendants on or after April 25, 2002. It is undisputed that Nog's last purchase of Aspartame from Defendant NutraSweet was on July 17, 1995 and that Sorbee's last purchase of Aspartame from Defendant NutraSweet was in July 1999. Neither of these purchases falls within the applicable statute of limitation.

Plaintiffs, however, contend that the statute of limitation should be equitably tolled pursuant to the doctrine of fraudulent concealment. As noted previously, where plaintiffs seek to

avail themselves of the doctrine of fraudulent concealment, and defendant seeks summary judgment on the same issue, a court must determine whether there is sufficient evidence in the record to support specific finding.[6] After careful consideration of the record, the Court finds that there is insufficient evidence to support a finding that (a) Plaintiffs exercised reasonable diligence or (b) that Plaintiffs should not have been aware of the facts supporting their claims.

1. Failure to Establish Due Diligence

The Third Circuit has noted that to establish fraudulent concealment in the antitrust context, "the exercise of due diligence must be shown." In re Lower Lake Erie Iron Ore Antitrust Litig., 998 F.2d 1144, 1179 (3d Cir. 1993); Matthews, 260 F.3d at 257 ("In order to avoid summary judgment, there must be a genuine issue of material fact as to whether the Appellants exercised reasonable due diligence in investigating their claim."). The equitable tolling doctrine "requires a level of diligence on the part of the plaintiff . . . [which] requires the plaintiff to take reasonable measures to uncover the existence of injury." Forbes v. Eagleson, 228 F.3d 471, 486 (3d Cir. 2000). In reviewing a plaintiff's diligence in uncovering an injury, equitable tolling "keys on a plaintiff's cognizance, or imputed cognizance, of the facts supporting the plaintiff's cause of action." Id. A plaintiff "who fails to exercise this reasonable measure of diligence may lose the benefit" of this doctrine. Id.

In this case, the record does not reveal any affirmative steps taken by either Nog or Sorbee

[6] As previously noted, at summary judgment the Court must determine whether there is sufficient evidence to support a finding that (a) Defendants engaged in affirmative acts of concealment designed to mislead Plaintiffs regarding facts supporting their claim, (b) Plaintiffs exercised reasonable diligence and (c) Plaintiffs were not aware, nor should they have been aware, of the facts supporting their claim until a time within the limitations period measured backwards from when the Plaintiffs filed their complaint. See Forbes v. Eagleson, 228 F.3d 471, 487 (3d Cir. 2000)

to investigate the allegations in these claims or uncover the existence of their alleged injury. Specifically, the depositions of both Nog and Sorbee clearly establish that neither Plaintiff took any steps to investigate the allegations set forth in the Amended Complaint at anytime during the Class Period.[7]

Nog stated that even though it knew that "the price [of Aspartame] was out of sight" when it started purchasing the sweetener, it did not investigate the existence of other suppliers because it believed that Defendant NutraSweet "was the only game in town." (Rittenburg Dep. 27:19-28:16; 182:22-24). Nog further stated that it never tracked or monitored the price or market for Aspartame (Rittenburg Dep. 108:20-109:5; 187:20-22). Nog explained that its failed to investigate its claims because it only purchased a small amount of Aspartame and, accordingly, these purchases were negligible and unimportant to Nog. (Rittenburg Dep. 195:16-21).

Similarly, Sorbee has no knowledge of any steps it took to investigate the claims set forth in the Amended Complaint during the Class Period. (Wexler Dep. 158:1-17; 161:9-14). It has no recollection about the "negotiation, price paid, bidding, or process of purchasing Aspartame." (Wexler Dep. 76:18-24; 77:1-8). Specifically, Sorbee does not know whether it sought to purchase Aspartame from any supplier other than NutraSweet, or whether any other supplier of Aspartame refused to sell to Sorbee. (Wexler Dep. 78:16-24; 79:1-10; 145:7-21). Additionally, Sorbee is not currently aware of any information it may have possessed about the Aspartame market during the Class Period. (Pls.'s Response to Certain Defs.' Statement of Material,

[7] In addition to not taking any steps to investigate their claims prior to becoming aware of their existence from counsels, neither Plaintiff took any steps to investigate their claims once they were made aware of their claims.

Undisputed Facts ¶ 32).[8] Specifically, Sorbee does not know how the price of Aspartame was generally set in the market, what other purchasers of Aspartame paid, or whether Aspartame manufactures charged different prices to different customers. (Wexler Dep. 147:12-13; 152:14-16).

Plaintiffs contend that they are not required to exercise any due diligence "because the record is devoid of any 'red flags' [or storm warnings] signaling Plaintiffs' claims and triggering an obligation of diligent investigation during the limitations period." (Plaintiff's Memo. of Law 6). The Court disagrees.[9] Rather, "[t]o determine what constitutes 'reasonable' due diligence . . . , we must consider the magnitude of the existing storm warnings. The more ominous the warnings, the more extensive the expected inquiry." Prudential Ins. Co. of America v. U.S. Gypsum Co., 359 F.3d 226, 238 (3d Cir. 2004) (quoting Matthews, 260 F.3d at 255). Moreover, to the extent that Plaintiffs argue that they do not need to demonstrate due diligence to survive this motion, this position has been "squarely foreclosed" by the Third Circuit. Matthews v. Kidder, Peabody & Co., Inc., 260 F.3d 239, 256 n.25 (3d Cir. 2001) (citing Forbes, 228 F.3d at 487).

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[8] According to Sorbee, Andrew Feinberg, the employee that purchased Aspartame, left the company in September 2002 and his files have not been recovered. There is no indication in the record that Sorbee has attempted to obtain any information related to this matter from Mr. Feinberg nor has it requested this Court's assistance in obtaining information from Mr. Feinberg. At summary judgment, this Court must take the record as it stands.

[9] The requirement that defendant first point to the existence of "red flags" or "storm warning" and only then establish that reasonable diligence would have lead to an awareness of the claims is applicable to determining whether a plaintiff is on inquiry notice in the context of the injury discovery rule, which is used to determine the accrual of a claim in a civil RICO suit. See Cetel v. Kirwan Financial Group, Inc., 460 F.3d 494, 507 (3d Cir. 2006). The discovery rule, however, is distinct from the doctrine of equitable tolling. See Forbes v. Eagleson, 228 F.3d 471, 486 (3d Cir. 2000) (citing Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1390 (3d Cir.1994)). Furthermore, to the extent that Plaintiffs cite cases that set forth this standard in the context of fraudulent concealment, it is the opinion of this Court that this does not adequately set forth the appropriate standard established by the Third Circuit and which we are bound to follow.

Though the record may not contain a particular "red flag" that provided Plaintiffs with unequivocal proof of the existence of their claims, the record contains numerous warnings that collectively revealed significant barriers to entry and lack of competition in the Aspartame market. First, Nog stated that when it first purchased Aspartame the price was "out of sight" and that it believed that Defendant NutraSweet was the "only game in town." Though this type of market information (high prices, one supplier) is not automatically indicative of antitrust violations, it does provide some warning to plaintiffs of the possible existence of their claims. See In re Milk Prods. Antitrust Litig., 84 F. Supp. 1016, 1024 (D. Minn. 1997) (indicating that the fact that prices for a product were raised and stabilized and that competition was substantially eliminated was sufficient to excite attention and put plaintiffs on notice). Second, the Amended Complaint discusses the complaints brought by Defendant Holland Sweetener against Defendants NutraSweet and Ajinomoto in Europe and Defendant NutraSweet in Canada related to the sale and marketing of Aspartame. Though these complaints do not provide a specific red flag about antitrust violations in the U.S., they add to the magnitude and context of the warnings associated with the Aspartame market. Finally, many of the allegations in the Amended Complaint appeared in a Harvard Business School case study entitled "Bitter Competition: The Holland Sweetener Company versus NutraSweet." This study was first prepared in 1993 and subsequently revised in 1995 and 2000, and is available for purchase through Harvard Business School's publishing website. The existence of this academic study, which complies many of the allegations set forth by Plaintiffs and was publically available since 1993, reinforces the conclusion that there existed significant warnings about Defendants' marketing and sales of Aspartame.

As noted previously, to determine what constitutes reasonable diligence the Court must

consider the magnitude of the existing "storm warnings." Though the warnings in this case are not extensive or unequivocal, there is no question that the record reveals the existence of a certain degree of warnings with respect to the Aspartame market. In light of these warning, it is clearly unreasonable for Plaintiffs to have taken no steps or actions to investigate their claims. This complete lack of any diligence by the Plaintiffs precludes them from invoking the equitable doctrine of fraudulent concealment.

2. Failure to Establish that Plaintiffs Should Not Have Been Aware of Facts Supporting Their Claim

In order to survive Defendants' motion for summary judgment, the Court needs to determine that there exists sufficient evidence in the record for Plaintiffs to establish that they were not aware, nor should they have been aware of facts supporting their claim four years before the filing of their initial complaint.

The Amended Complaint states that "Plaintiffs and other class members did not discover, and could not have discovered through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as alleged in this Complaint until shortly before this litigation was commenced." (Consolidated Am. Class Action Compl. ¶ 98). The Amended Complaint also sets forth a series of publically available facts that allegedly describe the structure and history of the Aspartame market from 1981 through 2005. The Amended Complaint, however, does not provide any indication of what ultimately alerted Plaintiffs to the existence of their claims against Defendants. In other words, there is no allegation in the Amended Complaint or in any of Plaintiffs' submissions to the Court that indicates what action, event or occurrence ultimately informed Plaintiffs of the existence of the alleged antitrust violations by Defendants. Instead,

both Plaintiffs simply indicate that they first became aware of the existence of their claims through conversations with their attorneys. These disclosure, however, do not specify what facts or events related either to the market for Aspartame or to any of the Defendant were disclosed or discovered by their attorneys that lead them to conclude that the Defendants were in violation of U.S. antitrust law. Though the absence of these factual allegations were not fatal to Plaintiffs' claims on a motion to dismiss; at summary judgment, the absence is a fundamental flaw in Plaintiff's case.[10]

The description of the facts or events that ultimately revealed Plaintiffs' cause of action and when these facts or events were first uncovered by Plaintiffs are indispensable in establishing that Plaintiffs should not have know about the existence of their claims four years prior to the filing of their complaint. Without the disclosure of these facts, there is insufficient evidence to support a finding that Plaintiffs should not have been aware of the facts supporting their claim during the four years prior to the filing of their initial complaint; because without knowing which facts alerted a plaintiff to its claim, it is impossible to determine whether this information was available four years prior to the filing of the initial complaint.

This conclusion follows from both the cases that have applied the doctrine and the necessity of providing reasonable limits to the doctrine of fraudulent concealment. In all the cases cited by Plaintiffs, as well as all the cases reviewed by this Court in which the doctrine of fraudulent concealment is invoked, the plaintiff has always clearly set forth a "triggering event"

[10] In a Memorandum and Order denying Defendants' motion to dismiss the claims brought by the Plaintiffs, the Court noted the omission of this information. Specifically, the Court stated "While the complaint is not robust in its factual allegations regarding due diligence, especially in that it provides no indication of how plaintiffs ultimately learned of the alleged conspiracy, this is not fatal to plaintiff's fraudulent concealment allegation at this time." (Memorandum and Order 13, Jan. 18, 2007).

that put it on notice of the existence of their claims. For instance, in Morton's Market, Inc. v. Gustafson's Dairy, Inc., plaintiffs argued that they first became aware of their claims when one of the defendants plead guilty to a price-fixing charge. 198 F.3d 823, 827 (11th Cir. 1999). Similarly, in In re Electric Carbon Products Antitrust Litigation, plaintiffs alleged that they first became aware of their cause of action upon learning that the Department of Justice had indicted certain defendants. 333 F. Supp. 2d 303, 315 (D.N.J. 2004). A similar pattern is present in all the cases reviewed by this Court. Without knowing what specific facts alerted plaintiffs to the existence of their claim, neither the Court at summary judgment or a fact finder at trial can determine whether these facts were available to the Plaintiffs prior to April 25, 2002. Furthermore, if Plaintiffs do not indicate what alerted them to their claims, Plaintiffs could conceivably have filed the same complaint in 2010 rather than 2006 because no facts alleged in the complaint would begin the running of the statute of limitations. Though we recognize the importance of permitting plaintiffs to toll the statute of limitations in the context of antitrust cases, where the existence of the facts supporting a claim is often hidden from public view, this Court cannot allow plaintiffs to craft their pleadings in such a way as to avoid all implications of the statute of limitations. Wood v. Carpenter, 101 U.S. 135, 141 (1879) ("Statutes of limitations are vital to the welfare of society and are favored in the law.")

III. Conclusion

For the reasons discussed above, it is hereby ORDERED that Certain Defendants' Motion for Summary Judgment (Doc. No. 138) is GRANTED. Furthermore, because no class has been certified in this matter and because all the claims set forth by the remaining class representatives, Nog and Sorbee, have been dismissed, "the entire action must be dismissed." Bass v. Butler,116 Fed. Appx. 376, 385 (3d Cir. 2004) (citing Bd. of Sch. Comm'rs v. Jacobs, 420 U.S. 128, 129-30 (1975); see also Brown v. Philadelphia Hous. Auth., 350 F.3d 338, 343 (3d Cir. 2003) ("[W]hen claims of the named plaintiffs become moot before class certification, dismissal of the action is required.") (quoting Lusardi v. Xerox Corp., 975 F.2d 964, 974 (3d Cir. 1992)). Accordingly, the Clerk of the Court is directed to close this matter for statistical purposes.

BY THE COURT:

/S/LEGROME D. DAVIS

Legrome D. Davis, J.