

Water Utility Hits PVC Pipe Makers With Price-Fixing Suit

By **Thy Vo**

Law360 (November 8, 2024, 7:59 PM EST) -- A public water utility on Friday hit some of the nation's largest PVC pipe manufacturers with a class action accusing them of using a commodity pricing service to exchange information and illegally fix prices, claiming the companies reaped "historic profits" at the expense of public utilities.

In a proposed class action filed Friday in Illinois federal court, the Erie County Water Authority accused JM Eagle Inc. and six other makers of polyvinyl chloride pipe of illegally colluding to keep the price of PVC pipes high even after supply chain issues from the coronavirus pandemic had subsided.

The lawsuit claims the companies — which also include Atkore Inc., Diamond Plastics Corp, IPEX USA LLC, National Pipe & Plastics Inc., Otter Tail Corp. and West Lake Corp — used the subscription price reporting service OPIS to pass competitively sensitive notes and signal their pricing intentions to competitors.

"OPIS is the proverbial smoke-filled backroom that enables defendants to implement their conspiracy," Erie stated in the complaint.

OPIS publishes daily prices and market trends for different industries and brags about having "two-way relationships with players at the heart of the action," according to the suit, citing a brochure in which the company said it gets daily information about prices and transactions from active traders.

In a January 2021 edition of the "PVC & Pipe Weekly," OPIS reported that "while some market participants believed the market needed to be reset with a new price letter closer to the current price level, other[s] said that there is no reason converters can't push prices higher."

"The only requirement would be discipline," the OPIS report continued.

That line was an "invitation to restrain competition by coordinating on future pricing actions," Erie alleged, noting that the report coincides with the start of a "dramatic increase" in prices for PVC pipes that began in January 2021.

Erie, a Buffalo, New York-based public benefit corporation, filed the suit on behalf of public water and sewer utilities across the country that purchased PVC pipes for municipal water from Jan. 1, 2021, to present.

A Tennessee man filed **a similar suit** in September that sampled the same OPIS newsletters as evidence of a price-fixing conspiracy.

California's attorney general also cited OPIS' price reports in a lawsuit accusing two energy companies of artificially inflating gas prices in that state, Erie said. California reached a **\$50 million settlement** with the companies to end the litigation.

In Friday's lawsuit, Erie said the subscription-only newsletter allowed the PVC pipe makers to raise their prices and keep them there because purchasers of PVC pipes couldn't access OPIS reports to negotiate lower prices

The newsletters also served as a "conduit" for the companies' antitrust conspiracy, the suit alleged, citing various reports from OPIS that included competitively sensitive information.

A January 2023 newsletter stated that two companies, Northern Pipe and IPEX, "indicated that they would follow whatever the market does." A few months later, in May, OPIS reported that some PVC makers believe "Atkore needs to take a hard stand next week on new business at the higher price levels."

"There is no pro-competitive reason to call on market leader Atkore to hold the line on higher price levels, while acknowledging that there is no economic reason for a price increase," the lawsuit stated.

The OPIS newsletters also contain evidence that the companies communicated directly, according to the complaint.

A November 2022 report shared that some companies had buyers "fishing for a lower price by claiming that a competitor had sold to them at a lower number."

"But a phone call or two proved that this was not the case. So far, nobody has blinked," the report stated.

The alleged conspiracy has clearly worked, Erie said.

The utility cited documents the manufacturer's filed with the Securities and Exchange Commission showing prices stayed high despite a lack of strong demand for PVC pipes.

"For example, defendant Otter Tail reported that its prices for PVC pipes manufactured to municipal standards increased by 198% but volume for those pipes decreased by 23% from 2019-2023 cumulatively. This is not consistent with the laws of supply and demand," according to the complaint, which said prices should fall when demand declines.

Representatives for the parties did not immediately respond to requests for comment on Friday.

Erie is represented by Elizabeth A. Fegan and Kyle Jacobson of Fegan Scott LLC and Michael London and Tate J. Kunkle of Douglas and London PC.

Counsel information for the defendants was not immediately available on Friday.

The case is Erie County Water Authority v. Atkore Inc. et al., case number 1:24-cv-11531, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Jared Foretek and Rae Ann Varona. Editing by Kelly Duncan.