

WEBSTER, CHAMBERLAIN & BEAN, LLP – NONPROFIT ALERT

Lawsuit Alleges Trade Association Information Sharing Program Facilitated Price Fixing

New litigation should serve as a reminder that trade associations should be careful when sharing competitor pricing and cost information. One trade association in particular, the Fire Apparatus Manufacturers' Association ("FAMA"), has been caught up in litigation for its information sharing program.

Background

In late October, a fire company serving communities in New York state sued several fire truck manufacturers for conspiring to consolidate the market for fire truck manufacturing, and FAMA for being "an active participant in the conspiracy to fix, raise, maintain, or stabilize prices of Fire Trucks in the United States."¹

What was FAMA Allegedly Doing?

The Plaintiff alleges that FAMA's meetings acted as a conduit whereby members could meet and plan predatory behavior.² This alleged plan was to coordinate price increases and suppress production.³ According to the complaint, FAMA's Data & Research Committee allegedly collected sales information from members and re-distributed it to members quarterly.⁴ These data, says the complaint, were used "to monitor co-conspirators to ensure continued adherence to the conspiracy."⁵

My Association has an Information Sharing Program. Should we be Concerned?

Currently this litigation is in its infancy. There has not been a decision regarding whether the accusations have any merit, or whether FAMA broke the law. However, it is of note that the federal government has signaled that it will be more suspicious of information sharing programs. Since 2023, the Federal Trade Commission and Department of Justice have withdrawn their Safe Harbor Policy Statements regarding information sharing. The agencies have also involved themselves in multiple lawsuits against AgriStats, a company that collects, anonymizes, and distributes pricing information specifically within the agricultural industry. Even so, trade associations should still feel empowered to have information sharing programs as long as they have considered the legal landscape.

¹ Complaint at 9, *The Newstead Fire Co., Inc. v. Oshkosh Corporation, Pierce Manufacturing, Inc. et. al.*, 1:25-cv-01693-BBC.

² *See id.* at 24.

³ *See id.* at 3.

⁴ *See id.* at 21.

⁵ *See id.* at 3.

What should my Association do with this Information?

It is never a bad time to be introspective about your association's information sharing system. While the safe harbor rules are no longer in effect, courts still recognize them as a good place to start in ensuring that associations are not breaking antitrust laws when sharing competitor information. As a reminder, the safe harbor rules were (1) sharing only information that is more than three months old; (2) sharing only information that has been anonymized so that members cannot know the source; and (2) sharing only information that is combined from a minimum of five competitors – ensuring that not one of those five competitors' data makes up more than 25% of the shared data. Associations should consider at least having these safeguards in place.

Additionally, an association should ensure that it has a robust antitrust policy and compliance program in place. You can consult with your legal counsel about the components of this.

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