Proskauer

Price Gouging Weekly Round Up

October 5, 2020

Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round up highlights some of the most relevant news and information to our clients and friends.

New Jersey Attorney General Speaks Out On Efforts to Stop Price Gouging

In a recent *Law360* article, New Jersey Attorney General Gurbir Grewal discussed the state's approach to combatting pandemic-related price gouging. Prior to the pandemic, the state had declared a variety of states of emergency resulting from hurricanes and winter nor'easters. Accordingly, Attorney General Grewal stated that New Jersey's "Division of Consumer Affairs anticipated an influx of price-gouging complaints related to COVID-19 because they knew unscrupulous merchants are always ready to take advantage of consumers in need in times of crisis." However, Attorney General Grewal quickly learned that their normal strategies and tactics used to prosecute price gougers were not the same "plays" his office found themselves using. The Division originally put a team of about 55 investigators together to go into the field to investigate businesses alleged of price gouging. As the pandemic continued, limiting investigators' ability to investigate in person, the number of complaints coming in led to the Division redesigning its online complaint portal to allow consumers to report price gouging by uploading documents and photos.

The numerous investigations led to new challenges for the Division. Some retailers could not timely respond to subpoenas, while in other cases the proprietors themselves had contracted COVID-19. The investigations also found that in many cases, price increases were actually the result of increased costs upstream, which are typically defensible. Attorney General Grewal stated that "[i]n response, we adjusted our operations to account for all of these developments, including to avoid penalizing local businesses for circumstances beyond their control." By mid-July, the Division had sent more than 1,800 cease-and-desist letters related to pandemic complaints, as well as taking multiple significant enforcement actions. In conclusion, according to Attorney General Grewal, "[a]s these investigations develop and evolve, we are updating our playbook to account for the various challenges this virus presents . . ."

Kansas Attorney General Says Price Gouging Laws Apply to Online Sellers

After signing onto the amicus brief filed by 31 state attorneys general in *Online Merchants Guild v. Cameron*, Kansas Attorney General Derek Schmidt issued a press release arguing that "[s]tates need authority to enforce anti-price gouging laws against online sellers just as they do against in-state brick-and-mortar businesses." According to Attorney General Schmidt, "[t]he Kansas anti-profiteering law is an important tool to help ensure hoarding and other unscrupulous practices do not deprive Kansans of necessary products during a disaster emergency. In our modern economy, it is critical that online vendors not receive preferential treatment that could make the Internet an inviting hideout for those who would prey on consumers and unfairly compete with our Main Street businesses during the disruption of a disaster." Kansas law prohibits "unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers." Kan. Stat. Ann. §50-6,106. A price increase is presumed unjustified if it exceeds by 25% or more the price at which the goods or services were available before the state of emergency began or the price for which the same goods or services are available from other sellers in the trade area.

North Carolina Attorney General Defends State's Price Gouging Law

North Carolina Attorney General Josh Stein also joined fellow state attorneys general in signing onto the amicus brief in *Online Merchants Guild v. Cameron*. In announcing the state's support, Attorney General Stein commented that "[p]rice gouging is unconscionable and illegal – it's taking advantage of people who are desperate because they are already dealing with a crisis. Our price gouging law is critical to protecting hard-working North Carolinians from greedy businesses, and as Attorney General, I am dedicated to aggressively enforcing this law on behalf of consumers. The court should not limit states' ability to safeguard consumers and take action against bad actors."

Businessman Charged with Price Gouging Donates $450,000 Worth of PPE

On September 25, 2020, the U.S. Attorney's Office for the Eastern District of New York announced that a Long Island businessman has agreed to donate more than $450,000 worth of PPE equipment to resolve allegations of price gouging. The businessman, the first charged under the Defense Production Act of 1950 during the pandemic in April 2020, accepted responsibility "for taking advantage of a public health emergency for personal profit." In April 2020, Postal Inspectors executed a search warrant on the businessman's retail store and warehouse, finding more than 100,000 face masks, 10,000 surgical gowns, nearly 2,500 full-body isolation suits, and more than 500,000 pairs of disposable gloves. According to Philip R. Bartlee, USPIS Inspector-in-Charge, the businessman "took advantage of being the 'only game in town' with PPE during the height of the coronavirus pandemic, by jacking up the prices on life-saving equipment needed by first responders, medical personnel and the general public. [He] held himself out as a local hero but we now know this was totally untrue."

Alabama Attorney General Warns Residents to Guard Against Price Gouging

On September 28, 2020, Alabama Attorney General Steve Marshall issued a press release warning Alabama residents to be on guard against price gouging resulting from Hurricane Sally. Alabama's price gouging restrictions relating to the Hurricane went into effect on September 14, 2020. Baldwin County District Attorney Robert Wilters has also warned that "[i]f you take advantage of homeowners by price gouging, home and roof repair scams, and flat stealing from them, we will prosecute you." While Tina Hammonds, Alabama's Assistant Attorney General, stated that "[w]e're here to send a warning to all who seek to unjustly profit off of destruction. They're being watched and their actions will be reported to law enforcement."On September 28, 2020, Alabama Attorney General Steve Marshall issued a press release warning Alabama residents to be on guard against price gouging resulting from Hurricane Sally. Alabama's price gouging restrictions relating to the Hurricane went into effect on September 14, 2020. Baldwin County District Attorney Robert Wilters has also warned that "[i]f you take advantage of homeowners by price gouging, home and roof repair scams, and flat stealing from them, we will prosecute you." Tina Hammonds, Alabama's Assistant Attorney General, also stated that "[w]e're here to send a warning to all who seek to unjustly profit off of destruction. They're being watched and their actions will be reported to law enforcement."

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