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## The Antitrust Division and Non-Sherman Act Cases

Robert E. Connolly (Law Office of Robert Connolly) · Wednesday, August 22nd, 2018

On August 20, 2018 the Antitrust Division announced in a press release ([here](#)) the return of an indictment ([here](#)) against a real estate company, a realtor and an accountant that does not include a charge of violating the Sherman Act.

The press release states:

[T]he Detloffs devised a scheme requiring repair contractors to pay the Detloffs kickbacks. In return, Jeffery Detloff used his position as a realtor for the victim companies to steer housing repair contracts to contractors who paid the kickbacks. The contractors paid kickbacks to the Detloffs through Detloff Marketing. The indictment further alleges that Jeffery Detloff procured and submitted sham bids as part of the scheme to defraud the victim companies.

The indictment is unusual for the Antitrust Division in that it does not charge a violation of the Sherman Act. Unusual, but certainly not unheard of. The indictment alleges that the realtor who was handling the sale of forced properties was demanding kickbacks from contractors for work repairing foreclosed properties in preparation for sale. The investigation, and indictment, likely grew out of the Antitrust Division's real estate foreclosure auction bid rigging investigation.

It is not uncommon during a bid rigging/price fixing investigation for evidence of other crimes to be uncovered. The question can then arise "What to do with the evidence?" Title 18 violations, such as the charges in this indictment, are the province of the United States Attorney for the district in which the crimes were committed. The Antitrust Division is pretty careful to "stay in their lane" and defer to US Attorneys for Title 18 crimes. There are many situations where the evidence and investigation of non-Sherman Act wrongdoing is turned over to the United States Attorneys' Office. This is not always the case, however. If Antitrust Division attorneys are immersed in the facts, and the crime does relate to a bidding process, for efficiency reasons, the Antitrust Division will often continue the prosecution. It can be inefficient to turn the matter over to a new set of attorneys. If the Antitrust Division wishes to continue with the matter and prosecute the case, it will consult with the US Attorney for the relevant district and seek her permission. That is what appears to have happened in this case.

During my time as Chief of the Philadelphia Field Office we prosecuted quite a variety of criminal offenses; from tax evasion, kickbacks, Iraq war zone graft cases and Buy American Act violations.

Typically, Antitrust Division lawyers are trying to leverage potential other charges to “turn” a witness to cooperate in price fixing/bid rigging investigation. But, sometimes it turns out that there was no Sherman Act violation, but other offenses have been uncovered and should be prosecuted. Naturally, the Antitrust Division attorneys who have spent time on the matter would like to finish what they started and prosecute the cases. It can be great experience for an Antitrust Division lawyer who operates in a field where almost every matter is handled by Information (voluntary plea) as opposed to Indictment, with the prospect of a trial. The down side, and the push back sometimes from the Division’s front office, is that Antitrust Division resources should be focused on developing cartel cases. I recall one senior Division official commenting that he would rather have Antitrust Division attorneys standing on a street corner handing out copies of the Corporate Leniency Policy than getting bogged down in the trial of small or Title 18 cases. Bottom line don’t be surprised when the Antitrust Division files non-Sherman Act cases, but don’t expect it to be the norm either.

Thanks for reading. [Bob Connolly](#)

This post originally appeared on the [Cartel Capers blog](#).

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