

# AntitrustConnect Blog

## What's New in U.S. Criminal Antitrust Enforcement? Cases Against Cartels in Local Markets

Jeffrey May (Wolters Kluwer) · Thursday, September 5th, 2024

In the last 12 months, the Department of Justice Antitrust Division has announced 19 new criminal cases. All of the cases focused on local markets. While this is not entirely new, it is in stark contrast to the global cartel cases, such as the auto parts cases, from a decade ago, or even the the block-buster generic drug price fixing cases filed in 2020 that ended in August 2023 with deferred prosecution agreements against [Teva Pharmaceuticals USA, Inc.](#) and [Glenmark Pharmaceuticals, Inc., USA](#). In addition, most but not all of these cases filed since September 2023 involved in some form bid rigging in connection with government contracting. The Justice Department noted the role of the Procurement Collusion Strike Force in a number of its announcements. While many of the cases shared these similarities, there were some novel counts as well. For instance, in 2024, one of the defendants pleaded guilty to a criminal charge of conspiring to monopolize in violation of Section 2 of the Sherman Act.

Before getting to the new cases, it is worth mentioning some developments from the last year in earlier-filed criminal actions. In a major win for the Department of Justice Antitrust Division, in July 2024, a jury in the federal district court in Savannah [convicted](#) two individuals for conspiring to fix prices, rig bids, and allocate markets for sales of ready-mix concrete in Georgia and South Carolina. They are awaiting sentencing and have moved for a new trial. The two convicted defendants were [indicted](#) in September 2020, along with a concrete company and two others who pleaded guilty and did not go to trial. The company and the two defendants who pleaded guilty were sentenced on August 29. Of the defendants who pleaded guilty, one of the individuals was [sentenced](#) to serve prison time and to pay a \$150,000 fine, and the other individual was [sentenced](#) to probation and community service. The concrete company was [ordered](#) to pay a fine of more than \$2.7 million.

Separately, a trial is currently scheduled for October in a [case](#) against a health care staffing executive for conspiring to fix the wages of Las Vegas nurses. That closely-watched case, filed in March 2023, appears to be the last case standing in a series of wage fixing and no poach criminal actions brought by the Antitrust Division (at least for now). That effort was met with a number of setbacks and losses. For instance, in March 2023, four owners and/or operators of Maine home health care agencies were [found](#) not guilty by a jury in the Maine federal district court for allegedly conspiring to fix wage rates. Later, in November 2023, the Antitrust Division moved to voluntarily [dismiss](#) a criminal indictment charging outpatient medical care facility owner/operator Surgical Care Affiliates, LLC with conspiring with rivals not to solicit senior-level employees.

A U.S. Supreme Court [petition](#) filed by the Justice Department in June 2024 is also making news. The Justice Department asked the Court to consider whether the *per se* rule against horizontal bid rigging applies where there is a vertical relationship between competing bidders. The U.S. Court of Appeals in Richmond, Virginia, [reversed](#) an antitrust conviction of a sales manager in charge of bids for aluminum-structure contracts at Contech Engineered Solutions LLC in a bid rigging case involving aluminum-structure projects sponsored by the North Carolina Department of Transit. The defendant whose conviction was reversed submitted to the Supreme Court a conditional [cross-petition](#) for certiorari.

### **Roundup of Criminal Enforcement Filings over Last 12 Months**

**Commercial roofing.** Among the most recent criminal antitrust case filings by the Justice Department are actions targeting purported bid rigging involving commercial roofing contracts in Florida. Commercial roofing company [Service Works of Ft. Lauderdale, LLC](#), and a roofing company [manager](#) were charged on August 12, 2024, with conspiring to rig bids for commercial roofing contracts in Florida. The challenged conduct took place between April 2017 and August 2021. These are the first charges involving commercial roofing bid rigging to be filed. The documents allege involvement by an unnamed competing company and executive, pointing to the potential for additional charges.

**Steel rebar.** Two executives at competing Puerto Rico steel distributors have pleaded guilty to conspiring to fix prices for sales of reinforcing bar, or rebar. The Justice Department contends that three competitors control approximately 70 percent of the wholesale rebar market in the territory. Competitors allegedly exchanged WhatsApp chat messages, agreeing on specific rebar prices, including price increases in Puerto Rico. The first individual pleaded guilty on August 7, and the second individual pleaded guilty on August 30, the government [announced](#). Sentencing is set for later this year in both cases.

**Erosion control products.** An antitrust investigation related to contracts for erosion control products has yielded guilty pleas from four individuals involved in the industry since September 2023. In addition, in August 2024, a federal grand jury in Oklahoma City returned an [indictment](#) charging Sioux Erosion Control, Inc. and the company's vice president, as well as another employee, with fixing prices for erosion control products used to control runoff of soil or rock on highway construction and repair. The government alleges a conspiracy to divide up contracts across different areas of Oklahoma and rigged bids for particular projects. The challenged conduct began as early as May 2017 and continued into 2023 for some defendants. The individuals who have pleaded guilty—including a former Sioux employee—are still awaiting sentencing in the federal district court in Oklahoma City, the government [reports](#). Sentencing dates have not yet been set.

**Asphalt paving.** Three asphalt paving companies and six individuals have been named in a bid rigging probe of the Michigan asphalt paving services industry. The challenged conduct dates back to 2013. The first [charge](#) was filed over a year ago on June 30, 2023, against F. Allied Construction Company Inc., the company's president, and its vice-president. All [pleaded](#) guilty in August 2023 and are awaiting sentencing either later this year or in early 2025 in the federal district court in Detroit.

Within the last year, bid rigging charges also have been filed against two other companies—Asphalt Specialists LLC and Al's Asphalt Paving Company—and their executives

and former executives. All have either pleaded guilty or agreed to plead guilty.

Asphalt Specialists was [sentenced](#) on August 15, 2024, to pay a \$6.5 million criminal fine for its role in the conspiracy. The company's [former president and part owner](#) and a [former company vice-president](#) are awaiting sentencing later this year or early in 2025. A company vice-president/co-owner was [charged](#) on July 30, 2024. However, a formal plea agreement has not yet been entered.

Al's Asphalt also has been sentenced. On July 31, 2024, the company was [ordered](#) to pay a nearly \$800,000 fine for its role in the conspiracy. The company's president/co-owner was [sentenced](#) on June 10, 2024, and ordered to serve probation for a term of two years.

**Sports equipment.** In May 2024, the Justice Department [announced](#) a charge in “an ongoing federal antitrust investigation into bid rigging and other anticompetitive conduct in the school sports equipment industry.” An employee of a sports equipment supplier [pleaded](#) guilty for his role in three separate conspiracies related to bid rigging for the sale of sports equipment, such as football helmets, sold to at least 100 schools. Two of the charges described separate bid rigging conspiracies, and the third charge alleged a conspiracy to commit wire fraud. According to the government, co-conspirators agreed to submit complementary bids to schools located in Mississippi and elsewhere in order to obtain procurements for school sports equipment and related services. However, no other cases have been filed as a result of this investigation. The challenged conduct took place between May 2016 to July 2023. The defendant is awaiting sentencing. No other related charges have been made public as part of this probe.

**U.S. Forestry contracts.** Two Idaho business owners were [indicted](#) in the federal district court in Boise, Idaho, in December 2023 for allegedly conspiring to rig bids and allocate territories as to U.S. Forest Service contracts (among other counts). The U.S. Forest Service runs a bidding process to award fire-fighting related contracts to small businesses. Those services include fuel trucks and water trucks. Both defendants essentially provided fuel trucks. In May 2024, the Justice Department announced that one of the two defendants had agreed to plead guilty. A [superseding information](#) was filed as to that defendant. It contained two counts: (1) a bid rigging/territorial allocation conspiracy count under Section 1 of the Sherman Act and (2) a conspiracy to monopolize count under Section 2. In this new charge, the government alleged a conspiracy to monopolize the market for wildlife fuel truck services. Sentencing for that individual is set for March 2025. The case is moving forward against the second defendant, and a pretrial conference is currently scheduled for early next year. No other charges have been filed in connection with the investigation.

A criminal charge for a Section 2 violation is unusual. In 2022, the Justice Department brought its first criminal Section 2 case in more than 40 years. In that case, a Montana paving and asphalt contractor [pleaded](#) guilty to attempting to monopolize the market for highway crack-sealing services in Montana and Wyoming.

**Army installation flooring contracts.** In January 2024, a project manager at a government contractor was [charged](#) with receiving kickbacks from artificially inflated construction proposals, among other counts. He has been sentenced to serve prison time and ordered to pay restitution. That individual admitted to conspiring with the owner of a commercial flooring company, who was charged in 2022 and was [sentenced](#) in March 2024 to prison time. The purported scheme was related to government contracts for construction and flooring services at Fort Wainwright, a U.S.

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Army installation in Fairbanks, Alaska. Although the Antitrust Division investigated the cases, no antitrust counts were alleged in either of the multi-count criminal informations.

**False statements.** Lastly, two of the new criminal cases filed in the last year alleged false statements. In [March](#) and [April](#) 2024, charges were filed in the federal district court in Greenbelt, Maryland, against two separate individuals for making a false statement to a government agency in violation of 18 U.S.C. §1001(a)(3). Both individuals pleaded guilty and were sentenced to probation. According to the filings, around May 2020, the defendants made false statements to the Department of Defense related to a company NASA contract requiring Top Secret clearance. No additional cases have been disclosed by the Justice Department in relation to the investigation.

The list of cases suggests that the Antitrust Division for the last 12 months has been focused primarily on localized bid rigging and price fixing schemes, many of which involve government procurement. Whether that track record holds is uncertain.

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