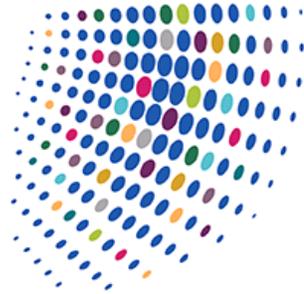


Alerts & Publications



California Supreme Court Decides Local Prosecutors Can Seek Statewide Recovery for UCL Violations

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On June 25, the California Supreme Court published a significant opinion in *Abbott Laboratories v. Superior Court* holding that local prosecutors can recover monetary remedies for statewide, rather than simply local, violations of California's Unfair Competition Law (UCL). This opinion could have far-reaching impacts on consumer protection enforcement in California.

The UCL empowers the Attorney General as well as any district attorney, any county counsel, and certain city attorneys to file a civil consumer protection action on behalf of the People of the State of California. See Cal. Bus. & Prof. §§ 17204, 17206. Although some local prosecutors have invoked this authority to bring civil actions to remedy alleged unfair competition violations occurring throughout the State of California, it had previously been unclear whether local prosecutors could seek monetary remedies for violations outside their geographic jurisdiction.

Abbott Laboratories has now recognized local prosecutors' statewide enforcement authority.

Background of Abbott Laboratories

This dispute arose from a UCL action filed by the Orange County District Attorney against several pharmaceutical companies alleging that the companies had conspired to cause consumers to overpay for certain medications. The District Attorney sought restitution and civil penalties, including treble penalties, to redress the alleged violations not only in Orange County, but statewide. Defendants filed a motion to strike claims for monetary relief outside the jurisdiction of Orange County.

The California Court of Appeal agreed that monetary remedies should be limited to the local jurisdiction of the Orange County District Attorney. Emphasizing that the California Constitution recognizes the Attorney General as "the chief law officer of the State," the California Court of Appeal reasoned that the UCL's grant of standing to local prosecutors "cannot reasonably or constitutionally be interpreted as conferring statewide authority or jurisdiction to recover such monetary remedies beyond the county the district attorney serves, or restricting the Attorney General's constitutional power to obtain

relief on behalf of the entire state.” The California Court of Appeal further noted that if the legislature had wished to confer upon local prosecutors the same remedial authority given to the Attorney General, the UCL would have explicitly vested local prosecutors with that authority.

California Supreme Court Opinion

The California Supreme Court reversed, holding that the UCL did vest local prosecutors with the authority to seek statewide relief, both injunctive and monetary. The California Supreme Court noted that the UCL’s substantive provisions are framed in intentionally broad and sweeping language and that courts’ power to fashion equitable remedies under the UCL is similarly extensive. The California Supreme Court observed that the UCL did not contain any explicit geographical limits on remedies and indeed appeared to contemplate that remedies won by one local jurisdiction would have force in another. Relying on this broad language and the history of UCL amendments expanding enforcement authority among local prosecutors, the California Supreme Court concluded the legislature had intentionally created an overlapping scheme of public enforcement at all levels.

The California Supreme Court held that this decentralized model of enforcing the UCL did not violate the California Constitution’s pronouncement that the Attorney General is chief law officer of the state. The California Supreme Court also held that nothing in the UCL prevents the Attorney General from intervening in a case brought by a local prosecutor and that the UCL’s requirement that the Attorney General be given notice of any appeals facilitates the Attorney General’s supervisory role.

Three Justices in concurrence did observe that there may be practical concerns with overlapping enforcement authority that the legislature may wish to address. The Justices suggested that the legislature may consider requiring local prosecutors to notify the Attorney General whenever they file a complaint under the UCL that seeks monetary relief for violations occurring beyond their respective jurisdictions.

Implications

The California Supreme Court’s opinion settles that local prosecutors can seek statewide monetary remedies for UCL violations. But the opinion reserves for later decision whether, as a precondition to a local prosecutor’s exercise of this statewide authority, there must be at least some violation within the prosecutor’s jurisdiction.

In addition, by recognizing the overlapping authority of dozens of local prosecutors and the Attorney General to pursue statewide UCL remedies for the same violations, the opinion promises to generate a new front of litigation concerning the coordination, reconciliation, and preclusion of parallel enforcement actions seeking conflicting or duplicative remedies.

While some local prosecutors were already bringing UCL actions seeking statewide remedies on a regular basis, *Abbott Laboratories'* endorsement will further encourage this practice. Local prosecutors will likely be emboldened to file UCL actions seeking statewide remedies. They might also be less likely to accept settlement offers that do not take into consideration potential statewide relief. The overall effect of this opinion on companies will be greater exposure to more expensive actions by local prosecutors.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Hannah Y. Chanoine, an O'Melveny partner licensed to practice law in New York and Massachusetts, Richard B. Goetz, an O'Melveny partner licensed to practice law in California, Daniel R. Suvor, an O'Melveny partner licensed to practice law in California, Jonathan Schneller, an O'Melveny counsel licensed to practice law in California, and Marissa Roy, an O'Melveny associate licensed to practice law in California, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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