No *Shepard’s*  Signal™As of: August 8, 2018 7:18 PM Z

# [***In re Auto. Parts Antitrust Litig.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5SHC-24P1-FCYK-2536-00000-00&context=)

United States District Court for the Eastern District of Michigan, Southern Division

May 5, 2017, Decided; May 5, 2017, Filed

Master File No. 12-md-02311; Case No. 2:16-cv-03802-MOB-MKM; Case No. 2:16-cv-03803-MOB-MKM

**Reporter**

2017 U.S. Dist. LEXIS 221151 \*

IN RE: AUTOMOTIVE PARTS ***ANTITRUST*** LITIGATION;IN RE: CERAMIC SUBSTRATES. THIS DOCUMENT RELATES TO: END-PAYOR ACTIONS DEALERSHIP ACTIONS

**Core Terms**

***antitrust***, Substrates, conspiracy, Ceramic, manufactured, statute of limitations, allegations, damages, motion to dismiss, complaints, commerce, refrigerators, judicial notice, vehicles, coating, prices, automotive parts, ***antitrust*** claim, purchaser, chemical, filings, sales, fraudulent concealment, limitations period, Defendants', compressors, import, conspiratorial, investigations, incorporation

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For Sean Hull, Objector (2:16cv3803): Christopher A. Bandas, Bandas Law Firm, P.C., Corpus Christi, TX, USA.

**Judges:** Hon. MARIANNE O. BATTANI, United States District Judge.

**Opinion by:** MARIANNE O. BATTANI

**Opinion**

**OPINION AND ORDER GRANTING CORNING DEFENDANTS' REQUEST FOR JUDICIAL NOTICE, DENYING CORNING DEFENDANTS' MOTION TO DISMISS,AND DENYING NGK DEFENDANTS' MOTION TO DISMISS**

**I. INTRODUCTION**

This matter is before the Court on Motions to Dismiss by Defendants Corning Inc. and Corning International Kabushiki Kaisha ("CIKK") (collectively, "Corning") (Case No. 16-03802, Docs. 13; Case No. 16-03803, Docs. 47) and by Defendants NGK Insulators, Ltd. and NGK Automotive Ceramics USA, Inc. (collectively, "NGK") (Case No. 16-03802, Doc. 12; Case No. 16-03803, Doc. 46). Corning seeks to dismiss claims brought by End-Payor Plaintiffs ("EPPs") and Auto Dealership Plaintiffs ("ADPs") (collectively, Indirect Purchaser Plaintiffs,**[\*9]** or "IPPs") based on the statute of limitations and failure to state a claim against Corning Incorporated pursuant to [*Fed. R. Civ. P. 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=). NGK seeks to dismiss claims brought by IPPs based on the Fair Trade ***Antitrust*** Improvements Act, lack of ***antitrust*** standing, and the statute of limitations. Corning also filed a Request for Judicial Notice of Publicly Available Documents and Documents Relied Upon in the Complaints. (Case No. 16-03802, Doc. 14; Case No. 16-03803, Doc. 48). For the reasons that follow, the Court **GRANTS** Corning's Request for Judicial Notice, **DENIES** Corning's motion to dismiss, and **DENIES** NGK's motion to dismiss.

**II. STANDARD OF REVIEW**

In order to survive a motion to dismiss pursuant to Federal [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), a complaint must "contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. [*Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (quoting [*Bell Atl. Corp. v. Twombly, 550 U.S., 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). A claim that is plausible "pleads factual content that allows the court to draw the reasonable inference" and demonstrates "more than a sheer possibility" that the plaintiff's claim has merit. Id. A complaint that offers "'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" Id. Although a court must accept**[\*10]** as true all factual allegations set forth in a plaintiff's complaint, it is not bound to accept as true a legal conclusion or a legal conclusion couched as a factual allegation. Id. All legal conclusions must be supported by the factual allegations. [*Id. at 679*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=).

**III. DISCUSSION**

**A. Request for Judicial Notice**

Corning requests that the Court take judicial notice of various publicly available documents, including SEC filings, press reports, criminal case filings, and other civil and criminal case filings. IPPs have submitted no argument in opposition to this request. As the request notes, pursuant to [*Fed. R. Evid. 201(c)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WV-00000-00&context=), the Court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Types of facts that may be judicially noticed include those that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." [*Fed. R. Evid. 201(b)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11WV-00000-00&context=). The types of public records sought to be judicially noticed here are appropriately considered when ruling on a [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motion to dismiss. See New England Health Care Emps. Pension Fund v. Ernst & Young, LLP, 336F.3d 495, 501 (6th Cir. 2003) ("A court that is ruling on a [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motion may consider materials in addition to the complaint**[\*11]** if such materials are public records or are otherwise appropriate for the taking of judicial notice."). Accordingly, the Court grants Corning's Request for Judicial Notice.

**B. Statute of Limitations**

EPPs filed their complaint on May 20, 2016 (Case No. 16-11804, Doc. 1); ADPs filed their complaint on June 14, 2016 (Case No. 16-12194, Doc. 1). Both Corning and NGK (collectively, "Defendants") argue that the applicable statutes of limitations bar IPPs' federal ***antitrust*** and the majority of IPPs' state-law ***antitrust***, consumer protection, and related claims. The Clayton Act incorporates a statute of limitations barring claims that are not filed within four years of the date the cause of action accrues. [*15 U.S.C. § 15b*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKV1-NRF4-43V6-00000-00&context=). State laws vary with respect to the statute of limitations applicable to ***antitrust*** claims, but Defendants maintain that the present state-law claims are barred under the three-year limitations period applicable in Kansas, Mississippi, and Tennessee[[1]](#footnote-0)1 and under the four-year limitations period applicable in Arizona, California, District of Columbia, Iowa, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, and**[\*12]** West Virginia[[2]](#footnote-1)2. Defendants do not claim that IPPs' state-law ***antitrust*** claims are barred under the six-year statutes of limitations applicable in Maine, Wisconsin, and Vermont.[[3]](#footnote-2)3 Likewise, consumer protection claims are subject to a two-year statute of limitations in Montana[[4]](#footnote-3)4; a three-year statute of limitations in New York, South Carolina, and District of Columbia[[5]](#footnote-4)5; and a four-year statute of limitations in California, Florida, Hawaii, Massachusetts, New Mexico, North Carolina, and Rhode Island[[6]](#footnote-5)6. However, Defendants do not appear to challenge the timeliness of consumer protection claims brought in Arkansas, Missouri, and Vermont.

The parties do not contest these limitations periods but rather dispute when the limitations period commenced and whether the limitations period was tolled based on the discovery rule and fraudulent concealment. Defendants argue that, by IPPs' own allegations made in their complaints, the statute of limitations began to run when the conspiratorial conduct at issue terminated in July 2011. They rely on the fact that in their complaints, IPPs allege that CIKK pleaded guilty to conspiratorial conduct "beginning at least as early as July 1999 and continuing until**[\*13]** on or about July 2011" and that IPPs do not specifically plead any conspiratorial acts later than July 2011. (See Case No. 16-11804, Doc. 1 ¶¶ 105-07; Case No. 16-12194, Doc. 1 ¶¶ 85-87).

First, the complaints define the class period as "the period from and including July 1, 1999 through such time as the anticompetitive effects of Defendants' conduct ceased." (Case No. 16-11804, Doc. 1 ¶ 3; Case No. 16-12194, Doc. 1 ¶ 3). Nowhere in the complaints do IPPs limit the time period during which the alleged conspiratorial acts took place, for example stating, "*Throughout the course of the conspiracy*, Defendants met and communicated in secret to conceal their conspiracy from the public and avoid detection thereof." (See Case No. 16-11804, Doc. 1 ¶ 193; Case No. 16-12194, Doc. 1 ¶ 169 (emphasis added)). Although IPPs' complaints refer to language in CIKK's criminal plea agreement stating that the conspiratorial conduct continued until July 2011, this does not preclude IPPs from asserting civil claims that are broader in scope. See [*In re High Fructose Corn Syrup* ***Antitrust*** *Litig., 295 F.3d 651, 665 (7th Cir. 2002))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:463F-SH40-0038-X19S-00000-00&context=) ("Because defendants typically do not plead guilty to all of the charges against them, and government resources often play a role in the plea agreement reached,**[\*14]** civil litigation is not limited by a defendant's admissions"). The Court also agrees that in spite of the lack of pleadings addressing specific conspiratorial acts after July 2011, it remains plausible that the conspiracy continued after this date. See [*In re Lithium Ion Batteries* ***Antitrust*** *Litig., No. 13-MD-2420, 2014 U.S. Dist. LEXIS 7516, 2014 WL 30912 (N.D. Cal. Jan. 21, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BBM-0TP1-F04C-T3N4-00000-00&context=) (denying motion to dismiss in spite of "sparse" allegations because an ongoing conspiracy remained plausible). Additionally, given the surreptitious nature of the conspiracy, IPPs are unlikely to have an adequate basis to allege when the conspiracy ended.

Second, IPPs claim that they allege a continuing conspiracy, whereby the statute of limitations begins anew with each sale by Defendants at an inflated price, irrespective of when the conspiratorial conduct occurred. IPPs allege that Defendants sold price- fixed Ceramic Substrates for years after submitting their collusive bids. Specifically, the complaints allege that:

Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs, and the OEMs usually award the business to the selected automotive parts supplier for the lifespan of the model, which is usually four to six years. Typically, the bidding process for**[\*15]** a particular model begins approximately three years prior to the start of production.

(Case No. 16-11804, Doc. 1 ¶ 88; Case No. 16-12194, Doc. 1 ¶ 68). Thus, some IPPs may not have incurred damages until three to nine years after the bidding process occurred.

"A cause of action accrues and the limitations period commences each time a defendant commits an act which injures the plaintiff's business." [*Peck v. Gen. Motors Corp., 894 F.2d 844, 848 (6th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7380-003B-52TS-00000-00&context=) (quoting [*Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 338, 91 S. Ct. 795, 28 L. Ed. 2d 77 (1971))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=). An overt act on the part of a defendant is required to restart the statute of limitations such that "the focus is on the timing of the causes of injury, i.e., the defendant's overt acts, as opposed to the effects of the overt acts." [*Id. at 849*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7380-003B-52TS-00000-00&context=) (citations omitted). The Sixth Circuit has defined an overt act as (1) "a new and independent act that is not merely a reaffirmation of a previous act," and (2) an act that "inflict[s] a new and accumulating injury on the plaintiff." [*Z Tech. Corp. v. Lubrizol Corp., 753 F.3d 594, 600 (6th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C8C-9N91-F04K-P009-00000-00&context=) (quoting [*DXS, Inc. v. Siemens Med. Sys., Inc., 100 F.3d 462, 467 (6th Cir. 1996))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RHD-J9D0-006F-M0H1-00000-00&context=) (internal quotations omitted). Thus, for example, the Sixth Circuit has previously held that individual payments made pursuant to a wrongful agreement are merely reaffirmations of that agreement and not continuing violations. [*Grand Rapids Plastics, Inc. v. Lakian, 188 F.3d 401, 406 (6th Cir. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3X59-0N70-0038-X3VR-00000-00&context=). Nonetheless, the "speculative damage exception" to the ***antitrust*** statute of limitations**[\*16]** permits plaintiffs to bring claims for "future damages which could not be proved within four years of the conduct from which they flowed . . . ." [*Barnosky Oils, Inc. v. Union Oil Co. of California, 665 F.2d 74, 82 (6th Cir. 1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XPS0-0039-W17S-00000-00&context=) (quoting [*Zenith Radio, 401 U.S. 321, 338-40, 91 S. Ct. 795, 28 L. Ed. 2d 77)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=) (internal quotations omitted).

Defendants contend that each individual sale to IPPs at an allegedly inflated price does not restart the statute of limitations because it involves no overt acts by Defendants and instead impermissibly focuses on the adverse impact on IPPs. Further, the downstream purchases by IPPs are transactions between sellers and buyers involving no overt acts by Defendants. However, consistent with the above ruling that IPPs' complaints plausibly allege a conspiracy extending beyond July 2011, there is a factual question with respect to when the last overt act took place — that is, it is plausible that the last act of collusion took place sometime after July 2011. Additionally, IPPs have alleged facts supporting the possibility that they fall into the speculative damage exception. According to the pleadings, the alleged collusion resulting in rigged bid submissions likely took place three years prior to start of production and had an impact for the lifespan of the vehicle model, which is four to six years. Therefore,**[\*17]** damages incurred by IPPs who purchased or leased vehicles at inflated prices more than four years after the conspiratorial conduct would have been speculative and not capable of proof during the limitations period. See [*Akron Presform Mold Co. v. McNeil Corp., 496 F.2d 230, 233-34 (6th Cir. 1974)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XSC0-0039-X073-00000-00&context=) (citing [*Zenith Radio, 401 U.S. at 338-42*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=)) ("[A] plaintiff may recover damages occurring within the period of the statute of limitations that are the result of conduct occurring prior to that period, if at the time of the conduct, those damages were speculative, uncertain or otherwise incapable of proof."). Accordingly, it is unclear when the limitations period began to run.

IPPs also argue that the statute of limitations was tolled for Corning under the discovery rule or fraudulent concealment theory until at least May 16, 2016, the date the DOJ announced that CIKK had entered into a plea agreement. For NGK, IPPs contend they had no knowledge of a conspiracy until October 14, 2014. Defendants, on the other hand, contest the applicability of these theories, arguing the conspiracy or fraud should have been discovered no later than March 30, 2012, the date of Corning's first public disclosure of the DOJ's grand jury investigation. Under a discovery rule, a "claim accrues when the plaintiff discovers,**[\*18]** or through the exercise of reasonable diligence, should have discovered, an injury and causal connection between his injury and the defendant's conduct." [*Blakely v. United States, 276 F.3d 853, 869 (6th Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44WK-7KY0-0038-X0N6-00000-00&context=). Similarly, for the equitable doctrine of fraudulent concealment to toll a statute of limitations, plaintiffs must plausibly allege the following factors: "(1) wrongful concealment of their actions by the defendants; (2) failure of the plaintiff to discover the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff's due diligence until discovery of the facts." [*Carrier Corp. v. Outokkumpu Oyj, 673 F.3d 430, 446 (6th Cir. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5536-XHJ1-F04K-P0NV-00000-00&context=) (quoting [*Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2KB0-0039-M48X-00000-00&context=) (internal quotations omitted). A plaintiff pleading fraudulent concealment must plead these facts with particularity as required under [*Rule 9(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=) and must also plead facts plausibly showing that it exercised reasonable diligence in seeking to discover its claims. [*Dayco, 523 F.2d at 394*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2KB0-0039-M48X-00000-00&context=). "[M]ere allegation of due diligence without asserting what steps were taken is insufficient" to satisfy the plaintiff's burden of pleading fraudulent concealment. Id.

Defendants argue that the discovery rule is inapplicable to ***antitrust*** claims (see Doc. 47, p. 6 n.7). Because the discovery rule standard is largely coextensive with the doctrine of fraudulent concealment,**[\*19]** the Court does not address this matter separately. According to both Corning and NGK, IPPs should have been on notice of their potential claims when Corning made its public Form 8-K disclosure on March 30, 2012, to the SEC regarding the DOJ investigation. The Form 8-K states:

In March of 2012, Corning Incorporated ("Company") received a grand jury subpoena issued in the United States District Court for the Eastern District of Michigan from the U.S. Department of Justice in connection with an investigation into conduct relating to possible ***antitrust*** law violations involving certain automotive products, including catalytic converters, diesel particulate filters, substrates and monoliths.

(Case No. 16-03803, Doc. 48, Ex. 20, p. 2). Corning also filed quarterly and annual updates with the SEC, in which the ceramic substrates ***antitrust*** action was discussed. (Id. at Exs. 2-19). Following disclosure to the SEC, numerous media publications such as *Bloomberg, Chicago Tribune*, *Reuters*, and *Seeking Alpha* quoted extensively from and reprinted information about the DOJ investigation, including that the DOJ was investigating the alleged price-fixing of catalytic converter substrates. (Id. at Exs.**[\*20]** 21-25). Between March 2012 and April 2016, Corning made 19 public disclosures of the DOJ's investigation. Corning argues that IPPs have failed to demonstrate concealment during this time, let alone that IPPs exercised reasonable diligence in investigating potential claims in light of this information. Corning expresses skepticism that IPPs' class counsel, who have long been involved in this action and have previously filed other class actions based in part on public filings, were entirely unaware of these facts. (See, e.g., EPPs' Compl. in Case No. 16-11082, Doc. 27 ¶ 204 ("No information in the public domain was available to Plaintiffs and members of the Classes prior to March 25, 2014, the date that Tenneco publically disclosed in an 8-K report that it received a subpoena from the DOJ's ***Antitrust*** Division related to a global ***antitrust*** investigation concerning multiple automotive suppliers, that revealed sufficient information to suggest that the Defendants were involved in a criminal conspiracy to fix the prices of and rig bids for Exhaust Systems.").

NGK makes a similar argument that the context surrounding Corning's disclosure should have put IPPs on inquiry notice as to NGK as**[\*21]** well. In February 2010, the press reported on raids and investigations into various auto parts suppliers, including co-conspirator DENSO. DENSO's guilty plea in January 2012 also received media attention. Just two months later, Corning made its SEC disclosure and filed an Annual Report identifying DENSO and NGK as its "principal" competitors with respect to its ceramic substrate products. (Case No. 16-03802, Doc. 12, Ex. 6).

"The rule in this Circuit is that '[w]here events receive . . . widespread publicity, plaintiffs may be charged with knowledge of their occurrence.'" [*Ball v. Union Carbide Corp., 385 F.3d 713, 722 (6th Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DFB-8B40-0038-X2NR-00000-00&context=) (quoting [*Hughes v. Vanderbilt Univ., 215 F.3d 543, 548 (6th Cir. 2000))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40F8-BF90-0038-X13K-00000-00&context=). Corning's cites to several opinions in its favor. First, the Northern District of California held that the DOJ's public announcement of its investigation into an ***antitrust*** conspiracy was sufficient to defeat the plaintiff's argument that the doctrine of fraudulent concealment tolled the statute of limitations. [*In re TFT-LCD (Flat Panel)* ***Antitrust*** *Litig., Nos. M 07-1827 SI, C 10-4945 SI, 2012 U.S. Dist. LEXIS 10779, 2012 WL 273761, at \*3 (N.D. Cal. Jan. 30, 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54VM-BRB1-F04C-T4P3-00000-00&context=) ("[W]hen the conspiracy became publicly known in December 2006, any wrongful conduct on the part of the defendants stopped having its effect, removing the basis for plaintiff's**[\*22]** tolling."). Likewise, the District Court of New Jersey held that, where purchaser plaintiffs alleged that two pharmaceutcal companies fraudulently concealed the anticompetitive nature of a settlement agreement reached by the companies, the public filings made with the SEC and the press releases put the plaintiffs on inquiry notice. [*In re Lamictal Indirect Purchaser &* ***Antitrust*** *Consumer Litig., 172 F. Supp. 3d 724, 744-45 (D.N.J. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JC8-4NK1-F04D-W428-00000-00&context=). However, that court expressly exempted bid-rigging ***antitrust*** cases from its holding.

Other cases have held that inquiry notice cannot be triggered based on the availability of limited information in the public domain. See, e.g., [*Staehr v. The Hartford Fin. Servs. Grp., Inc., 547 F.3d 406, 416-36 (2d Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TY5-6870-TXFX-41S5-00000-00&context=) (holding that the plaintiffs were not placed on inquiry notice where public SEC filings, four lawsuits, and various news sources provided little to no detail indicating the probability of fraud); [*Conmar Corp. v. Mitsui & Co. (U.S.A.), 858 F.2d 499, 503-04 (9th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-Y540-001B-K0X8-00000-00&context=) (finding a genuine issue of material fact regarding whether the plaintiff was put on notice of their ***antitrust*** claims where select newspapers and wire services carried stories of defendant being investigated by the federal government and where a competitor filed a related ***antitrust*** action). Here, the SEC filings and the media coverage of a criminal investigation would not have provided IPPs sufficient information either to put them on**[\*23]** notice of a likely conspiracy claim or to sustain adequate pleadings that could survive the [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) standard. See, e.g., [*In re Packaged Ice* ***Antitrust*** *Litig., 723 F. Supp. 2d 987, 1009 (E.D. Mich. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7YVB-F241-2RHK-N016-00000-00&context=) (quoting *Hinds Cty., Mississippi v. Wachovia Bank N.A., 700 F. Supp. 2d 378, \*10 (S.D.N.Y. March 25, 2010))* ("Although pending government investigations may not, standing alone, satisfy an ***antitrust*** plaintiff's pleading burden, government investigations may be used to bolster the plausibility of § 1 claims."). As observed by other courts, a mere investigation does not suggest the presence of viable claims, as it is unknown whether it will result in any pleas or indictments. [*In re Graphics Processing Units* ***Antitrust*** *Litig., 527 F. Supp. 2d 1011, 1024 (N.D. Cal. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PX8-FJN0-TXFP-C353-00000-00&context=) ("The [grand jury] investigation, however, carries no weight in pleading an ***antitrust*** conspiracy claim. It is unknown whether the investigation will result in indictments or nothing at all."). Accordingly, the Court finds that the SEC filings and media reports were insufficient to put IPPs on inquiry notice.

Because the Court concludes that the SEC filings and media publications were insufficient to put IPPs on inquiry notice, there is nothing to suggest that they should have been more diligent in their investigations. Even if IPPs had a duty to investigate further, Defendants have identified no avenues they should have explored that would have provided them the necessary factual basis to file a complaint.**[\*24]** Additionally, "[a]s many courts have noted in the ***antitrust*** conspiracy context, it is generally inappropriate to resolve the fact-intensive allegations of fraudulent concealment at the motion to dismiss stage, particularly where the proof relating to the extent of the fraudulent concealment is alleged to be largely in the hands of the alleged conspirators." [*In re Rubber Chems.* ***Antitrust*** *Litig., 504 F. Supp. 2d 777, 789 (N.D. Cal. 2007))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PHM-1X70-TXFP-C29X-00000-00&context=) (internal quotations omitted). Corning's motion to dismiss based on the statute of limitations must therefore be denied.

Similarly, the Court must also reject NGK's statute of limitations argument, which is even more tenuous than Corning's. The fact that one of NGK's alleged co-conspirators and principle competitors pleaded guilty while another was under investigation by the DOJ would not reasonably signal that a plaintiff may have a claim against NGK. Neither the media publications nor Corning's SEC filings identified NGK as a possible co-conspirator. According to IPPs, there were no announcements or publicity of any wrongdoing by NGK until September 2015, when the DOJ publicly announced that NGK had agreed to pay a fine for its role in the conspiracy. NGK's position is similar to an argument rejected by the Court in Occupant Safety**[\*25]** Systems. There, the Court determined that government raids at the facility of one defendant, standing alone, was insufficient to put plaintiffs on notice of claims against that defendant's co-conspirator. [*In re Automotive Parts Litig. (Occupant Safety Systems), No. 2:12cv601, 2014 U.S. Dist. LEXIS 120725, 2014 WL 4272784 (E.D. Mich. Aug. 29, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D19-F7S1-F04D-H0YM-00000-00&context=).

To the extent that Defendants seek to dismiss IPPs' unjust enrichment claims because they assert the underlying ***antitrust*** and consumer protection claims are time-barred, this position must fail because the Court has determined that the statute of limitations does not preclude these claims. Both Corning's and NGK's motions to dismiss based on statute of limitations grounds are therefore denied.

**C. Failure to State a Claim**

Corning Inc. and CIKK both argue that IPPs have failed to plead a claim for injunctive relief because they have not "demonstrate[d] a significant threat of injury from an impending violation of the ***antitrust*** laws or from a contemporary violation likely to continue or recur." [*Zenith Radio, 395 U.S. at 130*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRC0-003B-S48H-00000-00&context=). However, IPPs have cited to several opinions in this action where the Court has found that plaintiffs have pleaded a "cognizable danger of recurrent violation" based on allegations of "a decade-long global conspiracy in a**[\*26]** market with high barriers to entry. . . . [with] [t]he same market conditions exist[ing] today." [*In re Automotive Parts Litig. (Instrument Panel Clusters), No. 12-cv-0201, 2014 U.S. Dist. LEXIS 60362, at \*133 (E.D. Mich. Apr. 30, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C3P-S021-JCNC-8001-00000-00&context=); [*Occupant Safety Systems, No. 12-cv-0601, 2014 U.S. Dist. LEXIS 60362, 2014 WL 1746579, at \*12*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C3P-S021-JCNC-8001-00000-00&context=); [*Wire Harness, No. 12-cv-0101, 2012 U.S. Dist. LEXIS 127131, 2013 WL 2456584, at \*14*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58KW-5M31-JCNC-7000-00000-00&context=). In light of the former decisions rejecting other Defendants' identical arguments, the Court declines to dismiss IPPs' claim for injunctive relief.

Corning Inc. seeks dismissal of the claims asserted against it — but not against CIKK — based on IPPs' failure to state a claim. Corning Inc., the United States indirect parent company, argues that only CIKK, its Japanese subsidiary, pleaded guilty to ***antitrust*** violations and that IPPs do not plead any facts indicating that Corning Inc. had any involvement in or awareness of the alleged conspiracy. Corning Inc. represents that pursuant to the plea agreement, the Government "expressly stated and agreed that the violation was perpetrated by one employee of the Japanese subsidiary, CIKK," and that the Government expressly agreed that it would not prosecute the U.S. parent company. A review of the plea agreement reveals that the Government agreed it would "not bring further criminal charges against**[\*27]** the defendant or Corning Incorporated," as long as *both* entities provide cooperation in the form of document production and cooperation of Corning Inc.'s directors, officers, and employees. (Case No. 16-03803, Doc. 48, Ex. 28 ¶¶ 12, 14). Further, the factual background portion of the plea agreement states, "The defendant, through a senior CET Japan executive who had substantial authority within the defendant's company, participated in a conspiracy to suppress and eliminate competition." (Id. at ¶ 4(c).). Though the Government may have attributed significant blame to one CIKK executive, the Court does not agree that this forecloses the possibility of Corning Inc.'s involvement, especially in light of the fact that both Corning Inc. and CIKK were subject to the cooperation provision of the plea agreement.

Corning Inc. also argues that IPPs have made no specific allegations regarding its individual role or participation in the conspiracy. It notes that IPPs make generic references to "Defendants'" conduct collectively and that this type of group pleading is insufficient under Twombly. See, e.g., [*In re Lithium Ion Batteries, 2014 U.S. Dist. LEXIS 7516, 2014 WL 309192, at \*13*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5BBM-0TP1-F04C-T3N4-00000-00&context=) (a complaint containing references to corporate families or companies by a single name and**[\*28]** generic, conclusory allegations that defendant subsidiaries participated in the conspiracy by acting as agent for their parent companies did not meet the Twombly standard). IPPs' complaints note that "personnel working at [CIKK] provided services to Corning Incorporated related to the marketing and sales of Ceramic Substrates manufactured by Corning Incorporated in the United States." (Case No. 16-11804, Doc. 1 ¶ 106; Case No. 16-12194, Doc. 1 ¶ 86). The complaints also state that CIKK is a Japanese subsidiary wholly owned and/or controlled by Corning Inc. and that the market was ripe for collusive behavior. (Case No. 16-11804, Doc. 1 ¶¶ 80-81, 91, 98; Case No. 16-12194, Doc. 1 ¶¶ 60-61, 71-78). Similar pleadings have been found sufficient to survive a motion to dismiss. See [*In re Automotive Parts Litig. (Wire Harness), Nos. 12-cv-00102, 12-cv-00103, 2013 U.S. Dist. LEXIS 80333, 2013 WL 2456586, at \*3 (E.D. Mich. June 6, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58KW-5M51-JCNC-7001-00000-00&context=) ("Dismissal is not required merely because Plaintiffs did not name each Defendant in the allegations pleaded in support of their Sherman Act claim," where, taken as a whole, the complaint pleaded a conspiracy to restrain trade, market conditions open to collusion, and the defendants' strength in the market). That IPPs bring suit against**[\*29]** a parent company where a subsidiary has pleaded guilty is of no moment, as IPPs have alleged that Corning Inc. controlled CIKK and that CIKK provided marketing and sales services to Corning Inc. with respect to Ceramic Substrates. These allegations, in context, support an inference that Corning Inc. was aware of and may have participated in the conspiracy. The same factual scenario was presented in Occupant Safety Systems, No. 12-00601, 2014 WL 4272774, at \*3 (E.D. Mich. Aug. 29, 2014). Though in that case the plaintiffs alleged that the parent company "directly participated in meetings and submitted rigged bids in furtherance of the conspiracy," such allegations are not necessarily required, as discussed above. Corning Inc.'s motion to dismiss must therefore be denied.

**D. Foreign Trade *Antitrust* Improvement Act**

NGK contends that IPPs' claims premised on foreign sales of Ceramic Substrates made abroad are barred by the Foreign Trade ***Antitrust*** Improvements Act ("FTAIA"). Sp[ecifically, NGK challenges IPPs' claims based on sales of Ceramic Substrate made outside the United States to entities also located outside the United States. The FTAIA provides that the Sherman Act does not apply to conduct involving trade or commerce unless it relates to import commerce or (1) the conduct**[\*30]** has a direct, substantial, and reasonably foreseeable effect on U.S. import, export, or domestic commerce, *and* (2) the effect gives rise to a federal ***antitrust*** claim. [*15 U.S.C. § 6a*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=). The FTAIA also acts to preclude such state law ***antitrust*** claims. See [*In re Static Random Access Memory ("SRAM")* ***Antitrust*** *Litig., No. 07-md-01819, 2010 U.S. Dist. LEXIS 141968, 2010 WL 5477313, at \*4 (N.D. Cal. Dec. 31, 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:52BW-VJC1-JCNB-319D-00000-00&context=) ("[T]he United States Constitution vests Congress with the express power to '***regulate*** Commerce with foreign Nations,' and courts have accordingly recognized that foreign commerce is 'pre-eminently a matter of national concern' on which the federal government has historically spoke[n] with 'one voice.'") (citations omitted); Edward D. Cavanagh, *The FTAIA and Claims by Foreign Plaintiffs Under State Law*, 26 ***Antitrust*** L. J. 43, 46 (Fall 2011) ("[I]f the states were given free rein to entertain matters involving foreign commerce that are beyond the bounds set by the FTAIA for federal ***antitrust*** law, the explicit purpose of Congress to accommodate the ***antitrust*** schemes of other nations would be hopelessly compromised."). Indeed, the seminal case involving FTAIA noted the Congressional intent underlying the statute was to "prevent such 'unreasonable interference with the sovereign authority of other nations.'" [*Motorola Mobility, LLC v. AU Optronics Corp., 775 F.3d 816, 824 (7th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=) (quoting**[\*31]** [*F. Hoffman-La Roche Ltd. v. Empagran, S.A., 542 U.S. 155, 165, 124 S. Ct. 2359, 159 L. Ed. 2d 226 (2004))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CM8-9WB0-004B-Y00G-00000-00&context=).

Motorola Mobility involved the sales of allegedly price-fixed LCD panels to Motorola's foreign subsidiaries. [*Id. at 817*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=). The subsidiaries incorporated these component parts into cell phones that the subsidiaries then sold and shipped to Motorola for resale in the United States. Id. In its analysis, the Seventh Circuit Court of Appeals assumed that these sales had an effect on domestic U.S. commerce and that the effect was both foreseeable and direct. [*Id. at 819*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=) ("[T]he facts of this case are not equivalent to what we said in *Minn-Chem* would definitely block liability under the Sherman Act: the 'situation in which action in a foreign country filters through many layers and finally causes a few ripples in the United States.'"). Rather, the appellate court determined that the ***antitrust*** claims failed to meet the second half of the FTAIA standard — that the conduct give rise to an ***antitrust*** cause of action. Id. It noted that "[t]he conduct increased the cost to Motorola of the cellphones that it bought from its foreign subsidiaries, but the cartel-engendered price increase in the components and in the price of cellphones that incorporated them occurred entirely in foreign commerce." Id. The court held that**[\*32]** Motorola lacked standing to seek relief on behalf of its foreign subsidiaries, and, relatedly, that it was an indirect purchaser lacking standing to assert federal ***antitrust*** claims under [*Illinois Brick Co. v. Illinois. Id. at 820-21*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9DJ0-003B-S1WY-00000-00&context=) (citing [*Illinois Brick, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9DJ0-003B-S1WY-00000-00&context=). With respect to any argument that Motorola suffered damages based on the inflated pricing of cell phones passed onto it by its foreign subsidiaries, Motorola waived it by failing to raise it before the district court. [*Id. at 823*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=).

The court in [*In re Refrigerant Compressors* ***Antitrust*** *Litig., No. 2:09-md-02042, 2016 U.S. Dist. LEXIS 146013, 2016 WL 6138600 (E.D. Mich. Oct. 21, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M0G-K651-F04D-H036-00000-00&context=), followed Motorola Mobility in a similar ***antitrust*** action involving General Electric's purchase of refrigerators from MABE, a joint venture company based in Mexico of which GE was a 48% owner. GE alleged that foreign manufacturers of refrigerant compressors conspired to fix prices of the component part, which were then sold to MABE in the manufacture of residential refrigerators. [*Id. 2016 U.S. Dist. LEXIS 146013 [WL] \* 2-3*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M0G-K651-F04D-H036-00000-00&context=). MABE, in turn, sold these refrigerators to GE. Id. The court agreed with the defendants' position that, because the refrigerant compressor was purchased by MABE in Mexico from foreign manufacturers, "the cartel-engendered price increase in the refrigerant compressors and in the price of refrigerators that incorporated**[\*33]** them occurred entirely in foreign commerce. Thus, GE's foreign subsidiary (MABE) was the direct purchaser of the allegedly price-fixed refrigerant compressors and that is fatal to GE's attempt to assert claims based on MABE's purchases." [*Id. 2016 U.S. Dist. LEXIS 146013 [WL] \*24*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M0G-K651-F04D-H036-00000-00&context=).

In the present case, NGK contends that the transactions at issue are even more remote than the sales at issue in Motorola Mobility and In re Refrigerant Compressors. Pursuant to the complaints:

Defendants and their co-conspirators supplied Ceramic Substrates to OEMs for installation in Vehicles manufactured and sold in the United States and elsewhere. Defendants and their co-conspirators manufactured Ceramic Substrates (a) in the United States for installation in Vehicles manufactured and sold in the United States [Group A], (b) in Japan and elsewhere for export to the United States and installation in Vehicles manufactured and sold in the United States [Group B], and (c) in Japan and elsewhere for installation in Vehicles manufactured in Japan and elsewhere for export to and sale in the United States [Group C].

(Case No. 16-11804, Doc. 1 ¶ 89; Case No. 16-12194, Doc. 1 ¶ 69). NGK does not contend that the FTAIA bars ***antitrust*** claims stemming from Groups**[\*34]** A and B but does maintain that the FTAIA bars such claims stemming from Group C. (Case No. 16-03802, Doc. 22, pp. 5-6). According to NGK, Ceramic Substrates in Group C, like the LCD panels in Motorola Mobility, were manufactured outside the U.S. and sold to intermediaries (such as component manufacturers or OEMs) before incorporation into automobiles assembled outside the U.S. and later sold as finished automobiles inside the U.S. (Case No. 16-11804, Doc. 1 ¶¶ 87-89; Case No. 16-12194, Doc. 1 ¶¶ 67-69). IPPs argue that the commerce at issue here is import commerce not subject to FTAIA because the parts at issue ultimately made their way into the American market. IPPs rely on the only other instance in which the Court has confronted a FTAIA argument. In that decision, however, the Court declined to apply FTAIA where the plaintiffs alleged that NTN USA manufactured and sold bearings directly into the United States market at the direction of NTN, a foreign corporation. [*In re Automotive Parts Litig. (Bearings), No. 12-md-02311, 2014 U.S. Dist. LEXIS 127751, 2014 WL 4209588, at \*6 (E.D. Mich. Aug. 26, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D0W-GYJ1-F04D-H0VK-00000-00&context=). Under these facts, the Court found:

Plaintiffs do not seek damages for conduct occurring entirely outside of the United States causing only foreign injury. Likewise,**[\*35]** they do not seek remedies for domestic exporters injured in foreign ventures. Instead, Plaintiffs allege an ***antitrust*** conspiracy directed at the United States by foreign and domestic corporations, many of which are United States- based subsidiaries engaged in the manufacturing and domestic sale of the price-fixed product at issue.

[*Id. 2014 U.S. Dist. LEXIS 127751 [WL] \*7*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D0M-RG01-F04D-H0SN-00000-00&context=). The facts here differ. This matter involves sales analogous to those in Motorola Mobility that occurred entirely in foreign commerce. There, the Seventh Circuit described import commerce, stating:

Had the defendants conspired to sell LCD panels to Motorola in the United States at inflated prices, they would be subject to the Sherman Act because of the exception in the Foreign Trade ***Antitrust*** Improvements Act for importing. That is the 1 percent, which is not involved in the appeal. Regarding the 42 percent, Motorola is wrong to argue that it is import commerce. It was Motorola, rather than the defendants, that imported these panels into the United States, as components of the cellphones that its foreign subsidiaries manufactured abroad and sold and shipped to it.

[*Motorola Mobility, 775 F.3d at 818*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=). Likewise, NGK was not responsible for importing the Ceramic Substrates into the United States;**[\*36]** rather, the OEMs or other intermediaries were responsible for the parts' eventual introduction into U.S. commerce. IPPs attempt to distinguish the present case from Motorola Mobility by arguing that the case was premised on the plaintiffs' lack of standing pursuant to Illinois Brick and that the plaintiffs there did not assert claims for damages under the laws of indirect purchaser states. But, as discussed above, the FTAIA must be found to be equally applicable to state law ***antitrust*** claims. Additionally, the Seventh Circuit's decision that Motorola could not bring suit for a derivative injury occurring entirely in foreign commerce was independent of its discussion of Illinois Brick. See [*id. at 820-21*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=). Accordingly, IPPs' claims against NGK are not premised on import commerce.

Therefore, IPPs must show that the Group C sales have a "direct, substantial, and reasonably foreseeable effect" on U.S. commerce and give rise to an ***antitrust*** cause of action. Initially, if the prices of Ceramic Substrates were fixed, there would be a substantial effect in U.S. commerce that would be foreseeable, as NGK likely knew that its product incorporated into vehicles manufactured in Japan would be exported for sale**[\*37]** in the United States. Whether the effects are direct or are mere "ripple effects" would depend on evidence that the damages are traceable through the supply chain, thus requiring sophisticated economic analysis not properly considered at this stage. Accepting IPPs' allegations that such damages are traceable (Case No. 16-11804, Doc. 1 ¶¶ 167-77; Case No. 16-12194, Doc. 1 ¶¶ 146-57), the Court finds that the first prong of the test is satisfied.

With respect to whether the sales give rise to an ***antitrust*** cause of action, Motorola Mobility does not necessarily foreclose this possibility. Although, pursuant to that case, IPPs may not bring a claim stemming from supra-competitive prices incurred by the intermediaries that purchased the Ceramic Substrates directly from NGK, Motorola Mobility leaves open the possibility that a plaintiff may demonstrate that the inflated cost was ultimately passed on to him. [*Id. at 823-24*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5F2V-5FJ1-F04K-R1DB-00000-00&context=) (finding that Motorola waived any argument that it could base damages on the downstream effect the cartel's pricing of components had on Motorola and, in any event, that Motorola's damages expert discussed only the damages to the foreign subsidiary). Here, IPPs allege, "During the Class**[\*38]** Period, Plaintiffs and the members of the Classes paid supra- competitive prices for Ceramic Substrates. OEMs and automotive dealers passed on inflated prices to Plaintiffs and the members of the Classes. Those overcharges have unjustly enriched Defendants." (Case No. 16-11804, Doc. 1 ¶ 167; Case No. 16-12194, Doc. 1 ¶ 146). Assuming IPPs' allegations to be true, they have adequately alleged an injury sustained by them as opposed to the intermediaries. Therefore, the Court cannot conclude at the present stage that the FTAIA precludes IPPs' claims, and NGK's motion to dismiss on this ground must be denied.

**E. *Antitrust* Standing**

In order to satisfy constitutional standing, the Court must assess whether the ***antitrust*** plaintiffs are the proper parties to bring the action. [*Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 535 n.31, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5500-003B-S0SB-00000-00&context=) ("AGC"). Although IPPs bring their claims under state law, thus avoiding Illinois Brick's bar on federal indirect purchaser ***antitrust*** actions, they must nonetheless satisfy ***antitrust*** standing under AGC. (See Case No. 12-00203, Doc. 86, p. 19). Under AGC, courts consider five factors to determine whether ***antitrust*** plaintiffs have standing: (1) the causal connection between the violation and the alleged harm; (2) the nature**[\*39]** of the alleged injury and whether it was one Congress sought to redress; (3) the directness of the alleged injury, and whether damages are speculative; (4) the potential for duplicative recovery or complex apportionment of damages; and (5) the existence of more direct victims. [*459 U.S. at 537-45*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5500-003B-S0SB-00000-00&context=). As this Court has previously found in this action, "[a] plaintiff need not prevail on every factor[;] instead, the courts balance the factors, 'giving great weight to the nature of the plaintiff's alleged injury.'" [*In re Automotive Parts Litig. (Wire Harness), No. 12-md-02311, 2013 U.S. Dist. LEXIS 80338, 2013 WL 2456612, at \*14 (E.D. Mich. June 6, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58KW-5N61-F04D-Y01K-00000-00&context=) (quoting [*AGC, 459 U.S. at 535*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5500-003B-S0SB-00000-00&context=)).

NGK argues that IPPs fail to meet several prongs of the AGC test. In assessing the nature of the alleged injury, a "significant element" is whether the plaintiff is a "participant in the relevant market." [*Southaven Land Co., Inc. v. Malone & Hyde, Inc., 715 F.2d 1079, 1085 (6th Cir. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-YNS0-003B-G093-00000-00&context=) (citing [*AGC, 459 U.S. at 908-09*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5500-003B-S0SB-00000-00&context=)). NGK cited to previous decisions of this Court, relying on [*In re TFT-LCD, 586 F. Supp. 2d at 1132*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54VM-BRB1-F04C-T4P3-00000-00&context=), finding that where IPPs were not direct participants in the automotive parts market, they advanced allegations that the markets for parts and for vehicles were "inextricably linked and intertwined." (Case No. 12-00203, Doc. 86, pp. 19-20). In particular, the Court noted that :

Specifically, IPPs have alleged that the markets for [Instrument Panel Clusters]**[\*40]** and cars are inextricably intertwined, that the demand for cars creates the demand for IPCs, that the IPCs must be inserted into vehicles to serve a function, that IPCs remain identifiable, discrete physical products, unchanged by the manufacturing process or incorporation into vehicles, that IPCs follow a traceable physical chain, and that their prices can be traced through the chain of distribution.

(Id. at p. 20). Here, IPPs allege that the Ceramic Substrate and vehicle markets are inextricably linked and intertwined. (Case No. 16-11804, Doc. 1 ¶ 168, Case No. 16-12194, Doc. 1 ¶ 148). However, NGK contends that IPPs are unable to allege that Ceramic Substrates follow a "traceable physical chain" because they do not "remain identifiable, discrete physical products, unchanged by the manufacturing process." According to NGK, Ceramic Substrates undergo an irreversible chemical coating process before incorporation into the catalytic converter, which in turn is incorporated into the exhaust system. The complaints acknowledge that a catalytic converter performs its emissions control function by "convert[ing] certain pollutants in an exhaust gas stream into less harmful gases through a catalytic chemical**[\*41]** reaction." (Case No. 16-11804, Doc. 1 ¶ 85, Case No. 16-12194, Doc. 1 ¶ 65). NGK asserts this chemical reaction cannot take place absent the chemical coating of the substrates. Accordingly, Ceramic Substrates must be fundamentally transformed prior to incorporation into a second component in order for it to perform its function in a third component. NGK asserts that the coating of substrates renders it impossible to identify and trace damages because a coated substrate has an inherently different value to downstream links than an uncoated substrate.

IPPs maintain that the chemical coating added to Ceramic Substrates does not alter the physical characteristics of the part and that that they are traceable and identifiable after the coating is applied. IPPs liken the chemical coating process to adding a coat of paint. They contend that instances where a component part becomes unidentifiable include chemical components mixed with other chemicals to create a final product. For example, the market for potash, an ingredient used in fertilizer, was found to be too far removed from the fertilizer market to sustain an ***antitrust*** suit by indirect purchasers of fertilizer. [*In re Potash* ***Antitrust*** *Litig., 667 F. Supp. 2d 907, 940 (N.D. Ill. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4XMD-RGR0-TXFP-T3C7-00000-00&context=), *vacated and remanded****[\*42]*** *on other grounds by* [*Minn-Chem, 657 F.3d 650 (7th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:53VW-GS11-F04K-R0C7-00000-00&context=), *aff'd en banc by* [*Minn-Chem, 683 F.3d 845 (7th Cit. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5605-M9M1-F04K-R0JN-00000-00&context=). The Court finds a factual question exists with respect to whether Ceramic Substrates are rendered physically unidentifiable or untraceable such that they are "consumed" after the coating process. Construing the facts as set forth by IPPs' allegations, as the Court must at this stage, compels the conclusion that the Ceramic Substrates remain discrete physical products. Further, with respect to NGK's argument that the chemical coating process materially alters the value of the substrates, the Court has previously rejected the argument that a part's negligible price relative to the vehicle does not serve as grounds for dismissal. [*In re Automotive Parts Litig. (Fuel Senders), 29 F. Supp. 3d 982, 998 (E.D. Mich. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CK5-3X91-F04D-H1CR-00000-00&context=) (citing [*In re SRAM, 264 F.R.D. 603, 614-15 (N.D. Cal. 2009))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7X6R-9M40-YB0M-N0MH-00000-00&context=) (noting In re SRAM's conclusion that defendants "may not shield themselves from liability by fixing prices on a relatively inexpensive item").

Relatedly, NGK argues that IPPs cannot show a causal connection or a direct injury because they are too far removed in the stream of commerce. According to NGK, Ceramic Substrates pass through at least four intermediaries before reaching IPPs: (1) the company that chemically coats the ceramic substrate; (2) the manufacturer that incorporates the catalyzed substrate into**[\*43]** a catalytic converter; (3) the exhaust system manufacturer; and (4) the OEM that incorporates the exhaust system into a vehicle. Other cases have found the causal nexus to be too remote and attenuated to support the ***antitrust*** standing of consumers of a finished product incorporating an allegedly price-fixed part. For example, in In re Refrigerant Compressors, that plaintiffs who had purchased refrigerators, finished products containing the allegedly price-fixed compressors, were deemed to be too far removed in the causal chain to have standing. See 2013 WL 1431765, at \*13-14 (E.D. Mich. Apr. 9, 2013) (citing [*In re Potash* ***Antitrust*** *Litig., 667 F.Supp.2d at 940-41*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4XMD-RGR0-TXFP-T3C7-00000-00&context=)) ("But the IP Plaintiffs' complaint does not, and as a practical matter could not, contain any factual allegations regarding whether or not the parties from whom they purchased their finished products actually passed on any overcharges that they may have paid for hermetic compressors."). This case relied on In re Dynamic Random Access Memory (DRAM) ***Antitrust*** Litig., in which plaintiff asserted injuries stemming from paying artificially-inflated prices for finished goods that contained the price-fixed component. [*516 F. Supp. 2d 1072, 1085-96 (N.D. Cal. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P13-YTR0-TVSH-32NS-00000-00&context=). The Northern District of California likewise concluded that the plaintiffs' injuries were too remote to support standing,**[\*44]** reasoning:

It requires no leap of logic to conclude that each product in which DRAM is a component, contains numerous other components, all of which collectively determine the final price actually paid by plaintiffs for the final product. In other words, the price for the actual product paid by plaintiffs is reflective of much more than just the component price for DRAM. Yet plaintiffs' complaint sets forth no allegations that demonstrate that, within the final purchase price of a given product purchased by plaintiffs for "end use," the ultimate cost of the DRAM component is somehow directly traceable and/or distinguishable.

[*Id. at 1092*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P13-YTR0-TVSH-32NS-00000-00&context=).

This Court has previously rejected the notion that the alleged price-fixing of a component part is too far removed to sustain a complaint alleging injuries based on the purchase of the finished product. See [*In re Automotive Parts Litig., (Fuel Senders), 29 F. Supp. 3d at 997-98*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CK5-3X91-F04D-H1CR-00000-00&context=) ("IPPs have alleged that Defendants caused them economic injury because the overcharges affected the price of vehicles containing Fuel Senders as well as stand-alone Fuel Senders purchased as replacement parts. As the Complaints detail, there is a reasonable inference here that Defendants' anticompetitive conduct harmed businesses and impacted the prices that**[\*45]** consumers paid for new vehicles." (citations omitted)). The complaints at issue here amply allege that the damages to IPPs may be traced through the supply chain. (See Case No. 16-11804, Doc. 1 ¶¶ 167-77; Case No. 16-12194, Doc. 1 ¶¶ 146-57). As concluded in that opinion, the shortcomings identified by NGK reflect the difficulties of proof and not any deficiencies in pleading. [*Fuel Senders, 29 F. Supp. 3d at 998*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CK5-3X91-F04D-H1CR-00000-00&context=). Accordingly, the Court finds that IPPs have adequate ***antitrust*** standing and denies NGK's motion to dismiss on these grounds.

**IV. CONCLUSION**

For the foregoing reasons, the Court, **GRANTS** Corning's Request for Judicial Notice, **DENIES** Corning's motion to dismiss, and **DENIES** NGK's motion to dismiss.

**IT IS SO ORDERED**.

May 5, 2017

/s/ Marianne O. Battani

MARIANNE O. BATTANI

United States District Judge

**End of Document**

1. 1[*Kan. Stat. Ann. § 60-512*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BY4-T2G1-DYB8-31C7-00000-00&context=); [*Miss. Code Ann. § 15-1-49(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8P6B-7YV2-8T6X-72YP-00000-00&context=); [*Tenn. Code Ann. § 28-3-105*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4X8J-5HC0-R03J-M04M-00000-00&context=). [↑](#footnote-ref-0)
2. 2[*Ariz. Rev. Stat. § 44-1410(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DP0-J2P1-6MP7-F4PG-00000-00&context=); [*Cal. Bus. & Prof. Code § 16750.1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JFB-2YX1-DYB7-W1N9-00000-00&context=); [*D.C. Code § 28-4511(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CDK-B2N1-6NSS-B08Y-00000-00&context=); [*Iowa Code Ann. § 553.16(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GCJ-G901-DYB7-W00T-00000-00&context=); [*Mich. Comp. Laws Ann. § 445.781(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:56VF-8HD1-6RDJ-84FT-00000-00&context=); [*Minn. Stat. Ann. § 325D.64(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SR-00000-00&context=); [*Neb. Rev. Stat. § 25-212*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DHH-V4Y1-7308-2118-00000-00&context=); [*Nev. Rev. Stat. Ann. § 598A.220(2)(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5B62-NJJ1-6X0H-049P-00000-00&context=); [*N.H. Rev. Stat. Ann. § 356:12(II)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5B8M-42N1-669P-00Y6-00000-00&context=); [*N.M. Stat. Ann. § 57-1-12(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BXH-GGD1-64V8-14BT-00000-00&context=); [*N.Y. Gen. Bus. Law § 340(5)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CT3-0WS1-6RDJ-84HF-00000-00&context=); [*N.C. Gen. Stat. Ann. § 75-16.2*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S90-2WC0-004F-P038-00000-00&context=); [*N.D. Cent. Code Ann. § 51-08.1-10(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CP7-X5Y1-66WP-P45N-00000-00&context=); [*Or. Rev. Stat. Ann. § 646.800(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5812-D6T1-648C-847T-00000-00&context=); [*S.D. Codified Laws § 37-1-14.4*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DKM-GYJ1-66PT-F0VT-00000-00&context=); [*Utah Code Ann. § 76-10-3117(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BKJ-YPT1-6VSV-005C-00000-00&context=); [*W. Va. Code Ann. § 47-18-11*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:56W2-96N1-64R1-B0GV-00000-00&context=). [↑](#footnote-ref-1)
3. 3See [*14 Me. Rev. Stat. Ann. § 752*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5D41-79Y1-648C-F0BM-00000-00&context=); [*Wis. Stat. § 133.18(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5G4X-PM41-DYB7-M17N-00000-00&context=); [*12 Vt. Stat. Ann. § 511*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5SDC-H3B0-004G-G3DH-00000-00&context=). [↑](#footnote-ref-2)
4. 4Mont. Code Ann. § 27-2-221(1)(c). [↑](#footnote-ref-3)
5. 5[*N.Y. Gen. Bus. Law § 349*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CT3-0WS1-6RDJ-84HX-00000-00&context=); [*S.C. Code Ann. § 39-5-150*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5K1J-NM41-DYB7-S082-00000-00&context=); [*D.C. Code §§ 28-3801 to 28-3819*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CDK-B2N1-6NSS-B069-00000-00&context=). [↑](#footnote-ref-4)
6. 6[*Cal. Bus. & Prof. Code § 17208*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JFB-2YX1-DYB7-W1SS-00000-00&context=); [*Fla. Stat. § 95.11(3)(f)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8RBV-HY92-D6RV-H4SS-00000-00&context=); [*Haw. Rev. Stat. § 480-24(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JHY-GY41-DXC8-02BP-00000-00&context=); [*Mass. Gen. Laws ch. 260, § 5A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5FFB-G2B1-6HMW-V0T8-00000-00&context=); [*N.M. Stat. Ann. § 37-1-4*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BXH-GCP1-64V8-14Y9-00000-00&context=); [*N.C. Gen. Stat. Ann. § 75-16.2*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S90-2WC0-004F-P038-00000-00&context=); [*R.I. Gen. Laws Ann. § 6-36-23*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5SW5-BSB0-004G-403P-00000-00&context=). [↑](#footnote-ref-5)