

WV Attorney General Patrick Morrisey and Governor Jim Justice Announce \$101.3M Settlement in Paving Antitrust Case

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CHARLESTON, WV – West Virginia Attorney General Patrick Morrisey, Governor Jim Justice, the state Department of Transportation and six local governments reached a \$101.35 million settlement with 11 asphalt and paving companies – the largest, single-state antitrust settlement in West Virginia’s history.

The settlement resolves allegations that West Virginia Paving Inc., Kelly Paving Inc., American Asphalt & Aggregate Inc. and eight related companies conspired to monopolize the state-approved asphalt and paving market, thus reducing competition and maximizing profits at the taxpayers’ expense.

The agreement includes \$101.35 million in cash and credits, along with a mix of non-monetary terms to restore competition.

The Attorney General’s Office hired Bailey Glasser as lead outside counsel for the case, along with Robinson & McElwee and the Webb Law Centre.

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Bailey Glasser's work on this matter actually began more than five years ago when investigator Chuck Little began uncovering potential antitrust violations by the defendants. Bailey Glasser lawyers Benjamin Bailey, Eric Snyder, Benjamin Hogan, and Katherine Charonko all played an integral role in this case, along with many others - including Mike Hissam and Isaac Forman - over the many years it was litigated. Paralegal Missy Dennis deftly handled the massive number of documents in the case.

"This achievement means many more roads will be paved," Attorney General Morrisey said. "I will not tolerate monopolization on my watch.

"Our settlement will go a long way to restore competition and recoup road funds to the benefit of every taxpayer who pays for and drives West Virginia's roads. We can never afford to allow an unlawful monopoly to victimize West Virginia and maximize its profits on the backs of state taxpayers, especially when every dollar is needed to pave our roads and compete effectively with other states for business and tourism," he continued.

"This is a historic day for West Virginia, and all West Virginians should be really, really proud," Governor Justice said. "This settlement not only means another \$100 million that we'll be able to invest in continuing to repair and maintain our roads all across West Virginia, but it also means that you, the taxpayers, are getting what you paid for. We have made incredible progress over the last few years with my Roads To Prosperity program and Secondary Roads Maintenance Initiative, and this money will allow our great Department of Transportation to do even more. I want to thank everyone who played a part in helping to reach this settlement."

The Attorney General filed the lawsuit in January 2017 with the state's Department of Transportation alleging acquisitions or non-compete agreements were used to unlawfully eliminate competitors and push asphalt prices higher in areas controlled by West Virginia Paving, its parent company CRH plc, and other defendants as compared to parts of the state with robust competition.

The lawsuit set forth charges of trade restraint, monopolization and attempts to monopolize - all violations of the state's Antitrust Act - and argued high prices strained an already tight highways budget forcing the state to delay construction projects, some indefinitely, causing immeasurable economic damage and unconscionable public safety risks.

The settlement requires West Virginia Paving, Kelly Paving and American Asphalt to make a combined, upfront payment of \$30.35 million to the state and local participants. That includes a combined share of \$4.4 million for Beckley, Bluefield, Charleston, Huntington, Parkersburg and Kanawha County.

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West Virginia Paving also agreed to provide the state an additional \$71 million in credits that can be applied to already completed, yet unpaid, road projects and future work over the next seven years.

The non-monetary terms include a mix of price restrictions, the elimination of a non-compete clause and required advance notice for future acquisitions.

For instance, West Virginia Paving, CRH and its subsidiaries agreed to give the state a 120-day notice of any contemplated acquisition, merger or joint venture that exceeds \$500,000 in nine southeastern counties.

West Virginia Paving and CRH must give the same notice for any such transaction that exceeds \$1 million in 16 additional counties from the Mid-Ohio Valley, through the Charleston-Huntington metro area and further south to the Big Sandy and Tug Fork Rivers.

The settlement also gives American Asphalt control of a joint venture with two CRH subsidiaries and ends a non-compete clause, allowing American's owner to sell asphalt more broadly. In return, the CRH subsidiaries can move forward with eliminating a requirement to buy a minimum amount of asphalt from the joint venture.

Likewise, the terms institute price restrictions upon co-defendant Camden Materials LLC – a joint venture between Kelly Paving and West Virginia Paving. The limits will remain in place for seven years unless an unaffiliated, third-party competitor takes over Camden Materials.

West Virginia Paving, Kelly Paving and American Asphalt, together with each co-defendant, denied wrongdoing as part of the agreement. All parties agreed to the settlement to avoid the delay, expense, inconvenience and uncertainty of protracted litigation.

Other listed defendants were Oldcastle Inc., Oldcastle Materials Inc., Southern West Virginia Paving Inc., Southern West Virginia Asphalt Inc., American Asphalt of West Virginia LLC and Blacktop Industries & Equipment Company.

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