

“IF YOU NEVER DID, YOU SHOULD”: STATE EQUITABLE REMEDIES FOR ANTITRUST VIOLATIONS



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Section 16 of the Clayton Act authorizes "injunctive relief . . . against threatened loss or damage" due to an antitrust violation "under the same conditions and principles as injunctive relief against threatened conduct . . . is granted by courts of equity [.]". While State enforcers and other plaintiffs have long turned to this provision for non-monetary relief to redress anti-competitive conduct, the Supreme Court's initially expansive construction of Section 16 and other federal laws has narrowed in recent decisions. Facing this potential retrenchment in federal remedies, antitrust enforcers should consider the laws of many individual States, which offer alternative, additional remedies beyond traditional injunctions and damages. This paper summarizes Supreme Court developments and explores State-law remedies, some grounded in equity practice and others expressly included in State antitrust and consumer protection laws. The paper also presents a sampling of decisions from jurisdictions throughout the country recognizing the authority of State Attorneys General or other government officials to secure equitable relief extending to both residents and non-residents of the State.

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I. INTRODUCTION

Section 16 of the Clayton Act, in pertinent part, authorizes persons “to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust laws . . . when and under the same conditions and principles as injunctive relief against threatened conduct . . . is granted by courts of equity, under the rules governing such proceedings[.]”² Available to State enforcers and other antitrust plaintiffs besides the United States or the Federal Trade Commission, Section 16 has served as a Swiss-army knife of equitable relief, offering successful plaintiffs equitable remedies, despite the absence of their explicit mention in the statute itself. Recent Supreme Court rulings, however, call into question whether Section 16 will continue to afford a basis for expansive forms of equitable relief. Facing potential contraction of relief under this federal law, State enforcers and other plaintiffs should recognize that the laws of many individual States offer alternative, additional forms of relief.

We first discuss below leading Supreme Court decisions that inform the breadth of equitable remedies lower federal courts may recognize under general statutory grants of injunctive authority, such as that found in Section 16. We then discuss many different remedies found in state antitrust and unfair trade practices laws, which may be available to federal courts exercising jurisdiction over state law claims. In this discussion, we put aside injunctive relief, expressly available under Section 16, and non-equitable remedies, such as actual or treble damages and civil penalties. Our focus instead is on other forms of relief, some grounded in equity practice and others expressly included in State provisions.³ Finally, we present a sampling of decisions from jurisdictions throughout the country recognizing the authority of the State Attorney General or other government official to secure relief extending to both residents and non-residents of the State.

II. THE EVOLUTION OF EQUITABLE REMEDIES IN FEDERAL ANTITRUST CASES

A. Broad Equitable Authority Under *Porter v. Warner Holding Co.*

*Porter v. Warner Holding Co.*⁴ is a useful starting point to discuss judicial construction of federal laws granting the court authority to issue injunctive relief. The federal Price Control Administrator challenged rent set in violation of the Emergency Price Control Act. Section 205(a) of the Act authorized suit “enjoining such acts or practices, or for an order enforcing compliance with such provision,” and upon a showing that the defendant “has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.”⁵ The Supreme Court upheld an order of disgorgement as within the law’s grant of equitable authority:

“Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.”⁶

Porter effectively established that an unrestricted congressional grant of equitable jurisdiction could be presumed to confer broad equitable authority. *Mitchell v. Robert DeMario Jewelry, Inc.*⁷ hammered home the point. The Secretary of Labor brought suit under the Fair Labor Standards Act for a discriminatory discharge in violation of FLSA §15(a)(3).⁸ As relief, the Secretary sought an award of lost wages, based on FLSA §17, which authorized the district court, “for cause shown, to restrain violations of section 15.”⁹ The district court found a violation, but declined to direct reimbursement for lost wages, and the court of appeals held there was no jurisdiction to order such relief. Reversing, the Supreme Court quoted *Porter* and further wrote:

² 15 U.S.C. § 26.

³ Our discussion covers many States, large and small, from all parts of the country. We have not, however, researched the laws of all the States.

⁴ 328 U.S. 395 (1946).

⁵ *Id.* at 397.

⁶ *Id.* at 398. See also *id.* at 398-99 (“[O]nce [a District Court’s] equity jurisdiction has been invoked[,] . . . a decree compelling one to disgorge profits . . . may properly be entered.”).

⁷ 361 U.S. 288 (1960).

⁸ 29 U.S.C. § 215(a)(3).

⁹ *Id.* at 289; 29 U. S. C. § 217.

“[T]he comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court’s jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.”

* * *

“When Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes.”¹⁰

B. Porter Applied in Antitrust

Neither Porter nor Mitchell was an antitrust case, and neither involved a State-plaintiff. *California v. American Stores Co.*,¹¹ however, checked both boxes. After the FTC negotiated a merger settlement that included limited divestitures, California sued for additional divestiture relief under Clayton Act §16.¹² Although the Ninth Circuit declined to recognize a divestiture remedy as within the district court’s injunctive power, the Supreme Court reversed.

While the *American Stores* Court cited Porter’s effective presumption favoring broad equitable authority, its decision was more nuanced.¹³ Besides Section 16’s grant of equitable authority, Clayton Act §15 authorizes the United States to sue “to prevent and restrain violations of this Act” and to “institute proceedings in equity to prevent and restrain such violations” through petitions “praying that such violation shall be enjoined or otherwise prohibited.”¹⁴ Precedent established that relief in a U.S. action under Section 15 included divestiture.¹⁵

Comparing the two provisions, the Supreme Court wrote: “On its face, the simple grant of authority in § 16 to ‘have injunctive relief’ would seem to encompass divestiture just as plainly as the comparable language in § 15[.]”¹⁶ Moreover, construing §16 to include divestiture relief, the Court said, helped “harmonize the section with its statutory context. The Act’s other provisions manifest a clear intent to encourage vigorous private litigation against anticompetitive mergers.”¹⁷ As further support for its holding, the Supreme Court undertook a lengthy review of the Clayton Act’s legislative history.¹⁸

C. Lower Court Applications of Porter

Lower federal courts applied these decisions broadly. *Federal Trade Commission v. Mylan Labs., Inc.*¹⁹ arose after defendants entered exclusive supply contracts for the active pharmaceutical ingredients in two pharmaceutical products and then raised prices on those products. For the first time in a competition case, the FTC invoked the equitable authority conferred under Section 13(b) of the FTC Act to seek disgorgement of the defendants’ profits. Section 13(b) authorizes the district court, “in proper cases,” to issue a “permanent injunction” against “any person, partnership, or corporation” that the FTC believes “is violating, or is about to violate, any provision of law.”²⁰ Denying the defendants’ motion to dismiss, the district court wrote:

¹⁰ *Id.* at 291, 292.

¹¹ 495 U.S. 271 (1990).

¹² 15 U.S.C. § 26.

¹³ See *Id.* at 295 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) (quoting *Porter*, 328 U.S. at 398)).

¹⁴ 15 U.S.C. § 25.

¹⁵ See, e.g., *United States v. E. I. duPont de Nemours & Co.*, 366 U.S. 316 (1961). See also *Standard Oil Co. v. United States*, 221 U.S. 1 (1911), and *United States v. American Tobacco Co.*, 221 U.S. 106 (1911) (directing divestiture under Sherman Act § 4, which preceded Clayton Act § 15).

¹⁶ *Id.* at 281. Although the courts of appeals were split on this very issue, the Supreme Court concluded: “the plain text of § 16 authorizes divestiture decrees to remedy § 7 violations.” *Id.* at 281.

¹⁷ *Id.* at 284.

¹⁸ *Id.* at 285-93.

¹⁹ 62 F. Supp. 2d 25 (D.D.C.1999).

²⁰ 15 U.S.C. § 53(b).

“Although courts are generally disinclined to find remedies beyond those that Congress has expressly granted, the equitable jurisdiction of a federal agency such as the FTC must be read in light of the principles articulated in *Porter v. Warner Holding Co.*, 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946).”²¹

Thus, the court upheld disgorgement under § 13(b) “[b]ased on the principle of statutory construction set forth in *Porter* and reaffirmed in *De-Mario [Mitchell]*” and decisions of “five courts of appeals and numerous district courts” permitting the FTC to pursue monetary relief under § 13(b) in consumer protection cases.²²

States and private plaintiffs brought parallel cases against the same defendants. Because *Illinois Brick*²³ barred treble damage claims by indirect purchasers, they sought monetary remedies under the injunctive relief language of Section 16 of the Clayton Act.²⁴ The district court held, however, that implying a disgorgement or restitution remedy under §16 would impermissibly circumvent *Illinois Brick*, as would comparable relief under state law “absent express authority for such relief”²⁵ On the other hand, where state law allowed indirect purchasers to sue or seek monetary equitable relief, the court declined to dismiss.²⁶

Even the Antitrust Division, which almost never sues for monetary relief in civil antitrust cases other than those where the government itself is an injured victim, invoked the *Porter-Mitchell* line of cases. In *United States v. Keyspan Corp.*,²⁷ the DOJ settled a claim alleging that Keyspan rigged bids on electrical capacity. The settlement included a \$12 million disgorgement payment to the United States, the first such request by DOJ in an antitrust case. Relying on both *Porter*’s presumption and Second Circuit authority in SEC disgorgement cases, the district court upheld disgorgement as within its equitable authority under the antitrust laws. “Section 4 [of the Sherman Act] . . . [is] broad and contain[s] no language divesting a court of its ‘inherent equitable powers.’”²⁸

D. The Supreme Court Limits Porter

Both *Porter* and *Mitchell* arose from law enforcement cases brought by public officials. Private plaintiffs in subsequent cases did not fare so well in the Supreme Court, however. In *Mertens v. Hewitt Associates*,²⁹ beneficiaries of an ERISA retirement plan sought monetary relief from a nonfiduciary-actuary who allegedly participated in the statutory violation. The relevant ERISA provision authorized a civil action: “(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or the terms of the plan”³⁰ The district court dismissed the claim, and the court of appeals affirmed in relevant part.

The Supreme Court upheld dismissal, noting that the beneficiaries did not seek “a remedy traditionally viewed as ‘equitable,’ such as injunction or restitution , but rather compensatory damages—monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties . . . —the classic form of legal relief.”³¹ The Court recognized that “equitable relief” could embrace “whatever relief a court of equity is empowered to provide in the particular case at issue,” but also could “refer to those categories of relief that were typically available in equity (such as injunction, mandamus, and restitution, but not compensatory damages).”³² However, under ERISA’s statutory scheme, “appropriate equitable relief” against a nonfiduciary was limited; only professional service providers who “cross[ed] the

²¹ 62 F. Supp. 2d at 36.

²² *Id.* at 37.

²³ *Illinois v. Illinois Brick Co.*, 431 U.S. 720 (1977).

²⁴ See 62 F. Supp. 2d at 42; 15 U.S.C. § 26.

²⁵ 62 F. Supp. 2d at 43. See generally *FTC v. Mylan Labs., Inc.*, 99 F. Supp. 2d 1 (D.D.C. 1999) (discussing equitable relief under state law). For more recent similar authority, see *In re Pre-Filled Propane Tank Antitrust Litigation*, 893 F.3d 1047, 1059 (8th Cir. 2018) (Section 16 does not enable indirect purchasers to seek disgorgement).

²⁶ 62 F. Supp. 2d at 43.

²⁷ 763 F. Supp. 2d 633 (S.D.N.Y. 2011).

²⁸ *Id.* at 639-40 (quoting *Porter*, 328 U.S. at 398). Sherman Act § 4 is identical, in pertinent part, to Clayton Act § 15, discussed above. See also *Keyspan*, 763 F. Supp. at 638 (discussing authority in SEC cases).

²⁹ 508 U.S. 248 (1993).

³⁰ *Id.* at 253 (quoting 29 U.S.C. § 1132(a)(3)).

³¹ *Id.* at 255 (emphasis in original).

³² *Id.* at 257.

line from adviser to fiduciary,” and thus had “power to control what the plan did,” could be “compelled to make restitution, and subjected to other equitable decrees.”³³

*Meghrig v. KFC Western, Inc.*³⁴ is similar: Private plaintiffs sued under an environmental statute that authorized a citizen’s action “to restrain any person who has contributed or who is contributing to the [the statutory violation] . . . [and] to order such person to take such other action as may be necessary, or both.”³⁵ The issue before the Supreme Court was whether this grant of equitable relief included an award of “equitable restitution.” The Court emphasized that where, as in the environmental laws there invoked, “Congress has provided elaborate enforcement provisions for remedying the violation of a federal statute . . . , it cannot be assumed that Congress intended to authorize by implication additional judicial remedies for private citizens suing under’ the statute.”³⁶

The Supreme Court applied this statute-focused approach, rather than the Porter-Mitchell presumption against limits on equitable authority, most recently in *AMG Capital Management, LLC v. Federal Trade Commission*.³⁷ There, Federal Trade Commission Act §13(b) came before the Supreme Court in a consumer protection case. The district court had ordered restitution of \$1.3 billion against a payday lender, and the court of appeals had affirmed. Although by this time, eight courts of appeals had uniformly upheld issuance of monetary relief under §13(b), the Supreme Court unanimously disagreed.

The Court recognized that *Porter* and *Mitchell* had construed “similar language as authorizing judges to order equitable monetary relief.”³⁸ Nonetheless, “the text and structure of the statutory scheme at issue can, ‘in so many words, or by a necessary and inescapable inference, restric[t] the court’s jurisdiction in equity.’”³⁹ Reviewing specifically the language of § 13(b), the Court wrote: “taken as a whole, indicate[s] that the words ‘permanent injunction’ have a limited purpose—a purpose that does not extend to the grant of monetary relief.”⁴⁰ The Court further emphasized that, in more recent decisions, it had held, “based on our reading of a statutory scheme as a whole, that a provision’s grant of an ‘injunction’ or other equitable powers does not automatically authorize a court to provide monetary relief.”⁴¹

Unmentioned in *AMG* was the Supreme Court’s decision, just a year earlier, in *Liu v. Securities and Exchange Commission*,⁴² where the Court by an 8-1 vote upheld a disgorgement award in favor the Securities and Exchange Commission. There, the relevant statute, applicable to SEC enforcement actions, authorized the court to grant “any equitable relief that may be appropriate or necessary for the benefit of investors.”⁴³ Although other parts of the Securities Act and the Securities Exchange Act expressly authorized monetary relief — including disgorgement in SEC administrative proceedings — the Supreme Court relegated this statutory context to analytical background.⁴⁴ Instead, the Court focused on “whether a particular remedy falls into ‘those categories of relief that were typically available in equity.’”⁴⁵

And “[e]quity courts,” the Court noted, “have routinely deprived wrongdoers of their net profits from unlawful activity, even though that remedy may have gone by different names.”⁴⁶ Notably, the Court quoted *Porter* for the proposition that where a statute confers equitable au-

33 *Id.* at 262.

34 516 U.S. 479 (1996).

35 *Id.* at 484.

36 *Id.* at 488-89 (cleaned up).

37 141 S.Ct. 1341 (2021).

38 *Id.* at 1347. See also *Id.* at 1349 (under *Porter* and *Mitchell*, text and statutory structure can “in so many words, or by necessary and inescapable inference, restrict the court’s jurisdiction in equity.” (cleaned-up).)

39 *Id.* at 1350 (quoting *Porter*, 328 U. S., at 398 & *Mitchell*, 361 U. S., at 291).

40 *Id.* at 1348-49.

41 *Id.* at 1350.

42 140 S.Ct. 1936 (2020).

43 15 U.S.C. § 78u(d)(5).

44 See 140 S.Ct. at 1940 (identifying other statutes) & 1946.

45 *Id.* at 1942 (quoting *Mertens*, 508 U.S. at 256).

46 140 S.Ct. at 1942. See also *Id.* (“a remedy tethered to a wrongdoer’s net unlawful profits, whatever the name, has been a mainstay of equity courts.”).

thority, the court has “all inherent equitable powers” unless the statute “otherwise provide[s]”⁴⁷ The limiting equity principle was only that the award not exceed “net” profits, after deducting expenses.⁴⁸ The *Liu* and *AMG* decisions thus recognize an apparent dichotomy: a statute allowing for pursuit of “equitable relief” may permit any equitable remedy (in line with *Porter*), while a statute allowing merely for a “permanent injunction” may not, depending on the overall statutory context.

III. APPLYING RECENT PRECEDENT TO CLAYTON ACT SECTION 16

The Supreme Court’s recent trilogy of decisions leaves the scope of federal antitrust remedies in doubt. Although the language of the statutes involved in *Meghrig* and *AMG* differs to some extent from that in Clayton Act §16, nevertheless, the court could focus on the framework of the Sherman and Clayton Acts, and particularly on their express enforcement provisions, which already include the relatively unusual treble damage monetary remedy.⁴⁹ Or, picking up on *Liu*’s re-affirmation of *Porter*, the court might emphasize that monetary relief to prevent a wrongdoer from benefitting from its misconduct is a time-honored part of equity jurisdiction. And far from expressly limiting the court’s jurisdiction, Section 16 expressly imports, as guidance, the “conditions and principles” of equity practice generally.

Perhaps *American Stores*, the Supreme Court’s only foray into the scope of Section 16 remedies, further supports *Liu*’s signal favoring broad equitable relief. The *American Stores* Court recognized divestiture as available, even though Section 16 refers only to injunctive relief. On the other hand, divestiture directs future conduct, and in that sense is, like most injunctions, forward-looking. By contrast, equitable remedies such as disgorgement of profits, restitution of ill-gotten gains, and an accounting are not only backward-looking, but also are, arguably, unduly duplicative of the Clayton Act’s already generous treble damage remedy. This issue has already led one district court to take the *AMG* approach and deny equitable monetary relief under Section 16, though that litigation remains ongoing.⁵⁰

Accordingly, State antitrust enforcers, and private antitrust plaintiffs, would be well-advised to refrain from relying solely on federal law as the source of relief in antitrust cases. Remedies available under state antitrust or unfair trade practices laws are, therefore, an attractive alternative to urging a federal court to adopt an expansive construction of Section 16’s grant of injunctive authority.

State “harmonization” provisions — favoring construing state law to accord with federal antitrust law — should not be an insurmountable obstacle. Harmonization would apply with strongest force, of course, where the language of the state remedies law is identical to that of Section 16. By contrast, harmonization should not come into play at all where the state law either: (1) expressly authorizes relief beyond that identified in Section 16; or (2) includes language not found in Section 16 that fairly suggests more expansive remedies are contemplated. Moreover, state harmonization itself comes in different flavors, which afford varying deference to federal antitrust precedent. In New York, for example, state divergence is recognized “where State policy, differences in the statutory language or legislative history justify such a result. . . .”⁵¹ In the section that follows, we detail various state remedy provisions that go beyond the injunctive relief available if the federal court were more inclined to read the limiting signals from *Meghrig-AMG* than the less constrained ones from *Liu*.

IV. STATE-LAW REMEDIAL PROVISIONS

Many state remedies provisions, like the provision in *Liu*, speak in terms of “equitable” relief or other open-ended terminology, which itself suggests broader authority than that available under Section 16’s injunction language. Missouri law is illustrative:

“[I]n addition to granting such prohibitory injunctions and other restraints as it deems expedient to deter the defendant from, and secure against, his committing a future violation of [the antitrust laws], the court may grant such mandatory relief as is reasonably necessary to restore or preserve fair competition in the trade or commerce affected by the violation.”⁵²

47 *Id.* at 1947 (quoting *Porter*, 328 U.S. at 398). See also *Id.* at 1943 (citing *Porter* for the proposition that equitable relief could include disgorgement of profits).

48 *Id.* at 1943. See also *Id.* at 1945-46, 1950.

49 15 U.S.C. §§ 15, 15c(a)(2).

50 See *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, 2022 WL 2047964 (E.D. Pa. June 7, 2022) (declining to construe Section 16 to cover disgorgement).

51 *People v. Rattenni*, 81 N.Y.2d 166, 171, 597 N.Y.S.2d 280 (1993) (quoting *Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 335, 525 N.Y.S.2d 816 (1988)). See generally *In re Flash Memory Antitrust Litig.*, 643 F. Supp. 2d 1133, 1151-53 (N.D. Cal. 2009) (quoting and discussing various approaches).

52 Mo. Rev. Stat. § 416.071.2.

Texas antitrust law similarly empowers the court “to enter any order or orders required to implement the provisions of this Act.”⁵³ In addition to enumerated relief available to the Attorney General, Kansas law authorizes the court to issue orders “to prevent violations, . . . to enforce any [available] remedy, . . . [and to] grant other appropriate relief.”⁵⁴ Comparable provisions are common in the States.⁵⁵

Provisions in other states authorize not only forms of equitable relief, but also other more far-reaching remedies. Express grants of authority to direct relief restitution or disgorgement are common.⁵⁶ For example, Pennsylvania’s Unfair Trade Practices and Consumer Protection Law provides that where the court issues a permanent injunction, the court may also order the defendant, to “restore to any person in interest

53 Tex. Bus. & Com. Code Ann. § 15.26. See also *Id.* § 15.20(b) (expressly authorizing injunctive relief in an action by the Attorney General).

54 Kan. Stat. Ann. § 50-103(b).

55 See A.R.S. § 44-1408(B) (Arizona) (authorizing “appropriate injunctive or other equitable relief”); Cal. Bus. & Prof. Code § 16754.5 (in an action by the Attorney General, the court may “grant[] such prohibitory injunctions and other restraints as it may deem expedient” and “mandatory injunctions as may be reasonably necessary to restore and preserve fair competition”), § 17070 (any person may sue “to enjoin and restrain” violations), § 17079 (the court may “include in any injunction . . . such other restraint as it may deem expedient . . . to deter . . . and insure against” violations); Colo. Rev. Stat. §§ 6-4-111(1) & 113(1) (the Attorney General and persons injured may sue “to prevent or restrain” violations); Fla. Stat. Ann. § 542.23 (injured persons may sue for “injunctive or other equitable relief”) & § 501.207(3) (under the State’s Deceptive and Unfair Trade Practices Act, in an action by the Attorney General, the court may “grant legal, equitable, or other appropriate relief.”); 740 Ill. Comp. Stat. § 10/7(1) (the Attorney General may sue “to prevent and restrain” violations,” and the court may “enter such judgment as it considers necessary to remove the effects of any violation,” and prevent its continuation or renewal); IC § 24-1-2-5 (Indiana) (the Attorney General may “institute appropriate proceedings to prevent and restrain violations”); Kan. Stat. Ann. § 50-103(b) (the Attorney General may seek “such orders or judgments as may be necessary to prevent violations” or “to enforce any remedy available to the Attorney General,” and “other appropriate relief”); R.S. § 51:128 (Louisiana) (the Attorney General may sue “to prevent and restrain violations”) & § 51:130 (the court may issue interlocutory sequestration or receivership orders regarding “any property utilized in violating [the antitrust] law,” and “if the public interest would suffer from the suspension of defendant’s business, . . . order the judicial sequestrator or receiver appointed to carry on the [defendant’s] business . . . until the termination of the suit”); Md. Code Ann. Com. Law §§ 11-209(a)(1) & (3) (the Attorney General may “institute proceedings in equity to prevent or restrain violations,” and providing that the court “may exercise all equitable powers necessary for this purpose”); Mass. Gen. Laws, tit. XV, ch. 93, § 9 (the Attorney General may sue “to prevent or restrain violations”); Mich. Comp. Laws §§ 445.777 & 445.778(1) & (2) (the Attorney General, State agencies, and injured persons may sue “for appropriate injunctive or other equitable relief”); Minn. Stat. § 325D.59 (the Attorney General may sue “seeking appropriate relief”) & §§ 325D.072, 325D.15, 325D.58 (the court may issue injunctions “to prevent and restrain violations”); Miss. Code Ann. § 11-45-11 (the State may seek “all remedies to which individuals are entitled”), § 75-21-37 (authorizing enforcement “by appropriate legal proceedings and suits at law or in equity”) & § 75-24-9 (under the State’s Consumer Protection Act, the court may issue injunctions “to restrain and prevent” violations); Nev. Rev. Stat. § 598A.070(1) & (4) (the Attorney General may sue for [i]njunctive relief to prevent or restrain violations . . . [and for] [o]ther equitable relief”); N.Y. Gen. Bus. L. § 342 (the Attorney General may sue “to restrain or prevent” violations); N.C. Gen. Stat. § 75-14 (the Attorney General may “obtain a mandatory order, including (but not limited to) [injunctive relief] . . . to carry out the provisions of this Chapter”); N.D. Cent. Code § 51-08.1-07 (the Attorney General may seek “appropriate injunctive relief, [and] equitable relief”) & § 51-08.1-08 (the state and its agencies, and other persons threatened with injury may seek “appropriate injunctive or other equitable relief”); Ohio Rev. Code § 109.81(A) (“The attorney general shall do all things necessary . . . to properly conduct any antitrust . . . , including the bringing of an action for equitable relief”) & § 1311 (the Attorney General may sue “to restrain and enjoin” antitrust violations); 79 Okla. Stat. § 205A.1 (the Attorney General and injured persons may seek “appropriate injunctive or other equitable relief”); Or. Rev. Stat. § 646.770(1) (authorizing suits “for equitable relief”) & § 646.775(1)(a) (authorizing the Attorney General to sue for “equitable” relief); Vt. Stat. Ann. § 2458(b) (under the State’s unfair competition statute, the Attorney General may seek, in addition to injunctions, “any other temporary or permanent relief, or both, as may be in the public interest”); Va. Code Ann. § 59.1-9.8 (the court may grant “injunctions to prevent and restrain violations,” and “mandatory injunctions reasonably necessary to eliminate violations”); Wash. Rev. Code Ann. § 19.86.080(1) (the Attorney General may seek “to restrain and prevent” violations); Wis. Stat. Ann. § 133.16 (the court may issue relief to “prevent or restrain, by injunction or otherwise,” violations).

56 See, e.g. Alaska Stat. §§ 45.50.5809(a) & (b) (“the attorney general may bring an action to enjoin” violations, and “[t]he court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property . . . that may have been acquired by [an antitrust violation] . . . , and as may be necessary to prevent continuing or future violations”); Ark. Code Ann., §§ 4-75-315 (a)(3) & (b)(1) (the Attorney General may seek “restitution” for the State and state agencies, and as *parens patriae*); Fl. Stat. Ann. § 501.207(c)(3) (under the State’s Deceptive and Unfair Trade Practices Act, in an action by the Attorney General, “the court may make appropriate orders . . . to reimburse consumers or governmental entities found to have been damaged,” and may grant legal, equitable, or other appropriate relief”); KSA § 367.220(1) (Kentucky) (under the Commonwealth’s Consumer Protection Act, the court may “provide such equitable relief as it deems necessary and proper”); Md. Code Ann. Com. Law § 11-209(a)(3) (authorizing “restitution to any person of any money or . . . property acquired from that person by means of any violation”); Miss. Code Ann. § 75-24-11 (under the State’s Consumer Protection Act, the court may issue “orders or judgments, including restitution, as may be necessary to restore to any person in interest any monies or property, . . . which may have been acquired by means of any” violations); N.D. Cent. Code § 51-08.1-07 (the Attorney General may seek “disgorgement”); 9 Vt. Stat. Ann. § 2458 (b)(2) (the Attorney General may seek “restitution of cash or goods”) & § 2465(a) (-injured persons may seek “the consideration or value of the consideration given”); Wyo. Stat. §§ 40-114.2(a)(v) & (b) (the Attorney General may sue on behalf of the state and its agencies and as *parens patriae* to secure “restitution”). See also *Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758, 764, 111 Cal. Rptr.3d 666, 671 233 P.3d 1066, 1070 (2010) (“ensuring disgorgement of any ill-gotten proceeds” is one of the “overarching goals” of California’s Cartwright Act).

any moneys or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.”⁵⁷

Kansas authorizes the Attorney General to sue “to void any contract or agreement” that violates its antitrust law.⁵⁸ South Carolina’s Unfair Trade Practice statute authorizes recovery of any “ascertainable loss” arising from an antitrust violation.⁵⁹ Indiana has a remedy unique to victims of bid-rigging: recovery of “the full amount” of all payments “with interest to the date of judgment,” not just the overcharge or actual damages.⁶⁰

New York’s Executive Law, which authorizes the Attorney General to sue where a businessperson “engage[s] in repeated . . . illegal acts,” covers antitrust violations.⁶¹ While the statute itself provides for “an order enjoining the continuance . . . of any . . . illegal acts,” and directing “restitution,” case law construes the available relief broadly to include ordering disgorgement,⁶² as well as corporate dissolution and barring an individual from industry employment.⁶³

57 73 P.S. § 201-4.1. See Opinion and Order on Preliminary Objections, *Pennsylvania v. Chesapeake Energy Corp.*, No. 2015IR0069, slip op. at 59-60 (Ct. C.P. Dec. 15, 2017) (recognizing the Attorney General’s right to seek restitution for injured persons), aff’d in part, rev’d in part on other grounds sub. nom. *Anadarko Petroleum Corp. v. Commonwealth*, 206 A.3d 51, (Pa. Cmwlth. Ct. 2019) (en banc), aff’d in part, rev’d in part on other grounds *Pennsylvania v. Chesapeake Energy Corp.*, 247 A.3d 934 (Pa. Sup. Ct. 2021). See also Alaska Stat. § 45.50.574 (contracts in violation of the antitrust law are “voidable as to future performance”); Cal. Bus. & Prof. Code § 17203 (the court may “make such orders . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired” by the violation); Colo. Rev. Stat. § 6-4-121 (where an agreement is void under the antitrust law, “[a]ny payments made . . . may be recovered in an action by the party making the payment”); IC § 24-2-2-5 (Indiana) (injured persons may recover “the full consideration or sum paid” for products “controlled by” an unlawful “combination or trust”) & § 24-5-0.5-4(c)(2) (under the State’s Deceptive Consumer Sales Act, the Attorney General may seek an order that “the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow” for distribution “aggrieved consumers”); KSA § 367.200 (Kentucky) (under the Commonwealth’s Consumer Protection Act, the court may make orders “necessary to restore to any person in interest any moneys or property, . . . which may have been paid out as a result” or an antitrust violation”); Md. Code Ann. Com. Law § 11-209(a)(2) (in an action by the Attorney General, the court may enter orders to “[r]emove the effects of any [antitrust] violation,” and “[p]revent [its] continuation or renewal”); Mich. Comp. Laws § 445.108 (under the State’s Unfair Trade Practices Act, any injured person “may rescind the sale and recover back from the seller the price or any portion thereof theretofore paid”); Miss. Code Ann. § 75-24-11 (under the State’s Consumer Protection Act, “[t]he court may make such additional orders or judgments, including restitution, as may be necessary to restore to any person in interest any monies or property . . . which may have been acquired by means of any practice prohibited by this chapter”); Nev. Rev. Stat. §§ 598A.070(4) & 598A.210(1) (the Attorney General and other injured persons may seek “[o]ther equitable relief . . . including, without limitation, disgorgement or restitution”); N.C. Gen. Stat. § 75-15.1 (the Attorney General may seek an order directing “the restoration of any moneys or property and the cancellation of any contract obtained by any defendant as a result of [an antitrust] violation”); N.D. Cent. Code § 51-08.1-07 (the Attorney General may seek “disgorgement”); S.C. Code Ann. § 39-5-50(b) (“The court may make such additional orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use of [an unfair trade practice violation] any moneys or property, . . . which may have been acquired by means of any practice declared to be unlawful in this article”); Tenn. Code Ann. § 47-25-106 (injured persons may recover “the full consideration or sum paid” for products sold by a violator); Wash. Rev. Code Ann. §§ 19.86.080(2) & (3) (“the court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, . . . which may have been acquired by means of any [antitrust violation].”); Wis. Stat. Ann. § 133.14 (contracts prohibited by the antitrust law “shall be void,” and “[a]ny payment made upon . . . such contract . . . may be recovered from any person who received or benefited from such payment”).

58 Kan. Stat. Ann. § 50-103(a)(9). See also, e.g., Ohio Rev. Code Ann. Ch. 1331, § 1331.06 (“A contract or agreement in violation of [the antitrust law] is void”).

59 S.C. Code Ann § 39-5-50(b).

60 IC 24-1-2-4.

61 N.Y. Exec. L. § 63(12). See, e.g., *New York v. Actavis, PLC*, 2014 WL 7015198, at *43 (S.D.N.Y. Dec. 11, 2014), aff’d on other grounds, 787 F.3d 638 (2d Cir. 2015), cert. dis’d, 577 U.S. 1002 (2015); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 3475408, at *6 (N.D. Cal. Aug. 9, 2011); *New York v. Feldman*, 210 F.Supp.2d 294, 299-300 (S.D.N.Y. 2002).

62 *People ex rel. Schneiderman v. Greenberg*, 27 N.Y.3d 490, 497 (N.Y. 2016).

63 See, e.g., *In the Matter of People of State of New York v. Imported Quality Guard Dogs, Inc.*, 88 A.D.3d 800, 801-02, 930 N.Y.S.2d 906, 907-08 (2nd Dep’t 2011); *People v. Northern Leasing Systems, Inc.*, 70 Misc. 3d 256, 279-80, 133 N.Y.S.3d 389 (Sup.Ct. N.Y. Co. 2020); *State v. Midland Equities*, 117 Misc.2d 203, 208 (Sup. Ct. N.Y. Co. 1982).

Other state statutes expressly provide for corporate dissolution, for revocation or suspension of the corporate charter or the power to do business within the state, or for appointment of a receiver.⁶⁴ Indeed, the Tennessee Attorney General has “the duty . . . to enforce §47-25-104,” which provides simply that: (1) any domestic corporation that “violates [the antitrust statutes] shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease,” and (2) any foreign corporation that does so “is prohibited from doing business in the state.”⁶⁵ Indiana law, on the other hand, sets forth extensive, specific authority that the court may order in an antitrust action by the Attorney General:

Against any domestic corporation: The court may “restrain the corporation , , , and appoint a receiver for its property and effects, and take an accounting and make distribution of its assets among its creditors, and exercise any other power or authority necessary and proper for carrying out the provisions of this chapter.”⁶⁶

64 Cal. Bus. & Prof. Code § 16752 (the Attorney General may seek “forfeiture of charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the corporation or association”), § 16753 (“Every foreign corporation or association, . . . which violates this chapter, is subject to revocation of [its] powers, franchises or functions and upon such revocation is prohibited from doing any business in this state”), § 17203 (the court may appoint a receiver); Conn. Gen. Stat. Ann. § 35-36a (the Attorney General may sue for “forfeiture of charter rights, franchises, or privileges and powers exercised by such corporation or association [transacting business in the State], and for the dissolution of the corporation or association.”); Fl. Stat. Ann. § 501.207(3)(under the State’s Deceptive and Unfair Trade Practices Act, in an action by the Attorney General, “the court may make appropriate orders, including . . . appointment of a . . . receiver or sequestration or freezing of assets, . . . to order any defendant to divest herself or himself of any interest in any enterprise . . . ; to impose reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor; [and] to order the dissolution or reorganization of any enterprise”); Idaho Code § 48-108(1)(e) (in an action by the Attorney General, the court may order “divestiture of any assets (i) Acquired in violation of [the antitrust law] to the extent determined necessary by the district court to avoid the creation of a monopoly or any likely substantial lessening of competition . . . ; or (ii) To restore competition in any line of Idaho commerce which has been eliminated by a [monopolization] violation”); 740 Ill. Comp. Stat. § 10/7(1) (in action by the Attorney General, the court may order “divestiture of property, divorcement of business units, dissolution of domestic corporations or associations, and suspension or termination of the right of foreign corporations or associations to do business in the State”); IC §§ 24-1-1-2 & 24-1-4-2(a) (Indiana) (a domestic corporation that violates the State’s antitrust law “shall thereby forfeit its charter and its franchise,” while a foreign corporation “is hereby denied the right to do and is prohibited from doing business in the state”) & § 24-5-0.5-4(c)(5) (under the State’s Deceptive Consumer Sales Act, the Attorney General may seek an order appointing a receiver) & § 24-1-2-5 (in action by the Attorney General, where a domestic corporation violates the antitrust law, the court may “appoint a receiver . . . and take an accounting . . . and make distribution of [the corporation’s] assets among its creditors, and exercise any other power or authority necessary and proper for carrying out the provisions of this chapter”, and for non-domestic corporations order “ouster perpetually excluding such corporation” from transacting business in the State, and “forfeiting . . . any or all property . . . within the state,” and “exercise such power and authority with regard to the property of such corporation as may be exercised with regard to that of domestic corporations”); Kan. Stat. Ann. § 50-103 (a) (6) (“to forfeit the charter and for the dissolution of the corporate existence of any [domestic] corporation”); KSA § 367.200 (Kentucky) (under the State’s Consumer Protection Act, the court may order “appointment of a receiver or the revocation of a license or certificate authorizing any person to engage in business in the Commonwealth”); R.S. § 51:139 (Louisiana) (in an action by the Attorney General, the court may “order the forfeiture of the charter of a domestic corporation and its liquidation,” and “may order the ouster from the state of a foreign corporation, and the liquidation of its affairs within the state,” including “sale . . . of any property utilized in any business declared to have been carried on unlawfully”); Md. Code Ann. Com. Law § 11-209(a)(3) (the Attorney General may seek “divestiture of property or business units, and suspension or termination of the right of a foreign corporation or association to do business in the State”); Minn. Stat. § 325D.60 (upon violation of a judgment, the Attorney General may sue “(a) for the forfeiture of any charter rights, franchise privileges or powers of such corporation held by such person under the laws of this state; (b) for dissolution, if the person is a corporation or limited partnership organized under the laws of this state; or (c) for the suspension of the privilege to conduct business within this state”); Miss. Code Ann. § 75-21-19 (authorizing proceedings “for forfeiture of charter, [and] for forfeiture of right to do business in this state”) & § 75-24-11 (under the State’s Consumer Protection Act, the court may order “the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state”); Mont. Code Ann. § 30-14-223 (the Attorney General may seek “the forfeiture of the business’s charter, rights, franchises or privileges, and powers exercised by the business and to permanently enjoin it from transacting business in this state,” and the court may “enjoin the business from doing business in this state permanently or for a period of time, . . . or . . . annul the charter or revoke the franchise of the business.”); Nev. Rev. Stat. §§ 598A.180(1)(a) & (b) & 598A.190(1) (the Attorney General may seek relief against domestic corporations, including “[t]he forfeiture of charter rights, franchises, privileges and powers, and . . . the dissolution” or “[t]he suspension of the privilege to conduct business within the State;” and against foreign corporations, “the revocation or suspension of franchises, privileges and powers connected with doing business within the State”), and §§ 598A.180(2) & 598A.190(2) (the court may order “other appropriate relief”); Ohio Rev. Code Ann. Ch. 1331, § 1331.11 (in a quo warranto action by the Attorney General, “the court may declare a forfeiture of all its [corporate] rights, privileges, and franchises to the state and may order the corporation dissolved and appoint a trustee to wind up its affairs”); Or. Rev. Stat. § 646.760(2) (the Attorney General may seek “the forfeiture of any corporate franchise, professional or business license, [or] right to do business . . . , where the court finds the use by any defendant of such franchise, license or right has been material to [an antitrust] violation”); 73 P.S. § 201-9 & 9.1 (Pennsylvania) (under the State’s Unfair Trade Practices and Consumer Protection Law, the Attorney General may petition the court to “order the dissolution or suspension or forfeiture of any franchise or charter of any corporation which violates the terms of any injunction,” and to “appoint a receiver”); S.C. Code Ann. § 39-5-50(b) (the court may order “revocation of a license or certificate authorizing [the defendant] to engage in business in this State”) & 39-5-120 (under the State’s Unfair Trade Practices Act, in a proceeding by the Attorney General, the court may “order the dissolution or suspension or forfeiture of any franchise or charter of any corporation which violates the terms of any injunction”); Vt. Stat. Ann. § 2458(a) (under the State’s Consumer Protection Act, the Attorney General may seek “to dissolve a domestic corporation or revoke the certificate of authority granted a foreign corporation”); Wash. Rev. Code Ann. § 19.86.150 (the Attorney General may seek an order directing “the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate [specified antitrust laws]”); Wis. Stat. Ann. § 133.12 (a corporation may “have its charter or authority to transact business in this state suspended, canceled or annulled” for antitrust violations).

65 Tenn. Code Ann. § 47-25-104. The substantive provisions, §§ 47-25-101 & 102, are themselves broad, prohibiting, in summary: (a) “[a]ll arrangements, contracts, agreements, trusts or combinations . . . made with a view to lessen or which tend to lessen, full and free competition . . . , or which tend, to advance, reduce, or control the price” of products, and (b) “[a]ny arrangements, contracts, or agreements that may be made [by a person] . . . to sell and market its products . . . at prices reduced below the cost of production . . . which tend to lessen full and free competition”

66 Ind. Code Ann. § 24-1-2-5. See also R.S. § 51:139A (Louisiana) (in an action by the Attorney General, the court may “order the forfeiture of the charter of a domestic corporation and its liquidation in accordance with existing laws”); Nev. Rev. Stat. § 598A.180(2) (in an action by the Attorney General, the court “may order the dissolution [of a domestic corporation violating the act], suspend the privilege to conduct business for a specific period, . . . or provide other appropriate relief”).

Against any non-domestic corporation. The court may enter a “decree of ouster perpetually excluding such corporation from the privilege of transacting business in the state of Indiana and forfeiting to the school corporation’s education fund or operations fund any or all property of such corporation within the state, and shall exercise such power and authority with regard to the property of such corporation as may be exercised with regard to that of domestic corporations.”⁶⁷

Although these corporate-related remedies may be thought severe, depending on the seriousness of the underlying antitrust violation, they could well be warranted.

Florida and Montana authorize administrative enforcement proceeding, which permit the Attorney General to investigate anticompetitive conduct, issue a complaint, hold a hearing, and direct relief, which is then subject to judicial review.⁶⁸ In Florida, the reviewing court’s “decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition [for review]” and may, among other things, “[o]rder such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.”⁶⁹ Montana law similarly provides that the court “may issue writs that are ancillary to the court’s jurisdiction or that are necessary to prevent injury to the public or to competitors pending the outcome of the suit.”⁷⁰

In sum, state law confers extensive remedial authority in antitrust cases. Equally important, judicial decisions throughout the country recognize that in law enforcement civil actions prosecuted by State officials, the relief ordered can extend not only to state residents, but also to non-residents.

V. CASE LAW RECOGNITION OF THE NATIONAL REACH OF STATE-BASED EQUITABLE REMEDIES

Many courts have recognized that where the defendant has significant contacts with the forum State, State Attorneys General and other government officials have authority to prosecute law enforcement cases that seek equitable relief whose beneficiaries include residents and non-residents of the State alike. Indeed, in a bid-rigging case brought by the New York Attorney General 20 years ago, the Court wrote that authority for relief that included non-residents was “overwhelming.”⁷¹ That New York authority has only since increased.⁷²

States throughout the country recognize law enforcement actions confer authority to include non-residents as beneficiaries of equitable relief.⁷³ For example, the Iowa Supreme Court upheld a restitution order that included non-residents, noting: “Authorities in other jurisdictions have applied similar statutes to provide recovery for nonresidents as well as residents.”⁷⁴ Likewise, the Utah Supreme Court upheld applying its laws to business “operations that are conducted within this state, even if those laws affect, or are aimed at non-residents.”⁷⁵

67 Ind. Code Ann. § 24-1-2-5. See also R.S. § 51:139B (Louisiana) (in an action by the Attorney General, the court “may order the ouster from the state of a foreign corporation, and the liquidation of its affairs within the state through a liquidating receiver, . . . and the sale . . . of any property utilized in any business declared to have been carried on unlawfully.”); Nev. Rev. Stat. § 598A.190(2) (in an action by the Attorney General, the court “may order the revocation or suspension of the privilege to conduct business for a specified period, . . . or provide other appropriate relief.”).

68 Fl. Stat. Ann. § 501.208; Mont. Code Ann. § 30-14-220.

69 Fl. Stat. Ann. §§ 120.68(6)(a) & (a)(2).

70 Mont. Code Ann. § 30-14-220(4). See also Nev. Rev. Stat. § 598.0971 (authorizing the Attorney General to initiate and conduct proceedings under the States Deceptive Trade Practices Act).

71 *New York v. Feldman*, 210 F. Supp. 2d 294, 303 (S.D.N.Y. 2002) (citing authorities).

72 See, e.g. *People v. H & R Block, Inc.*, 58 A.D.3d 415, 417, 870 N.Y.S.2d 315, 316 (1st Dep’t 2009); *People v. Telehublink Corp.*, 301 A.D. 2d 1006, 1009-10, 756 N.Y.S.2d 285, 285 (3d Dep’t 2003); *People v. Amerimod, Inc.*, 2011 NY Slip Op. 31268 (Sup. Ct. NY Cty May 2, 2011). See also *People v. Lipsitz*, 174 Misc.2d 571, 580, 663 N.Y.S.2d 468, 474 (N.Y. Sup. Ct. 1997) (relief in an early internet fraud case directed to non-US victims as well as US residents).

73 *Brown v. Market Development, Inc.*, 41 Ohio Misc. 57, 64-66, 322 N.E.2d 367, 372 (C.P. 1974); *Enntex Oil & Gas Company (of Nevada) v. State*, 560 S.W.2d 494, 497 (Tex. Civ. App. 1977); *Millennium Communications & Fulfillment, Inc. v. Office of the Attorney General*, 761 So.2d 1256, 1260-62 (Fla. Ct. App. 2000); *In re Breast Cancer Prevention Fund*, 574 BR 193, 214 (Bankr. Ct. W.D. Wash. 2017) (applying Washington law); *Federal Trade Comm’n v. Information Management Forum, Inc.*, 12-cv-986-Orl-28KRS (M.D. Fla. June 4, 2013) (applying Florida law in an action by the Attorney General). In addition, many decisions uphold nationwide class certification enabling the forum’s law to govern monetary relief. See, e.g. *Diamond Multimedia Systems, Inc. v. Superior Court*, 19 Cal.4th 1036, 80 Cal.Rptr.2d 828, 837 (1999); *Martin v. Heinold Commodities*, 117 Ill.2d 67, 83, 510 N.E.2d 840 (1987). But see *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059 (9th Cir. 2021) (vacating nationwide certification under federal and California state antitrust and unfair competition laws).

74 *State v. New Womyn, Inc.*, 679 N.W.2d 593, 597 (2004).

75 *Johnson-Bowles v. Division of Securities*, 829 P.2d 101, 110 (Utah Ct. App. 1992).

These rulings often arise in securities fraud or consumer protection cases. They are grounded in the State's interest in assuring that business operating in the State is conducted lawfully and that, where it is not, injury to victims can be redressed, whether or not they are State residents. As the Texas Court of Civil Appeals noted in affirming equitable relief, "[a] state is damaged if its citizens are permitted to engage in fraudulent practices even though those injured are outside its borders."⁷⁶

These same considerations apply equally in antitrust cases, where the State's interest in preserving free and open competition is well recognized.⁷⁷ And they apply regardless of whether the remedy ordered compensates victims directly or prevents an antitrust violator from retaining the benefits of its ill-gotten gains.⁷⁸ Thus, in a recent monopolization case, the district court ruled that, upon proof of violation of New York's antitrust law, the Attorney General "may obtain disgorgement of [the defendant's] net profits attributable to the entirety of its U.S. sales."⁷⁹ In the respect, the remedial authority of a State Attorney General enforcing state law extends even further than that available in an Attorney General seeking damages under the Clayton Act's *parens patriae* provision. There, the Attorney General may secure relief for only "natural persons residing in such State."⁸⁰

VI. CONCLUSION

Regardless of whether equitable remedies under federal antitrust law shrink, there is significant potential to invoke state law, both to supplement relief under federal law and to fill any federal vacuum that may result. While there may be variations from State to State, a significant statutory and case law base exists. State Attorneys General, as well as private plaintiffs seeking equitable remedies, should seize the opportunity.

⁷⁶ *Rio Grande Oil Co. v. State*, 539 S.W.2d 917, 921 (Tex. Ct. Civ. App. 1st Dis. 1976, writ ref'd n.r.e.). See also *State v. Pickrell*, 136 Ariz. 589, 597, 667 P.2d 1304, 1312 (1983) (en banc) (the State's "legitimate interest in redressing the wrongs committed from within Arizona" and its "moral imperative to provide redress for those injured" authorizes relief on behalf of non-residents).

⁷⁷ See, e.g. *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 447 (1945) (upholding Pennsylvania's *parens patriae* authority to seek injunctive relief under the Clayton Act); *New York v. Feldman*, 210 F. Supp. 2d 294, 305 (S.D.N.Y. 2002) ("Permitting the Attorney General to sue for injuries suffered by both residents and nonresidents is also in keeping with the purpose of Maryland's antitrust statute.").

⁷⁸ See, e.g. *United States v. Grinnell*, 384 U.S. 563, 577 (1966) ("adequate relief in a monopolization case should . . . deprive the defendants of any of the benefits of the illegal conduct"); *United States v. Microsoft Corp.*, 253 F.3d 34, 103 (D.C. Cir. 2001) (en banc) ("a remedies decree in an antitrust case must seek to . . . deny to the defendant the fruits of its statutory violation.").

⁷⁹ *Federal Trade Comm'n v. Vyera Pharmaceuticals, LLC*, 2021 WL 4392481 (S.D.N.Y. Sept. 24, 2021). See also *Federal Trade Comm'n v. Shkreli*, 2022 WL 135026 (S.D.N.Y. Jan. 14, 2022) (ordering disgorgement based on nationwide sales and an industry bar, both directed to an individual defendant), appeal pending sub nom. *Federal Trade Commission v. Vyera Pharmaceuticals, LLC*, No. 22-728 (2d Cir. Apr. 7, 2022); *Kugler v. Haitian Tours, Inc.*, 120 N.J. Super. 260, 269, 293 A.2d 706 (1972) (New Jersey law "prohibits unlawful practices in New Jersey without limitation as to the place of residence of the persons imposed upon."); *Solomon v. Cedar Acres East, Inc.*, 455 Pa. 496, 501, 317 A.2d 283 (1974) ("Once equity has assumed jurisdiction of an action, money damages may be awarded to insure a just result."). Cf. Statement of Decision, *People v. Ashford University, LLC*, No. 37-2018-00046134-CU-MC-CTL, slip op. at 44 (Super. Ct. S.D. Cty Calif. Mar. 3, 2022) (directing civil penalties based on nationwide violations).

⁸⁰ 15 U.S.C. § 15c(a)(1).

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