

# Scrap Metal Recycling/Scrapped Vehicles: Federal Appellate Court Addresses Antitrust Challenge to City of Milwaukee Contract



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The United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) addressed in a June 24th Opinion issues arising out of a federal antitrust lawsuit involving the scrap metal recycling business.

An antitrust Complaint challenged a contract the City of Milwaukee, Wisconsin, entered into with a recycling company addressing scrap vehicles and towing services.

Various plaintiffs in the litigation are described as companies that tow or recycle used cars. They alleged that the City of Milwaukee (“Milwaukee”) and a subcontractor:

... engaged in anticompetitive behavior to self-allocate towing services and abandoned vehicles, a primary input to the scrap metal recycling business.

The scrap metal recycling business involves in this instance the collection and processing of ferrous (iron-based) and nonferrous metals.

Milwaukee is described as undertaking various roles in regulating the entities that tow, sell and buy vehicles for scrap recycling in and around the city. They are described as:

- Regulating the process
- Citing, towing, and disposing of abandoned/unlawfully parked vehicles

A Milwaukee-area recycling provider (Miller Compressing) is alleged to have conspired to:

- Improperly divert scrapped vehicles
- Allocate towing services through a decade-long exclusive contract
- Reinforced their market positions through a conspiracy to regulate private tow truck companies

The plaintiffs challenged various Milwaukee ordinances addressing activities such as towing of unlawfully parked vehicles. Further, they claimed that Milwaukee’s denial (or nonrenewal) of licenses to three of the four plaintiffs was an attempt to “squeeze them out of the market.”

In regards to Milwaukee’s disposal of vehicles, plaintiffs alleged:

- Improper denial of a bid for a subcontract to perform some tows
- Improperly promising to sell a significant portion of its abandoned vehicle inventory to Miller Compressing

Milwaukee's contract with Miller Compressing was described in terms of services, price, quantity and duration.

Miller Compressing was sold a percentage of the scrapped vehicles at fixed cost and reimbursed for evacuating fluid from cars and towed vehicles to the company's facilities. A set price for the purchase of scrapped vehicles was set for Miller Compressing and provided a certain percentage of its scrapped vehicles for specific periods. The contract was for seven years with the possibility of a three-year extension.

Plaintiffs alleged that Milwaukee violated:

- Section 1 of the Sherman Act
- Section 2 of the Sherman Act
- Clayton Act

The Complaint also alleged tortious interference with contract under Wisconsin common law. Miller Compressing was subsequently added as a defendant with an allegation that the company entered into an agreement with Milwaukee in violation of Section 1 of the Sherman Act.

The United States District Court granted a Motion to Dismiss the claims and the Second Circuit affirmed, holding:

- Section 1 of the Sherman Act
- Plaintiffs did not plausibly link the alleged circumstantial evidence to an agreement between Milwaukee and Miller Compressing to create an injurious regulatory scheme
- The contract did not rise to a plausible inference that Milwaukee and Miller Compressing conspired to control the recycling, towing, and salvaging market (at most the lower court indicated Milwaukee may have violated its procurement obligations, rather than antitrust law)
- The contract does not constitute a per se unlawful agreement involving horizontal price fixing (a vertical restraint on competition is imposed as opposed to a horizontal) or bid rigging (Milwaukee and Miller Compressing are not competitors for scrapped vehicles within the bid system, at most Milwaukee and Miller Compressing interfered with the bid process rather than rotate the bids)

The Seventh Circuit also holds that the remaining federal claims were waived on appeal.

A copy of the Opinion can be downloaded [here](#).