Circuit Court Splits Affecting Standing: Real or Not Real?

BY ELLEN MERIWETHER

WHO CAN SUE AND FOR WHAT? This is an important threshold issue in all cases, but especially in class action antitrust cases. This article explores differences in circuit authority on the question of whether, in a class action case asserting claims under a variety of similar state laws, standing principles require that there must be a named plaintiff with a purchase or transaction in each of the states whose laws are at issue. The answer matters not just for antitrust cases,[1] but also for cases brought under state consumer protection statutes,[2] and other state laws.[3] This issue has been litigated exhaustively, with district courts even within the same circuit contradicting one another. Yet circuit authority remains surprisingly sparse, leaving practitioners in many circuits to guess as to how the court may rule in their case.

Setting Up the Standing Split

The question of named plaintiff standing in cases asserting claims under multiple states' laws arises most often in the context of a motion to dismiss. Defendants move to dismiss the claims brought pursuant to state laws in states where no named plaintiff resides or has made a purchase, and therefore, no named plaintiff could sue individually under such state's laws. (Consider these the "non-covered states.") Courts that require a demonstration of individual named plaintiff standing under each of the state laws implicated in the complaint will dismiss the claims arising under non-covered states' laws for lack of Article III standing. For example, in *In re Propranolol Antitrust Litigation*, the district court dismissed indirect purchaser antitrust claims asserted under state laws other than New York for lack of Article III standing because named plaintiffs did not purchase or reimburse for the purchase of Propranolol in any state except New York.[4]

Given the number of district court cases addressing this issue, it is surprising that there are only two circuit courts cases directly on point: the First Circuit's decision in *In re Asacol Antitrust Litigation*,[5] and the Second Circuit's decision in *Langan v. Johnson & Johnson Consumer Companies*.[6] In both of these cases, decided in 2018, the courts ruled that so long as the named plaintiffs can demonstrate Article III standing with respect to their own state law claims, the question of whether they can represent absent class members whose claims arise under other states' laws becomes a question of compliance with the requirements of Rule 23.[7] In *In re Asacol*, an antitrust case, the First Circuit considered the issue as presenting a question of representative standing: "Courts generally focus not on whether the putative representative independently satisfies Article III standing, but rather on whether that party qualifies under the applicable law as a representative of the one who does have standing."[8] Thus, the "Article III focus in class actions [is] on 'the incentives of the named plaintiffs to adequately litigate issues of importance to them,'" which is a question to be decided under Rule 23.[9]

Similarly, in *Langan*, a case arising under state law consumer protection statutes, the Second Circuit stated that "considering variations in state laws as questions of predominance under Rule 23(b)(3), rather than standing under Article III, makes sense [because] it acknowledges the obvious truth that class actions necessarily involve plaintiffs litigating injuries that they themselves would not have standing to litigate."[10]

While this issue may now be settled in the First and Second Circuits, district courts in the other circuits are all over the map, especially in antitrust cases.[11] Many district court cases cite to the same circuit court precedent for support of their (opposite) conclusions, sometimes characterizing their views as well-settled or supported by the "overwhelming majority" of courts.[12] Each camp finds its support from a different line of Supreme Court cases. On the one hand, there is the *Amchem/Ortiz* line of authority, which

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holds that in some circumstances, class certification can be "logically antecedent" to standing issues, thus allowing the standing inquiry to be deferred until after class certification.[13] On the other hand, Supreme Court cases such as *Warth v. Seldin* and *Lewis v. Casey* have been interpreted to require that in the class action context, just as in any other context, the class representatives must have standing to assert each claim they bring.[14]

None of those Supreme Court cases, however, addresses the specific issue decided by the First and Second Circuit, and debated by the district courts in the cases cited herein—that is, whether the named plaintiffs can assert claims (or represent absent class members) from states other than the states in which the named plaintiffs reside or transacted. Indeed, how the question is characterized may predict its outcome. In those courts where named plaintiff coverage is required for each state law claim, the courts view the named plaintiffs *themselves* as asserting claims under the multiple state laws. For example, in *In re Effexor Antitrust Litigation*, the court stated: "In a putative class action, standing must be analyzed on a claim-by-claim basis, with the plaintiff bearing the burden of demonstrating standing for each claim he seeks to prove."[15] By contrast, courts that allow plaintiffs to pursue state law claims from non-covered jurisdictions, view the named plaintiffs as asserting claims under their own state laws only, while seeking to represent absent class members whose claims arise under the other similar state laws. As the court stated in *In re Bayer Corp.*, "Whether the named plaintiffs have standing to bring suit under each of the state laws alleged is 'immaterial' because they are not bringing those claims on their own behalf, but are only seeking to represent other, similarly situated consumers in those states."[16]

Logically Antecedent v. Claim-by-Claim Standing. Two distinct lines of cases from the Supreme Court (neither of which present the exact issue here) are cited in support of the divergent views of the district courts considering this issue.

The first is the "logically antecedent" principle discussed by the Supreme Court in *Amchem Products Inc. v. Windsor* and *Ortiz v. Fiberboard Corporation*.[17] These cases stand for the proposition that while standing is normally addressed first, in some circumstances, an evaluation of standing questions arising in class actions may be deferred and considered in the context of class certification.

In *Ortiz*, the Supreme Court considered a challenge to the standing of absent class members in the context of the approval of a global class action settlement relating to asbestos exposure. Objectors to the settlement claimed that the "exposure-only" class members (persons exposed to asbestos but who had not as yet manifested any injury) lacked the "injury-in-fact" element necessary to establish Article III standing. Although the Court stated that standing is ordinarily a threshold jurisdictional issue which must be considered at the outset of the case, it recognized an exception to the general rule in circumstances where class certification is "logically antecedent" to Article III concerns. In such cases, the Court held, standing issues could be deferred until after class certification.[18] It therefore determined that "the issue about Rule 23 certification should be treated first, 'mindful that [the Rule's] requirements must be interpreted in keeping with Article III constraints . . . .'"[19]

The question of named plaintiff standing in cases asserting claims under multiple states' laws arises most often in the context of a motion to dismiss. Defendants move to dismiss the claims brought pursuant to state laws in states where no named plaintiff resides or has made a purchase, and therefore, no named plaintiff could sue individually under such state's laws.

The *Amchem/Ortiz* exception appears "to rest on the long-standing rule that, once a class is properly certified, statutory and Article III standing requirements must be assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs."[20] Courts disagree on the meaning of "logically antecedent," however, specifically as it applies to challenges to standing to assert state law claims.[21] A common description of the principle is that class certification is logically antecedent to the standing question if the standing issue "would not exist but for the [class action] certification.[22] Put another way, "Rule 23 certification should be addressed first in those cases where it is the possibility of class certification that gives rise to the jurisdictional issues as to standing."[23] Consequently, the *Ortiz* exception is not applicable where the standing question would exist whether plaintiff filed her claim alone or as part of a class.[24]

Courts that follow the *Amchen/Ortiz* logic look only to whether the named plaintiffs have standing to press their own *individual* claims; once that is established, the scope of the class the plaintiffs may represent is "exactly the focus of the Rule 23 class certification analysis."[25] Class certification is "logically antecedent" because the standing issue only arises if the class is certified; if certification is denied, the named plaintiffs will press only their individual claims.[26]

District courts that reject the application of the logically antecedent analysis to class claims arising under multiple state laws focus instead on the Supreme Court's decisions in *Warth v. Seldin* and *Lewis v. Casey*.[27] These cases are cited for the proposition that named plaintiffs who represent a class must allege and show that they personally have been injured, and cannot bring claims arising from injures to absent class members.

In *Warth v. Seldin* (which was not a class action), various organizations and individuals brought suit against the town of Penfield, New York, and members of its zoning, planning,

and town boards, claiming that the town's zoning ordinances effectively excluded persons of low and moderate income from living in the town, in violation of plaintiffs' constitutional rights and statutory rights. The Supreme Court affirmed dismissal of the case for lack of standing on the basis that none of the named plaintiffs adequately alleged that they themselves suffered actual or threatened injury on account of the enforcement of the zoning laws. Although certain plaintiffs were members of the racial or ethnic minorities alleged to be impacted by the laws, the fact that these plaintiffs "share attributes common to persons who may have been [injured] is an insufficient predicate for the conclusion that petitioners themselves have been excluded . . . ."[28] As the Court there stated:

> Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent. Unless these petitioners can thus demonstrate the requisite case or controversy between themselves personally and respondents, "none may seek relief on behalf of himself or any other member of the class."[29]

Lewis v. Casey (which was a class action), concerned the appropriate scope of an injunction that should issue after the plaintiffs proved that the Arizona Department of Corrections violated inmates' constitutional rights by failing to provide appropriate support to illiterate and non-English speaking inmates so as to enable them to pursue their legal rights. In rejecting a broad injunction covering not only those deficiencies in the department's procedures, but others as well, the Supreme Court stated:

> The actual-injury requirement would hardly serve the purpose we have described above—of preventing courts from undertaking tasks assigned to the political branches—if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy *all* inadequacies in that administration. The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.[30]

Quoting language from *Warth v. Seldin*, the Court stated:

> This is no less true with respect to class actions than with respect to other suits. "That a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'"[31]

Relying on these cases, the district court decisions requiring named plaintiff coverage for each state law claim begin their analysis with the proposition that "[a] plaintiff's standing to sue must be analyzed on the basis of each claim asserted."[32] In *In re Wellbutrin XL Antitrust Litigation*, for example, the district court stated that "each claim must be analyzed separately and a claim cannot be asserted on behalf of a class unless at least one plaintiff has suffered the injury that give rises to that claim."[33] That court explained:

> A named plaintiff whose injuries have no causal relation to, or cannot be redressed by, the legal basis for a claim does not have standing to assert that claim. For example, a plaintiff whose injuries have no causal relation to Pennsylvania, or for whom the laws of Pennsylvania cannot provide redress, has no standing to assert a claim under Pennsylvania law, although it may have standing under the law of another state.[34]

Wellbutrin rejected the plaintiffs' invocation of the logically antecedent principles of *Amchem* and *Ortiz*, narrowly construing those decisions to apply only in the unique setting at issue in those cases, where the standing and class certification issues were presented together in the context of a global settlement approval.[35] Other cases have relied on this narrow reading of *Anchem* and *Ortiz* to reject the application of the logically antecedent principles in this context.[36] As the court stated in *In re Potash Antitrust Litigation*, *Amchem/Ortiz* requires that a court "simultaneously facing both class certification and Article III standing issues must deal with Rule 23 issues first when they are dispositive," but does not direct courts to postpone an inquiry into the threshold issue of justiciability outside of that context.[37]

Even for courts that accept the applicability of the logically antecedent reasoning outside of the global settlement context, its meaning has proven elusive. In *In re Propranolol Antitrust Litigation*, for example, the district court concluded that because the case would proceed under New York law no matter what happened on class certification, the standing issue was not logically antecedent to class certification.[38] By contrast, the court in *In re Remicade Antitrust Litigation*, in the exact same factual setting, concluded the opposite: "Indirect Purchaser Plaintiffs' 'capacity to represent individuals from [states other than where Indirect Purchasers reside] depends upon obtaining class certification.' Therefore, '[t]hese class certification issues are "logically antecedent" to the standing concerns,' and deferring ruling on them until class certification is appropriate."[39]

Article III Standing vs. Statutory Standing. Given the confusion over the meaning of logically antecedent, and its applicability outside of the *Amchem/Ortiz* context, some cases have analyzed these questions as a distinction between Article III standing (a constitutional and jurisdictional prerequisite) and statutory standing (an issue that may be deferred until after class certification).

The Seventh Circuit made this distinction in *Morrison v. YTD International, Inc.*[40] There, plaintiffs asserted claims under the Illinois Consumer Protection Act on behalf of a nationwide class of individuals and entities who participated in defendants' home travel agency program. The district court dismissed the non-Illinois residents' claims for lack of standing after concluding that Illinois law would not apply to those claims. Judge Easterbrook reversed the decision, distinguishing between Article III standing (a constitutional prerequisite) and statutory standing, the right to proceed under a particular statute:

> There's no problem with standing. Plaintiffs have standing if they have been injured, the defendants caused that injury, and the injury can be redressed by a judicial decision. . . . Plaintiffs allege that they are victims of a pyramid scheme that saddled them with financial loss, which YTB caused. The judiciary can redress that injury by ordering YTB to pay money to the victims. Nothing more is required for standing. If the Illinois Consumer Fraud Act law does not apply because events were centered outside Illinois, then plaintiffs must rely on some other state's law; this application of choice-of-law principles has nothing to do with standing, though it may affect whether a class should be certified—for a class action arising under the consumer-fraud laws of all 50 states may not be manageable, even though an action under one state's law could be.[41]

This distinction between statutory standing and Article III standing has been discussed in other district court cases in the Seventh Circuit.[42] In *Muir v. Nature Bounty (DE) Inc.*, the district court noted that the named plaintiffs had Article III standing to assert claims under the consumer fraud laws of their own states, but lacked statutory standing to assert such claims on behalf of California, Michigan, or Pennsylvania purchasers. Relying on *Morrison* and other Seventh Circuit cases, the court held that "the question of who is authorized to bring an action under a statute is one of statutory interpretation; it does not implicate Article III or jurisdiction."[43] The court further held that because statutory standing is not a constitutional imperative, the named plaintiffs themselves may bring those claims.[44] And in *In Re Dealer Management Systems Antitrust Litigation*, the district court stated that "the trend has been to treat the issue as one of statutory standing that can be deferred until class certification," citing a recent decision espousing that "the weight of recent authority points against analyzing standing to bring class actions by legal theory."[45]

District court cases in the Ninth Circuit, however, continue to reject this distinction on the basis, as stated in *In re Packaged Seafood Products Antitrust Litigation*, that "the Supreme Court has explicitly defined 'injury in fact' as 'an invasion of a legally protected interest' that is 'not conjectural or hypothetical.'"[46] In that case, the court reasoned: "In the absence of a named Plaintiff who has purchased a product within the relevant state—even if there are sufficient allegations of injury under other states' or federal law—there can be no determination that an interest was harmed that was legally protected under the relevant state's laws."[47]

Circuit Split: Real or Not Real?

Whether there is a real circuit split depends upon perspective. As discussed above, only two circuit courts have specifically addressed the subject, and both of these 2018 decisions agree that the standing inquiry does not require a named plaintiff to be identified as having a purchase or transaction in each state. While a number of decisions by other courts of appeal touch upon the issue, the guidance they provide has pushed district courts in opposite directions.

For example, district courts in the Third Circuit are all over the map. Many cite to the Third Circuit decisions in *In Re Prudential* and *Neale v. Volvo*, both of which arose in the context of class-wide settlements. These cases stand for the proposition that "once Article III standing 'is determined vis-à-vis the named parties . . . there remains no further separate class standing requirement in the constitutional sense.'"[48] District courts within the Third Circuit use these cases to reach opposite conclusions as to whether the standing analysis requires a named plaintiff with a purchase or transaction in each state.[49] For example, the court in *In re Wellbutrin XL*,[50] concluded that *Prudential* did not reach the issue of Article III standing as applied to claims arising under particular states' laws, while the court in *In re Thalomid and Revlimid Antitrust Litigation* relied on *Prudential* to hold that whether plaintiffs may pursue certain state law claims is better left for the class certification stage because "the issue now [becomes] one of compliance with the provisions of Rule 23, not one of Article III standing."[51]

At least four cases presenting these issues have been decided by district courts in the Third Circuit since *Asacol* and *Langan*. Three of these cases have concluded that claims arising under state laws wherein no named plaintiff resides or purchased need not be dismissed for lack of standing.[52] In *In re Generics*, for example, the court, analyzing the recent decisions in both *Asacol* and *Langan*, concluded that dismissal of the state laws claims was not warranted.[53] One decision, however, *In re Insulin Pricing Litigation*, rendered after *Langan* and *Asacol*, concluded that dismissal of claims from uncovered states was required by existing precedent.[54] In that case, the court stated:

> [D]istrict courts within the Third Circuit and throughout the nation have held that named plaintiffs in a class action lack standing to bring claims on behalf of putative classes under the laws of states where no named plaintiff is located and where no named plaintiff purchased the product at issue.[55]

That decision, however, neither cites to nor discusses the recent circuit court cases or the division of authority on the subject within the Third Circuit itself.

In the Ninth Circuit, in contrast, district courts considering antitrust claims are in virtual agreement that claims arising under state laws in which no named plaintiffs reside or made a purchase must be dismissed at the motion to dismiss phase for lack of standing.[56] Notably, however, none of these decisions was rendered after the First and Second Circuits' decisions in *Asacol* and *Langan*, respectively. In a consumer case decided in 2015, a court in the Northern District of California exhaustively reviewed the arguments on both sides of the issue.[57] Relying on the Seventh Circuit's decision in *Morrison*, the court held that Article III did not *require* the dismissal of claims from non-covered states. Nevertheless it held that it could exercise its "discretion in ordering the determinations of class certification and standing, [and found] it appropriate in this case to address standing in advance of class certification." The court thereafter concluded that it

would dismiss the claims from states in which plaintiffs "do not reside or did not purchase their mobile device."[58]

Within the Eleventh Circuit, a Southern District of Florida decision issued in 2001 dismissed individual state law claims arising under the laws of states in which no named plaintiff resided or purchased the branded drug.[59] More recently, however, a district court in Georgia, citing to *Langan*, allowed a nationwide class of consumers to proceed under multiple state consumer protection statutes without the necessity of identifying a plaintiff affected under each state statute.[60]

Cases within both the Sixth and Seventh Circuits contradict one another, although more recent decisions are trending towards the conclusion that standing principles do not require named plaintiff transactions in each state. Again, in those circuits, there do not appear to be any district court opinions that analyze the circuit court decisions in *Langan* and *Asacol* and disagree with the reasoning.

Looking Ahead

While it is too early to be sure what the persuasive effects of the First and Second Circuit decisions in *Asacol* and *Landan* will be outside of those circuits, they appear to have had an effect in that they have been followed in every case in which they have been discussed. Certainly, after *Asacol* and *Landan*, it is likely that plaintiffs' arguments that named plaintiff coverage for each state is unnecessary will be more seriously considered, even in other circuits. Following the lead of cases within the Seventh Circuit, it may help plaintiffs to frame the issue as one of statutory standing as opposed to constitutional standing, thus avoiding the confusing "logically antecedent" label. In short, even if this circuit split is real now, it may not be a real split in the near future. ■

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[1] In the following antitrust cases, the district courts held that standing principles did not require a named plaintiff purchase in each state: *In re* Relafen Antitrust Litig., 221 F.R.D. 260, 267–70 (D. Mass. 2004); *In re* Loestrin 24 Fe Antitrust Litig., 261 F. Supp. 3d 307, 358–59 (D.R.I. 2017); *In re* Buspirone Patent Litig., 185 F. Supp. 2d 363, 377 (S.D.N.Y. 2002); *In re* Thalomid and Revlimid Antitrust Litig., Civ. No.14-6997, 2015 WL 9589217, at *17–18 (D.N.J. Oct. 29, 2015); *In re* Magnesium Oxide Antitrust Litig., Civ. No. 10-5943, 2011 WL 5008090, at *5–6 (D.N.J. Oct. 20, 2011); *In re* Remicade Antitrust Litig., 345 F. Supp. 3d 566, 585 (E.D. Pa. 2018); *In re* Generic Pharm. Pricing Antitrust Litig., 368 F. Supp. 3d 814, 831 (E.D. Pa. 2019); *In re* Chocolate Confectionary Antitrust Litig., 602 F. Supp. 2d 538, 579 (M.D. Pa. 2009); *In re* Zetia (Ezetimibe) Antitrust Litig., No. CV 2:18-MD-2836, 2019 WL 1397228, at *22–23 (E.D. Va. Feb. 6, 2019); *In re* Auto. Parts Antitrust Litig., No. 12-MD-02311, 2013 WL 2456612, at *9–11 (E.D. Mich. June 6, 2013); *In re* Polyurethane Foam Antitrust Litig., 799 F. Supp. 2d 777, 804–06 (N.D. Ohio 2011); *In re* Broiler Chicken Antitrust Litig., 290 F. Supp. 3d 772, 809–10 (N.D. Ill. 2017); *In re* Dealer Mgmt. Sys. Antitrust Litig., 362 F. Supp. 3d 510, 548 (N.D. Ill. 2019); *In re* Aftermarket Filters Antitrust Litig., No. 08-cv-4883, 2009 WL 3754041, at *5 (N.D. Ill. Nov. 5, 2009).

In the following antitrust cases, the district courts dismissed claims arising under the laws of states where no named plaintiff made a purchase: *In re* Propranolol Antitrust Litig., 249 F. Supp. 3d 712, 726–28 (S.D.N.Y. 2017); *In re* Insulin Pricing Litig., No. 3:17-cv-699, 2019 WL 643709, at *13 (D.N.J. Feb. 15, 2019); *In re* Niaspan Antitrust Litig., MDL No. 2460, 2015 WL 8150588, at *4 (E.D. Pa. Dec. 8, 2015); *In re* Flonase Antitrust Litig., 692 F. Supp. 2d 524, 534 (E.D. Pa. 2010); *In re* Wellbutrin XL Antitrust Litig., 260 F.R.D. 143, 157–58 (E.D. Pa. 2009); *In re* Effexor Antitrust Litig., 337 F. Supp. 3d 435, 458 (E.D. Pa. 2018); *In re* Packaged Ice Antitrust Litig., 779 F. Supp. 2d 642, 657 (E.D. Mich. 2011); In re Refrigerant Compressors Antitrust Litig., No. 2:09-md-02042, 2012 WL 2917365, at *6–8 (E.D. Mich. July 17, 2012); *In re* Potash Antitrust Litig., 667 F. Supp. 2d 907, 922 (N.D. Ill. 2009); *In re* Plasma-Derivative Protein Therapies Antitrust Litig., No. MDL 2109, 2012 WL 39766, at *6 (N.D. Ill. Jan. 9, 2012); *In re* Dairy Farmers of Am., Inc. Cheese Antitrust Litig., No. 09 CV 3690, 2013 WL 4506000, at *8 (N.D. Ill. Aug. 23, 2013); *In re* Packaged Seafood Prod. Antitrust Litig., 242 F. Supp. 3d 1033, 1095–96 (S.D. Cal. 2017); *In re* Capacitors Antitrust Litig., 154 F. Supp. 3d 918, 926 (N.D. Cal. 2015); *In re* Graphics Processing Units Antitrust Litig., 527 F. Supp. 2d 1011, 1026–27 (N.D. Cal. 2007); *In re* Terazosin Hydrochloride Antitrust Litig., 160 F. Supp. 2d 1365, 1371 (S.D. Fl. 2001).

[2] In all of the consumer cases below, except the last case cited (*Baldwin*), the district courts held that a named plaintiff transaction in each state was not required: *In re* Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practices Litig., 701 F. Supp. 2d 356, 376–77 (E.D.N.Y. 2010); Blessing v. Sirius XM Radio, Inc., 756 F. Supp. 2d 445, 450–52 (S.D.N.Y. 2010); Gress v. Freedom Mortgage Corp., 386 F. Supp. 3d 455, 462 (M.D. Pa. 2019); Muir v. Nature's Bounty (DE), Inc., No. 15 C 9835, 2018 WL 3647115, at *7–8 (N.D. Ill. Aug. 1, 2018); *In re* Grand Theft Auto Video Game Consumer Litig. (No. II), No. 06 md 1739(SWK) (MHD), 2006 WL 3039993, at *2–3 (S.D.N.Y. Oct. 25, 2006); Hudock v. LG Elec., Inc., Civ. No. 16-1220 (JRT/FLN), 2017 WL 1157098, at *2 (D. Minn. Mar. 27, 2017); *In re* Target Corp. Data Sec. Breach Litig., 66 F. Supp. 3d 1154, 1160 (D. Minn. 2014); Roth v. Life Time Fitness, Inc., No. CV 15-3270 (JRT/HB), 2016 WL 3911875, at *4 (D. Minn. July 14, 2016); *In re* Equifax, Inc., Customer Data Sec. Breach Litig., 362 F. Supp. 3d 1295, 1343–44 (N.D. Ga. 2019); Dragoslavic v. Ace Hardware Corp., 274 F. Supp. 3d 578, 584–85 (E.D. Tex. 2017); *In re* Carrier IQ, Inc., 78 F. Supp. 3d 1051, 1068 (N.D. Cal. 2015); Baldwin v. Star Sci., Inc., 78 F. Supp. 3d 724, 733–35 (N.D. Ill. 2015).

[3] *In re* U.S. Foodservice Inc. Pricing Litig., 729 F.3d 108, 126–27 (2d Cir. 2013) (contract law); Kuhl v. Guitar Center Stores, Inc., No. 07–cv–0214, 2008 WL 656049, at *3 (N.D. Ill. Mar. 5, 2008) (fair pay claims). In these cases, the courts held that a named plaintiff purchase in each state was not required.

[4] *In re Propranolol*, 249 F. Supp. 3d 712, 726–28 (S.D.N.Y. 2017).

[5] *In re Asacol*, 907 F.3d 42, 48–51 (1st Cir. 2018).

[6] Langan v. Johnson & Johnson Consumer Cos., 897 F.3d 88 (2d Cir. 2018).

[7] *Id.* at 95–96; *In re Asacol*, 907 F.3d at 48–50.

[8] *In re Asacol*, 907 F.3d at 48.

[9] *Id.* (quoting Plumbers' Union Local No. 12 v. Nomura Asset Acceptance Corp., 632 F.3d 762, 770 (1st Cir. 2011)).

[10] *Langan*, 897 F.3d at 95.

[11] *See supra* notes 1–2.

[12] *Compare In re Packaged Seafood Prods.*, 242 F. Supp. 3d 1033, 1095–96 (S.D. Cal. 2017) ("The overwhelming majority of courts have held that Article III standing for state law claims is necessarily lacking when no plaintiff is alleged to have purchased a product within the relevant state.") *with In re* Dealer Mgmt. Sys. Antitrust Litig., 362 F. Supp. 3d 510, 548 (N.D. Ill. 2019) ("[T]he trend has been to treat the issue as one of statutory standing that can be deferred until class certification.").

[13] Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 612 (1997); Ortiz v. Fibreboard Corp., 527 U.S. 815, 831 (1999).

[14] Warth v. Seldin, 422 U.S. 490, 502 (1975) ("Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.") *See also* Lewis v. Casey, 518 U.S. 343, 357 (1996) (same).

[15] *In re Effexor*, 337 F. Supp. 3d 435, 458 (E.D. Pa. 2018).

[16] *In re Bayer Corp.*, 701 F. Supp. 2d at 377 (quoting Ramirez v. STi Prepaid LLC, No. 09–CV–2290 (JBW) (MDG), 2009 WL 3171738, at *9 (E.D.N.Y. Mar. 30, 2010)). *See also In re Zetia*, 2019 WL 1397228, at *23 (E.D. Va. Feb. 6, 2019) ("The named class representatives are not themselves seeking recovery under the laws of foreign states. They merely allege that all the claims derive from the same source—Defendants' unlawful reverse payment Settlement Agreement.").

[17] *Amchem*, 521 U.S. at 612 (1997); *Ortiz*, 527 U.S. at 831.

[18] *Ortiz*, 527 U.S. at 831 (citing *Amchem*, 521 U.S. at 621).

[19] *Id.* (quoting *Amchem*, 521 U.S. at 612–13).

[20] Payton v. County of Kane, 308 F.3d 673, 680 (7th Cir. 2002).

[21] *In re Auto. Parts*, 2013 WL 2456612, at *10 (E.D. Mich. June 6, 2013) ("Courts have reached different conclusions as to what impact, if any, *Ortiz* and *Amchem* create in the context of an indirect purchaser antitrust class action.").

[22] *In re Relafen*, 221 F.R.D. at 267–70 (D. Mass. 2004) (quoting *Amchem*, 512 U.S. at 612).

[23] *In re Chocolate Confectionary*, 602 F. Supp. 2d 538, 579 (M.D. Pa. 2009).

[24] Rivera v. Wyeth-Ayerst Labs., 283 F.3d 315, 319–21 (5th Cir. 2002).

[25] *In re Zetia*, 2019 WL 1397228, at *22–23.

[26] *See also In re Grand Theft Auto*, 2006 WL 3039993, at *2 (S.D.N.Y. Oct. 25, 2006) (reasoning class certification is logically antecedent to standing where class certification is the source of the potential standing problem); Blessing v. Sirius XM Radio Inc., 756 F. Supp. 2d 445, 450–52 (S.D.N.Y. 2010) ("[C]lass certification is 'logically antecedent' where its outcome will affect the Article III standing determination.").

[27] *Warth v. Seldin*, 422 U.S. at 502; *Lewis*, 518 U.S. at 357.

[28] *Warth v. Seldin*, 422 U.S. at 502.

[29] *Id.* (quoting O'Shea v. Littleton, 414 U.S. 488, 494 (1974)).

[30] *Lewis*, 518 U.S. at 357.

[31] *Id.* (citing Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 40, n. 20 (1976) (quoting *Warth v. Seldin*, 422 U.S. at 502)).

[32] *In re Wellbutrin*, 260 F.R.D. at 151 (2009); *see also id.* at 152 ("Standing in the context of class actions remains a claim by claim prerequisite"); *In re Effexor*, 337 F. Supp. 3d at 458 ("In a putative class action, standing must be analyzed on a claim-by-claim basis. . . ."); *In re Graphics Processing Units*, 527 F. Supp. 2d 1011, 1026 (N.D. Cal. 2007) ("Each claim under each state statute must be analyzed separately.").

[33] *In re Wellbutrin*, 260 F.R.D. at 152 (quoting Griffin v. Dugger, 823 F.2d 1476, 1483 (11th Cir.1987)).

[34] *Id.*

[35] *Id.* at 155.

[36] *See In re Graphics Processing Units*, 527 F. Supp. 2d at 1026–27 (holding *Amchem* and *Ortiz* line of cases do not apply outside of the global settlement context); Baldwin v. Star Sci., Inc., 78 F. Supp. 3d 724, 733–35 (N.D. Ill. 2015) (citing to *In re Wellbutrin* and adopting narrow interpretation of *Amchem* and *Ortiz*); *see also* Easter v. Am. W. Fin., 381 F.3d 948, 962 (9th Cir. 2004) (limiting *Ortiz* to the very specific situation of a mandatory global settlement class).

[37] *In re Potash*, 667 F. Supp. 2d 907, 923 (N.D. Ill. 2009).

[38] *In re Propranolol*, 249 F. Supp. 3d 712, 726–28 (S.D.N.Y. 2017).

[39] *In re Remicade*, 345 F. Supp. 3d 566, 585 (E.D. Pa. 2018) (quoting *In re Chocolate Confectionary*, 602 F. Supp. 2d at 579–80).

[40] Morrison v. YTD Int'l, Inc., 649 F.3d 533, 535–36 (7th Cir. 2011).

[41] *Id.* at 536 (internal citations omitted). Because the named plaintiffs did not assert claims under other states laws, Judge Easterbrook did not squarely address the question of whether the named plaintiffs would have had standing to do so.

[42] *Baldwin*, 78 F. Supp. 3d at 731–35 (collecting cases).

[43] Muir v. Nature's Bounty (DE), Inc., 2018 WL 3647115, at *7–8 (N.D. Ill. Aug. 1, 2018).

[44] *Id.* at *7.

[45] *In re Dealer Management Systems*, 362 F. Supp. 3d at 548.

[46] *In re Packaged Seafood Prods.*, 242 F. Supp. 3d 1033, 1095–96 (S.D. Cal. 2017) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)).

[47] *Id.*

[48] Neale v. Volvo Cars of N. Am., LLC, 794 F.3d 353, 361–62 (3d Cir. 2015) (quoting *In re* Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 306–07 (3d Cir. 1998)).

[49] *Compare In re Insulin Pricing*, 2019 WL 643709, at *17 (D.N.J. Feb. 15, 2019) ("Consistent with *Neale*, district courts within the Third Circuit and throughout the nation have held that named plaintiffs in a class action 'lack standing to bring claims on behalf of putative classes under the laws of states where no named plaintiff is located and where no named plaintiff purchased the product at issue'") *with In re Generic Pharm. Pricing*, 368 F. Supp. 3d 814, 829 (E.D. Pa. 2019) (The Third Circuit's decision in *Neale* does not definitively address the issue "about how to evaluate Article III and class standing at the motion to dismiss stage where putative class representatives assert claims arising under the laws of states where they neither reside nor allege to have suffered injury.").

[50] *In re Wellbutrin*, 260 F.R.D. at 157.

[51] *In re Thalomid and Revlimid*, 2015 WL 9589217, at *19 (D.N.J. Oct. 29, 2015.)

[52] *See* Gress v. Freedom Mortgage Corp., 2019 WL 2612733 (M.D. Pa. June 26, 2019); *In re Generic Pharm. Pricing*, 368 F. Supp. 3d 814 (E.D. Pa. 2019); *In re Remicade*, 345 F. Supp. 3d at 585.

[53] *In re Generic Pharmaceuticals Pricing*, 368 F. Supp. 3d at 831.

[54] *In re Insulin Pricing*, 2019 WL 643709, at *17 (D.N.J. Feb. 15, 2019).

[55] *Id.*

[56] *See, e.g., In re Capacitors*, 154 F. Supp. 3d at 926–27 ("The strong trend in this district and in other courts is to require an in-state purchase to establish Article III standing for state antitrust and related consumer protection claims like the ones alleged in this case.") (collecting cases).

[57] *In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1072–75 (N.D. Cal. 2015).

[58] *Id.* at 1075.

[59] *In re* Terazosin Hydrochloride Antitrust Litig., 160 F. Supp. 2d 1365, 1371–72 (S.D. Fla. 2001).

[60] *In re Equifax, Inc.*, 362 F. Supp. 3d at 1344 n.332.