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# Antitrust - Treble Damage Action - Illinois Brick Rule Does Not Bar Suit by Direct Purchaser of Product Which Contains Price Fixed Component Produced by Seller

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# Antitrust

ANTITRUST—TREBLE DAMAGE ACTION—*ILLINOIS BRICK* RULE DOES NOT BAR SUIT BY DIRECT PURCHASER OF PRODUCT WHICH CONTAINS PRICE FIXED COMPONENT PRODUCED BY SELLER.

*Stotter & Co.* v. *Amstar Corp.* (1978)

In this private antitrust action,[1] a candy wholesaler sought damages from twelve sugar refiners for an alleged conspiracy to fix the price of refined sugar in violation of section 1 of the Sherman Act.[2] Two of the defendant sugar refiners, Borden and SuCrest, used the sugar to manufacture candy which they sold to plaintiff.[3] Alleging that it had been overcharged for the candy containing this sugar, plaintiff claimed that it was thus entitled to treble damages under section 4 of the Clayton Act.[4]

The United States District Court for the Eastern District of Pennsylvania granted the defendant's motion for summary judgment, concluding that plaintiff lacked standing since it only purchased products containing sugar, as opposed to purchasing refined sugar in its unaltered form.[5] Plain-

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1. The action was brought under § 4 of the Clayton Act, 15 U.S.C. § 15 (1976). Stotter & Co. v. Amstar Corp., 579 F.2d 13, 15 (3d Cir. 1978). Section 4 provides in pertinent part: "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including reasonable attorney's fee." 15 U.S.C. § 15 (1976).

2. 579 F.2d at 15. *See* 15 U.S.C. § 1 (1976). Section 1 of the Sherman Act provides in pertinent part: "[E]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ." *Id.* The instant case arose out of the Sugar Industry Antitrust Litigation, wherein the United States Government brought indictments and civil actions against sugar beet processors and sugar cane refiners, charging price fixing of refined sugar in states west of the Mississippi. 579 F.2d at 15 n.1. Numerous private suits, involving both eastern and western sugar markets, were soon filed. *Id.* In September, 1975, the Judicial Panel on Multidistrict Litigation decided that the cases east of the Mississippi should be consolidated before Judge Cahn in the Eastern District of Pennsylvania. *Id. See In re* Sugar Industry Litigation, 399 F. Supp. 1397 (J.P.M.D.L. 1975).

3. 579 F.2d at 15. The plaintiff also purchased products containing sugar from nondefendant manufacturers who had purchased sugar from defendants. *Id.* On appeal the issue was limited "to the summary judgment only insofar as it affects the direct purchases of candy from defendants." *Id.* at 16.

The court did not reach the question of whether SuCrest or Borden, both of whom refined sugar and manufactured and sold candy, were the only defendants to whom liability would attach or whether all twelve sugar refiners were jointly and severally liable to Stotter. *Id.* at 19-20. (opinion sur petition for panel rehearing).

4. *Id.* at 15. For the relevant portion of § 4 of the Clayton Act, *see* note 1 *supra.*

5. *In re* Sugar Indus. Antitrust Litigation, 73 F.R.D. 322, 338-39 (E.D. Pa. 1976). In granting summary judgment, the district court relied on Philadelphia Hous. Auth. v. American Radiator & Standard Sanitary Corp., 50 F.R.D. 13 (E.D. Pa. 1970), *aff'd sub nom.* Mangano v. American Radiator & Sanitary Corp., 438 F.2d 1187 (3d Cir. 1971) (per curiam). In *Philadelphia Housing Authority,* Judge Lord held that homeowners could not bring an antitrust suit for treble damages against plumbing fixture manufacturers. 50 F.R.D. at 30. Plaintiffs claimed that the inflated cost of the plumbing fixtures had been passed on to them in the sale of their homes. *Id.* at 19. The court held that plaintiffs' failure to answer interrogatories invoked a presumption that they had purchased from builders or previous homeowners and not directly from plumbing fixture manufacturers. *Id.* The district court did not rely on Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), which had not yet been decided. This distinction between "direct purchasers" and "indirect purchasers," *i.e.*, those who buy directly from the alleged price fixer

tiff was therefore "too remote in the chain of distribution of refined sugar to make a claim of alleged overcharges."[6] The United States Court of Appeals for the Third Circuit, reasoning that the United States Supreme Court's proscription of recovery by indirect purchasers in *Illinois Brick Co.* v. *Illinois*[7] did not extend to the product itself,[8] reversed,[9] *holding* that the rule of *Illinois Brick* was inapplicable to the situation where the purchased product containing the price fixed component was purchased directly from the manufacturer of that price fixed component. *Stotter & Co. v. Amstar Corp.*, 579 F.2d 13 (3d Cir. 1978).

The question of which purchaser in the chain of distribution of a price fixed product has standing to bring an action under section 4 of the Clayton Act was addressed in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*,[10] where the Supreme Court barred the use of the "passing-on defense"[11] by antitrust defendants.[12] "Defensive passing-on" refers to the situation where a defendant asserts that the plaintiff-purchaser was not in fact injured by price fixing because the plaintiff passed the overcharge on to his purchaser.[13] *Hanover Shoe* barred the use of the passing-on defense, except in limited circumstances,[14] due to the difficulties inherent in proving the amount of injury to each party in the chain of distribution,[15] the complexity of multiparty litigation,[16] and the diminished effectiveness of private

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and those who buy from a middleman, is of paramount importance in determining whether one has standing to bring an antitrust action. *See* notes 20-22 and accompanying text *infra*.

6. *In re* Sugar Indus. Antitrust Litigation, 73 F.R.D. 322, 340 (E.D. Pa. 1976).

7. 431 U.S. 720 (1977). This Supreme Court decision was handed down after the district court's decision. *See* notes 5 & 6 and accompanying text *supra*. For a discussion of *Illinois Brick, see* notes 20-23 and accompanying text *infra*.

8. 579 F.2d at 18.

9. The court also remanded to determine whether SuCrest or Borden actually sold candy to plaintiffs. 579 F.2d at 20 (opinion sur petition for panel rehearing). The case was heard by Judges Adams and Weis, and Judge Coolahan of the United States District Court for the District of New Jersey, sitting by designation. Judge Weis wrote the opinion.

10. 392 U.S. 481 (1968). In *Hanover Shoe*, a lessee of shoe making equipment brought a private antitrust action against the equipment lessor for refusing to sell equipment. *Id.* at 483-84. The defendant contended that plaintiff had passed the higher costs on to plaintiff's purchasers and therefore was not injured by the higher rental price. *Id.* at 487-88. The district court found for plaintiff on the grounds that the passing-on defense was impermissible because plaintiff was the ultimate consumer and suffered a legal injury. Hanover Shoe, Inc. v. United Shoe Mach. Corp., 185 F. Supp. 826, 829 (M.D. Pa. 1960). The court of appeals affirmed in Hanover Shoe, Inc. v. United Shoe Mach. Corp., 281 F.2d 481 (3d Cir.), *cert. denied*, 364 U.S. 901 (1960). Defendant presented the issue again after losing on the merits. The Third Circuit affirmed in Hanover Shoe, Inc. v. United Shoe Mach. Corp., 377 F.2d 776, 781 (3d Cir. 1967). The Supreme Court granted *certiorari*. Hanover Shoe, Inc. v. United Shoe Mach. Corp., 389 U.S. 818 (1967).

11. On defensive "passing-on" *see* text accompanying note 13 *infra*.

12. 392 U.S. at 494.

13. For a discussion of defensive passing-on, *see* Pollack, *Automatic Treble Damages and the Passing-on Defense: The* Hanover Shoe *Decision*, 13 ANTITRUST BULL. 1183, 1184-91 (1968).

14. 392 U.S. at 488, 494. Circumstances where the passing-on defense may be valid are where there exists a "pre-existing 'cost-plus' contract," or where "no differential can be proved between the price unlawfully charged and some price that the seller was required by law to charge." *Id.* at 494.

15. *Id.* at 492-93.

16. *Id.* at 493-94.

antitrust enforcement occasioned by the failure of consumers, to whom the loss is often eventually "passed-on," to bring suit.[17] In so doing, the *Hanover Shoe* Court insured that a direct purchaser injured by a price fixing overcharge could bring an action even though he had passed the overcharge resulting from the price fixing on to his purchaser,[18] and did not condition such an action by an overcharged direct purchaser upon a demonstration of actual pecuniary loss.[19]

In *Illinois Brick*, the Supreme Court dealt with another aspect of the passing-on concept, holding that an indirect purchaser could not bring a treble damage action against a price fixer for an overcharge.[20] The Court barred this offensive use of passing-on, whereby an indirect purchaser asserts injury because an amount of the overcharge created by price fixing was passed on to him.[21] The Court held that only the overcharged direct purchaser, and no other entity in the chain of distribution, could bring an action under section 4 of the Clayton Act.[22] The Court was of the opinion that the antitrust laws would be "more effectively enforced by concentrating the full recovery for the overcharge in the direct purchasers rather than by allowing every plaintiff potentially affected by the overcharge to sue."[23]

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17. *Id.* at 494.

18. *Id.* The Court stated:

> Our conclusion is that Hanover proved injury and the amount of its damages for the purposes of its treble damage suit when it proved that United had overcharged it during the damage period and showed the amount of the overcharge; United was not entitled to assert a passing on defense.

*Id.*

19. *See* note 18 *supra.*

20. 431 U.S. at 746. In *Illinois Brick*, the State of Illinois and 700 local government units in the Chicago area brought suit against 11 manufacturers and distributors of concrete block in the same area. *Id.* at 726. They alleged conspiracy to fix the price of concrete block. *Id.* at 726-27. The overcharge passed from defendants' sale to masonry contractors to general contractors and finally to plaintiffs. *Id.* at 726. The district court held for defendants because the plaintiffs, as indirect purchasers, suffered too remote an injury to have standing to sue. Illinois v. Ampress Brick Co., 67 F.R.D. 461, 468 (N.D. Ill. 1975). On appeal, the Seventh Circuit reversed on the grounds that an indirect purchaser who proves injury from an illegal overcharge is entitled to bring suit. Illinois v. Ampress Brick Co., 536 F.2d 1163, 1167 (7th Cir. 1976). The Supreme Court reversed. 431 U.S. at 748.

Between the *Hanover Shoe* and *Illinois Brick* decisions, a few courts held that an indirect purchaser could not sue a price fixer. *See, e.g.*, Donson Stores, Inc. v. American Bakeries Co., 58 F.R.D. 481 (S.D.N.Y. 1972); City of Akron v. Laub Baking Co., 1972 Trade Cas. ¶173,930 (N.D. Ohio 1972); Philadelphia Hous. Auth. v. American Radiator & Standard Corp., 50 F.R.D. 13 (E.D. Pa. 1970), *aff'd sub. nom.* Mangano v. American Radiator & Standard Sanitary Corp., 438 F.2d 1187 (3d Cir. 1971) (per curiam). *But see In re* Western Liquid Asphalt Cases, 487 F.2d 191 (9th Cir. 1973), *cert. denied*, 415 U.S. 919 (1974). The district court in *Stotter* partially relied on *Mangano* in granting summary judgment against the plaintiff. *See* note 5 *supra.*

21. 431 U.S. at 726-27.

22. *Id.* at 729. For discussion of the *Illinois Brick* decision, *see* Note, 23 VILL. L. REV. 381 (1978).

23. 431 U.S. at 735. The Court opined that the passing-on prohibition should apply to both offensive and defensive uses, thereby barring indirect purchasers from treble damage actions. *Id.* The Court explained that symmetry between offensive and defensive passing-on was necessary to prevent exposing the defendant to conflicting claims and multiple liability, and to prevent the evidentiary complexities underlying *Hanover Shoe*. *Id.* at 730-32, 737. The Court

The Third Circuit, noting that the district court had granted defendant's motion for summary judgment[24] on the basis that the plaintiff was an indirect purchaser and therefore lacked standing to sue,[25] addressed the question of whether "the proscription [of *Illinois Brick*] against recovery for indirect purchases extends to the product as well as the buyer."[26] The court explained initially that *Illinois Brick*'s prohibition of the use of offensive passing-on[27] barred actions by indirect purchasers for several reasons, "including the possibility of exposing the defendant to multiple liability and the evidentiary complexities that would arise in apportioning the overcharge" among the injured parties.[28]

The Third Circuit, however, did not agree with the defendants' contention that since the rationale of *Illinois Brick* was the "Court's desire to avoid further complexity" in antitrust litigation, the plaintiff here should be barred from bringing suit.[29] As the defendants pointed out, the product in question, candy, did not compete with sugar, the price fixed product.[30] While the court conceded that "complications in the underlying claims" could arise because of the lack of competition between the price fixed product and the product purchased, it nevertheless rejected the defendant's argument that *Illinois Brick*'s concern with complex litigation should be controlling in this situation.[31] The Third Circuit noted that the *Illinois Brick* Court was primarily concerned with the complexities resulting from indirect purchaser suits, and that the instant case was brought by a direct purchaser.[32]

The court also pointed out that a basic premise of *Illinois Brick* was that the overcharged direct purchaser is, for section 4 Clayton Act purposes, the

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foresaw that plaintiffs at different levels in the chain of distribution would claim to have absorbed the entire overcharge. *Id.* at 737. The Court also emphasized that private enforcement of the antitrust laws would be discouraged if litigants were compelled to trace and prove an overcharge through the distribution chain. *Id.* at 741. The Court explained that the acceptance of the passing-on doctrine would mean "massive evidence and complicated theories" in treble damage actions. *Id.*

24. 579 F.2d at 16. *See* note 5 and accompanying text *supra.*

25. 579 F.2d at 16. Although the defendants alleged that the plaintiff's pleadings were deficient, the court stated that plaintiff did plead "not artfully or clearly" that it had purchased the products containing the price fixed sugar from defendants. *Id.*

Plaintiffs' complaint alleged:

> During the period in suit to the present, plaintiff and members of the Class it represents have purchased various food products containing sugar refined or sold by one or more of the defendants.
>
> INJURY TO PLAINTIFF AND CLASS
>
> 23. As a result of the foregoing, plaintiff and other members of its Class have been injured in their businesses and other property by having been charged substantially higher prices for various food products than they would have paid and by having a smaller volume of business than they would have had in the absence of such violations.

*Id.* n.3.

26. *Id.* at 16.

27. For a discussion of defensive and offensive passing-on, *see* L. SULLIVAN, HANDBOOK OF THE LAW OF ANTITRUST § 252 (1977).

28. 579 F.2d at 17. *See* notes 20-23 and accompanying text *supra.*

29. 579 F.2d at 17.

30. *Id.*

31. *Id.*

32. *Id.* at 17-18.

injured party.[33] The difficulty in computation here, the Third Circuit observed, would not be in prorating the amount of the injury among multiple parties, as was the case in *Illinois Brick*,[34] but merely "isolating the excessive cost of one ingredient which goes into the product purchased by the plaintiff."[35] Assuming arguendo that the plaintiff had been overcharged,[36] the court then asserted that the plaintiff was the proper party to bring the action since it purchased directly from the alleged price fixer.[37]

Contrarily, the *Stotter* court agreed with plaintiff's contention that if *Illinois Brick* barred plaintiff's cause of action in the instant case, then no party would have standing to sue an antitrust violator who produced a price fixed ingredient of a product that it marketed.[38] The court reasoned that a denial of recovery would "leave a gaping hole in the administration of the antitrust laws."[39] *Illinois Brick*, the court explained, was not intended to create such an escape,[40] because that case had held that a direct purchaser who had been overcharged was the party injured in his business or property within the meaning of the Clayton Act.[41]

Finally, the court rejected SuCrest's argument that since its subsidiary was plaintiff's vendor and the subsidiary had an independent legal existence, plaintiff could not proceed directly against SuCrest.[42] The court explained that there was no reason to distinguish the sale of the candy through SuCrest's subsidiary from sale through Borden's division.[43] Given "all of the facts in this case . . . at least for this purpose and in this context,"[44] the subsidiary should be treated as the alter ego of the parent.[45] The court observed that if it recognized the subsidiary's separate legal existence, a company could evade liability by "inserting a subsidiary between the violator and the first noncontrolled purchaser."[46]

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33. *Id.* at 18. The court noted that any purchaser other than the plaintiff in *Stotter* would clearly be an indirect purchaser. *Id.* at 17.

34. *Id.* at 18.

35. *Id.* The court noted that "[t]he difficulty in computation here is not in parceling out damages among entities in the chain." *Id.* Here there was but one defendant and the only calculation a district court would be called upon to make would be the determination of the difference between the price of the candy without price fixed sugar and the price including the price fixed sugar. *See id.*

36. *Id.* at 18 n.7.

37. *Id.* at 18. The court stated: "Plaintiff is a direct purchaser and, therefore, entitled to recover the full extent of the overcharge." *Id.*

38. *Id.*

39. *Id.* The court explained that since under *Illinois Brick* any person other than the purchaser of the final product containing the price fixed component would be an indirect purchaser, any defendant could escape liability by incorporating the price fixed product into another product. *Id.*

40. *Id. See* note 33 and accompanying text *supra*.

41. 579 F.2d at 18. *See* Illinois Brick Co. v. Illinois, 431 U.S. 720, 729 (1977).

42. 579 F.2d at 18-19. For a discussion of the violator attempting to circumvent the law by having its subsidiary alone engage in sales, *see* Note, *supra* note 22, at 395.

43. 579 F.2d at 18.

44. *Id.* at 18.

45. *Id.* at 18-19. The court noted that "[a]lthough the subsidiary does have a separate legal existence, it is owned by the parent company, and would not ordinarily sue it." *Id.* at 18.

46. *Id.* at 19.

In support of its disregard of the separate legal existence of the subsidiary, the *Stotter* court referred to footnote 16 of *Illinois Brick*,[47] in which the Supreme Court stated that an exception to the prohibition of defensive passing-on "might be permitted . . . where the direct purchaser is owned or controlled by its customer."[48] The *Stotter* court stated that the situation here, where the alleged price fixer owns the direct seller, is the offensive passing-on "mirror image" of footnote 16's defensive passing-on exception.[49]

It is submitted that the court's emphasis on the right of private enforcement provided by the Clayton Act was not misplaced.[50] Congress intended that private parties have a means of redress for injuries suffered due to antitrust violations.[51] The Third Circuit wisely recognized that if it allowed the defendants in *Stotter* to escape liability under *Illinois Brick*, it would be fostering a situation whereby price fixers could evade liability in section 4 Clayton Act suits by simply incorporating the price fixed product into another product.[52]

This analysis does not seem to conflict with *Illinois Brick*.[53] Although defendants correctly asserted that *Illinois Brick*'s result was at least partially based upon the Court's concern with complex evidentiary questions,[54] the problem of prorating the injury among several parties, a crucial concern of *Illinois Brick*,[55] does not arise here.[56] More importantly, the plaintiff in *Stotter* is a direct purchaser, and, under *Illinois Brick*, is thus the party "injured" for Clayton Act purposes.[57]

It is further submitted that the court was correct in refusing to give effect to the separate legal existence of defendant's subsidiary.[58] Such recognition would preclude any treble damage action, since by purchasing the price fixed component, the subsidiary would become the direct purchaser, and, as the court properly pointed out, the subsidiary would not sue the parent.[59]

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47. *Id.* at 19. *See* 431 U.S. at 736 n.16.

48. 579 F.2d at 19, *quoting* Illinois Brick Co. v. Illinois, 431 U.S. 720, 736 n.16 (1977).

49. 579 F.2d at 19.

50. *See* notes 38-41 and accompanying text *supra*. For the text of the Clayton Act, *see* note 1 *supra*.

51. "[S]ection 5 gives any person who may be injured in his business by reason of anything forbidden in the antitrust laws, the right to sue for such injury . . . ." 51 CONG. REC. 9073 (1914).

52. *See* notes 38-41 and accompanying text *supra*.

53. *See* notes 29-37 and accompanying text *supra*.

54. *See* text accompanying notes 29-31 *supra*.

55. *See* text accompanying note 34 *supra*.

56. *See* note 35 and accompanying text *supra*.

57. For the text of the relevant portion of § 4 of the Clayton Act, *see* note 1 and accompanying text *supra*. *See also* note 33 *supra*.

58. *See* notes 42-46 and accompanying text *supra*.

59. *See* note 45 and accompanying text *supra*. The retailers to whom Stotter sold would necessarily be indirect purchasers, and the subsidiary manufacturer would not sue. Hence, as a practical matter Stotter is the only purchaser in a position to seek private enforcement of § 1 of the Sherman Act.

Furthermore, the court's interpretation of footnote 16 of the *Illinois Brick* decision[60] seems to comport with *Illinois Brick*'s goals of symmetry between defensive and offensive passing-on and of avoiding the proration of injury among parties.[61] Footnote 16 would allow the price fixer to defend on the grounds that the plaintiff, a direct purchaser, passed the overcharge on to an entity that owned or controlled the plaintiff-direct purchaser.[62] The passing-on defense would be allowed in this situation because the direct purchaser and its owner or controller are the parties among whom such damage would be apportioned.[63] Likewise in *Stotter*, where a purchaser sues a price fixer who controls or owns the direct seller, the difficulties in apportioning damages among the parties are also nonexistent.[64]

It is unclear, however, why the Third Circuit limited this aspect of its holding to the facts of this case.[65] The court seems to imply that it will pierce the corporate veil whenever a plaintiff buys from an entity "owned or controlled" by the price fixer.[66] Though as a general rule the corporate veil is pierced only with reluctance,[67] it is submitted that the court could have indicated clearly the types of situations in which piercing of the corporate veil would be appropriate.

*Stotter* arguably stands for the proposition that in a price fixing case, the party entitled to sue is the first party to purchase the overcharged product who is not controlled by the price fixer, irrespective of whether or not the price fixed product is incorporated into another product.[68] Certainly the *Stotter* court articulated a concern that there be a party with standing to sue in each case.[69] *Stotter* may be more narrowly read as preventing a price fixer from escaping liability by incorporating a price fixed component into another product.[70]

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60. *See* text accompanying notes 47-49 *supra*.

61. *See* note 23 *supra*.

62. *See* text accompanying note 48 *supra*.

63. The Supreme Court stated that the exception is "[a]nother situation in which market forces have been superseded." 431 U.S. at 736 n.16.

64. *See* notes 34 & 35 and accompanying text *supra*.

65. *See* text accompanying note 44 *supra*.

66. 579 F.2d at 18-19.

67. *See, e.g.*, United States v. Milwaukee Refrigerator Transit Co., 142 F. 247 (C.C.E.D. Wis. 1905).

68. 579 F.2d at 18-19.

69. The court insisted that if a price fixer could insulate itself from treble damage actions by incorporating the price fixed product into another product, there would be a "gaping hole" in the law through which a price fixer could evade liability. *Id.* at 18. As to recognition of the independent existence of SuCrest's subsidiary, the court emphasized that the price fixer's subsidiary would not sue its parent, and if the court recognized the subsidiary's independent existence, the price fixer would be insulated from liability. *Id.* at 18-19. It seems reasonable to conclude that the court believed that in all cases there should be one party who can and in actuality will bring an action. *See* notes 38-41 and accompanying text *supra*. The court stated that "[t]o adopt defendants' position in the case at bar, however, would permit them to by-pass the threat of a treble-damage remedy and would be contrary to the spirit of the antitrust laws." *Id.* at 18 (footnote omitted).

70. *See* notes 38-41 and accompanying text *supra*.

The *Stotter* decision makes it clear that, in the Third Circuit, standing under section 4 of the Clayton Act depends on the purchaser's location in the chain of distribution as opposed to the product's location in the chain of production.[71] Hence, companies in industries in which vertical integration[72] is common, such as the oil,[73] steel[74] and paper[75] industries, will not be able to shield themselves from antitrust liability by incorporating a price fixed product into another product or by setting up a subsidiary through which a price fixed product must pass before it reaches an entity that is not controlled or owned by the price fixer. Since the result in *Stotter* clearly effectuates the Clayton Act's goal of enforcement of the antitrust laws through private damage actions and does not conflict with *Illinois Brick*'s bar on suits by indirect purchasers, it seems probable that the *Stotter* court's analysis and conclusion will be persuasive in other circuits.

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71. *See* notes 30-37 and accompanying text *supra*.

72. The Supreme Court has stated that "[e]conomic arrangements between companies standing in a supplier-customer relationship are characterized as 'vertical.' " Brown Shoe Co. v. United States, 370 U.S. 294, 323 (1962).

73. *See* F. ALLVINE & J. PATTERSON, COMPETITION, LTD.: THE MARKETING OF GASOLINE (1972).

> An important structural feature of the [oil] industry is that all the major firms are vertically integrated. These firms are not only engaged in distributing and marketing gasoline, but also in finding and producing crude oil from which gasoline is made, in running . . . refineries . . . and finally in operating complex networks of pipelines for controlled distribution . . . .

*Id.* at 10.

74. The steel industry is another example of a vertically integrated industry. The integrated steel companies "begin manufacture of steel by mining the raw materials. They operate coal ovens, blast furnaces and rolling and finishing facilities." United States v. Bethlehem Steel Corporation, 168 F. Supp. 576, 585 (S.D.N.Y. 1958). Some of the vertically integrated steel companies produce and sell finished products such as oil field equipment. *Id.* at 586. The application of *Stotter* to the steel industry could take the form of a price fixing arrangement with pig iron. Under *Stotter*, the fact that the steel company incorporates the pig iron into another product before sale would not insulate the steel company from liability.

75. The paper industry, wherein many paper merchant chains are owned by paper manufacturers and integration from the paper mill to the wholesale paper distributor is not uncommon, is an example of the piercing of the corporate veil concept in this area. United States v. Kimberly Clark Corp., 264 F. Supp. 439, 446-47 (N.D. Cal. 1967). Thus, if there is price fixing on the level of paper, the fact that the first purchaser bought the paper from a distributor that is owned by the price fixer but independently incorporated would not serve to insulate the price fixer from liability.