

Third Circuit Holds Food Manufacturers Have Standing to Seek Damages From Egg Suppliers

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Last week, in *In re: Processed Egg Products Antitrust Litigation*, the U.S. Court of Appeals for the Third Circuit issued a decision holding that purchasers of processed egg products have standing to seek damages from egg suppliers accused of price-fixing in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The decision is notable because it concerns a novel issue: May purchasers recover damages for purchases of products that include inputs from both defendant suppliers who conspired to fix the price of the inputs and nonparty suppliers who did not conspire to fix the price of the inputs? The case involved a purported conspiracy among egg suppliers to reduce the supply of eggs. Defendants, who were vertically integrated to varying degrees, sold both shell eggs and egg products that used shell eggs as inputs.¹ In making their egg products, however, defendants used both their own shell eggs (which were the subject of the alleged price-fixing) and the shell eggs of nonparty suppliers who were not alleged to have been part of the conspiracy. In a series of actions brought by food manufacturers that purchased egg products from the defendants, plaintiffs alleged that defendants had conspired to reduce the supply of shell eggs, thereby increasing the market price of all shell eggs — including those produced by nonconspirators — and egg products. While plaintiffs only sued the egg suppliers from whom they had purchased egg products and who were allegedly part of the conspiracy, they based their damages claim on all egg products they purchased from defendants, including those in which shell eggs from nonparty, nonconspirator egg suppliers were the input.

In September 2016, the district court granted defendants' motion for summary judgment, holding that plaintiffs lacked standing to bring their damages claim. Plaintiffs had not distinguished between egg products made with defendants' shell eggs and those made with nonconspirators' shell eggs, and the court held that plaintiffs could not recover damages for purchases of the latter because they had failed to present evidence that defendants, rather than nonconspirator egg suppliers, had recovered the overcharges paid by plaintiffs. The court reasoned that plaintiffs were essentially seeking "umbrella" damages precluded by the Third Circuit's decision in *Mid-West Paper Products, Co. v. Continental Group, Inc.*, 596 F.2d 573 (3d Cir. 1979), or, alternatively, pass-through damages prohibited by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

The Third Circuit reversed, holding that plaintiffs' standing did not depend on who had pocketed the overcharges plaintiffs had paid. The court explained: "Damages recoverable by a plaintiff on a § 4 claim do not depend on the ill-gotten benefit of the wrongdoer."

The Third Circuit further held that neither *Mid-West Paper* nor *Illinois Brick* barred plaintiffs' claim. The court explained that the plaintiff in *Mid-West Paper* lacked standing to recover damages under an "umbrella" theory that the defendants' price-fixing had allowed nonconspirator third parties to charge supra-competitive prices because the plaintiff sought overcharge damages based on purchases from nonconspirators, rather than from the defendants, thus creating a "tenuous line of causation" between the defendants' conduct and the overcharges the plaintiff had paid. By contrast, plaintiffs here sought overcharge damages for purchases they had made directly from the defendants who were part of the alleged conspiracy.

¹ "Shell eggs" are eggs that are sold in the shell for consumption or for breaking and further processing. "Egg products" are products in which the whole or any part of shell eggs are removed from the shells and processed into dried, frozen or liquid forms. Food manufacturers such as plaintiffs are the primary purchasers of egg products.

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The Third Circuit found *Illinois Brick* similarly distinguishable. Whereas *Illinois Brick* involved indirect purchasers seeking to recover pass-through damages, the Third Circuit concluded that plaintiffs were not indirect purchasers at all. Instead, the court found that defendants agreed to reduce the supply of all shell eggs to achieve price increases of both shell eggs and egg products derived from those shell eggs. Further, plaintiffs purchased the egg products directly from defendants, so the risk of “multiple liability” and the issues of proof and apportionment of damages underlying *Illinois Brick* were not present.

The Third Circuit noted that the antitrust standing factors highlighted in *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519 (1983), supported the conclusion that plaintiffs had standing to pursue damages for all egg product purchases, without regard to whether the egg products were made with shell eggs from defendants or nonconspirators. Plaintiffs had alleged a clear causal connection between the antitrust violations and the harm suffered by them, contending that defendants drove up the price of shell eggs with the intention of artificially inflating the price

of egg products as well. Further, plaintiffs’ alleged payment of supra-competitive prices was the type of injury the antitrust laws were intended to redress, and that injury flowed directly from defendants to plaintiffs. In addition, more direct victims to the alleged conspiracy did not exist, and there was no potential for duplicative recovery, nor any complex issues of apportionment of damages. Accordingly, the Third Circuit concluded that plaintiffs had antitrust standing to pursue damages against defendants for all egg product purchases.

The Third Circuit’s decision highlights that courts may be willing to broadly define what constitutes the relevant price-fixed product to find direct purchaser relationships, and to hold a party liable for overcharge damages regardless of whether the party is the ultimate beneficiary of supra-competitive pricing. The practical implication is that, when suppliers agree to reduce supply of a product for the purpose of increasing the price of the product and downstream products, they may be liable for resulting overcharges of all of the finished goods they sell that incorporate the product as an input, even those that also use inputs from suppliers who did not participate in the alleged conspiracy.