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Antitrust: Broadening of Standing in Private Litigation Under Malamud v. Sinclair Oil Corporation

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Case Comment

ANTITRUST: BROADENING OF STANDING IN PRIVATE LITIGATION UNDER MALAMUD V. SINCLAIR OIL CORPORATION*

INTRODUCTION

Private suits in federal antitrust litigation are authorized by Section 4 of the Clayton Act.[1] This statutory provision sets forth two prerequisites.[2] First, there must be an injury to the plaintiff's business or property. Second, the injury must be caused by the defendant's violation of the antitrust laws. While congressional intent[3] mandates a liberal interpretation of this section, lower courts have limited the application of Section 4 to deny plaintiffs access to the courts.[4] The limitation on the potential

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1. Clayton Act § 4, 15 U.S.C. § 15 (1970). The entire provision is as follows:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

2. *Id.*

3. Congress apparently intended a liberal interpretation of the antitrust laws since,

> the purposes of the antitrust laws are better served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws . . . . [T]he law encourages his suit to further the overriding public policy in favor of competition.

Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 139 (1968); *See* FTC v. Meyer, 390 U.S. 341 (1968); Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 381 U.S. 311 (1965); Radovich v. National Football League, 352 U.S. 445 (1957); Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955); Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (9th Cir. 1955); *cf.* Perkins v. Standard Oil Co. of California, 395 U.S. 642 (1969).

4. Loeb v. Eastman Kodak Co., 183 F. 704 (3d Cir. 1910), first introduced the concept of "direct injury." Since *Loeb*, some courts have expanded the "direct injury" test into what is labeled the "target area" doctrine. *See* Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (9th Cir. 1955).

number of antitrust litigants has been accomplished by creating a myriad of analytical techniques in defining "by reason of,"[5] the statutory provision for causation. Judicial interpretation has superimposed the requirement that in order for a plaintiff to have standing, his loss must have been the result of a "direct injury"[6] by the defendant, or he must have been within the "target area"[7] of the antitrust violation.[8]

However, in a recent decision, the Sixth Circuit Court of Appeals refused to apply such judicial limitations traditionally imposed on private antitrust standing. *Malamud v. Sinclair Oil Corporation*[9] adopted the liberal Supreme Court standing test articulated in *Association of Data Processing Service Organizations, Inc. v. Camp.*[10] The two-pronged analysis of *Data Processing* requires, first, that a plaintiff allege an injury in fact, and second, that the interest sought to be protected by the plaintiff be arguably within the zone of interest to be protected by the statute in question.[11] In practical effect, this test commands a liberal application of the standing prerequisites of Section 4 of the Clayton Act.

The scope of this comment is confined to the causation element of private antitrust standing. First, an historical analysis of antitrust standing will be presented, with specific emphasis upon the language of Section 4 of the Clayton Act, the Supreme

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5. 15 U.S.C. § 15 (1970). This section is quoted in its entirety in note 1, *supra.*

6. *See* note 27 *infra* and accompanying text.

7. *See* note 28 *infra* and accompanying text.

8. Although it is not at issue in *Malamud,* courts have also construed the first requirement, that of injury, to exact a showing of certainty. Rather than allowing minimal factual allegations to suffice for purposes of injury, courts have demanded that the pleading demonstrate with certainty that the complainant has in fact suffered legal injury. Story Parchment Co. v. Paterson Co., 282 U.S. 555, 562 (1931); Terrell v. Household Goods Carriers' Bureau, 494 F.2d 16, 20 (5th Cir. 1974).

9. 521 F.2d 1142 (6th Cir. 1975).

10. 397 U.S. 150 (1970). Although the *Data Processing* test was developed for use in administrative law, the court in *Malamud* found it to be applicable to standing in antitrust litigation:

> Because a private action under Section 4 has some considerable enforcement value, it is in the nature of a public suit. As with a suit in the administrative law field, a private antitrust claim seeks both to remedy the alleged injury to the private plaintiff and to "vindicate the important public interest in free competition."

521 F.2d at 1151.

11. 397 U.S. at 152-53.

Court's interpretation of the Act, and the lower courts' traditional restrictions on standing. The second part of the comment will be addressed to the application of the *Data Processing* test and its probable impact on antitrust standing.

HISTORICAL ANALYSIS OF ANTITRUST STANDING

Broad Language of Section 4 of the Clayton Act

Section 4 of the Clayton Act gives private parties standing to bring treble damage actions for injuries sustained by reason of the anti-competitive activities of others. An examination of the language of the Act evidences the congressional intention to grant relief to an expansive array of litigants. In relevant part, the Act states:

> 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 a reasonable attorney's fee.[12]

Under Section 4, there exists the requirement that a plaintiff establish a causal nexus between the injury sustained and the defendant's violation of the antitrust laws. The plain language of the Act would seem to require no more than a finding of causation in accordance with the typical "cause in fact" test; there is no additional statutory language exacting a greater showing of causation as a condition precedent to standing.

The contention that such a liberal grant of standing was intended by Congress is further supported by the purpose of the Clayton Act. The treble damage action was created to facilitate private litigation in an effort to deter economic abuses.[13] Four

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12. 15 U.S.C. § 15 (1970).

13. The purpose of the Clayton Act was defined by Congress:

> [I]t was believed that the most effective method [of enforcing the antitrust laws], in addition to the imposition of penalties by the United States, was to provide for private treble damage suits. It was originally hoped that this would encourage private litigants to bear a considerable amount of the burden and expense of enforcement and thus save the Government time and money.

S. Rep. No. 619, 84th Cong., 1st Sess. at 2 (1955). *See* REPORT OF THE ATTORNEY GENERAL'S NAT'L COMM. TO STUDY THE ANTITRUST LAWS 378 (1955). *See also* Maltz v. Sax, 134 F.2d 2, 4 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943); Fanchon & Marco v. Paramount Pictures, 100 F. Supp. 84, 88 (S.D.

significant inducements are provided for private enforcement: (1) the absence of a jurisdictional amount as a condition precedent to bringing suit; (2) the provision for treble damages; (3) the recovery of the cost of suit and (4) a reasonable attorney's fee.[14] As stated by the court in *Malamud v. Sinclair Oil Corporation*:

> This broad remedial statute which is available to private persons is an integral part of the enforcement scheme of the federal antitrust laws. . . . By providing sufficient incentive to private plaintiffs to file suit for alleged violations of the antitrust laws, Section 4 serves as an additional deterrent supplementing the government's enforcement of these same statutes.[15]

A restrictive interpretation of the statute is unresponsive to the needs enunciated by Congress—the need for a free and competitive economy.[16]

Interpretation of Section 4 of the Clayton Act by the Supreme Court

In furtherance of Congressional intent, the Supreme Court has consistently refused to burden the antitrust litigant with standing requirements in addition to those delineated in Section 4 of the Clayton Act. *Malamud* stresses the decision in *Radovich v. National Football League*[17] wherein the Supreme Court spe-

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Cal. 1951), *aff'd*, 215 F.2d 167 (9th Cir. 1954), *cert. denied*, 348 U.S. 912 (1955); Weinberg v. Sinclair Refining Co., 48 F. Supp. 203, 205 (E.D.N.Y. 1942).

14. 15 U.S.C. § 15 (1970). In Bruce's Juices, Inc. v. American Can Co., 330 U.S. 743 (1947), the Supreme Court stated:

> It is clear that Congress intended to use private self-interest as a means of enforcement and to arm injured persons with private means to retribution when it gave to any injured party a private cause of action in which his damages are to be made good threefold, with costs of suit and a reasonable attorney's fee.

Id. at 751-52. *See* Zenith Radio Corp. v. Hazeltine Research, Inc., 342 U.S. 134, 147 (1968); Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 138-40 (1968); Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co., 381 U.S. 311, 318 (1965); Emich Motors Corp. v. General Motors Corp., 340 U.S. 558, 567-68 (1951).

15. 521 F.2d at 1147-48.

16. Lawlor v. National Screen Service, 349 U.S. 322 (1955); United States v. Borden Co., 347 U.S. 514 (1954); United States v. National City Lines, 334 U.S. 573 (1948); Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940); Karseal Corp. v. Richfield Oil Corp., 221 F.2d (9th Cir. 1955); Maltz v. Sax, 134 F.2d 2 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943); Weinberg v. Sinclair Refining Co., 48 F. Supp. 203 (E.D.N.Y. 1942).

17. 352 U.S. 445 (1947).

cifically stated: "Congress itself has placed the private litigant in a most favorable position and this Court should not add requirements to burden what is specifically set forth by Congress."[18] After many lower courts[19] imposed some restrictions on the causation requisite to standing, the Supreme Court reiterated its position that the Clayton Act should be broadly defined: "The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated."[20]

The Supreme Court has noted that lower courts have attempted to limit the class of prospective antitrust litigants.[21] The Court's recognition of these limitations may be construed to give implicit approval of the restrictive trend of antitrust standing. Justice Brennan, however, views private litigants as "primary enforcers of antitrust policy armed with the weapon of triple recovery as a means of stimulating their efforts."[22] Furthermore, the Supreme Court has never expressly accepted lower court restrictions on private antitrust standing.[23] Nonetheless, the courts

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18. *Id.* at 454.

19. *See* notes 28-29 *infra* and accompanying text.

20. Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 236 (1948).

21. In Hawaii v. Standard Oil Co. of California, 405 U.S. 251 (1972), Justice Marshall remarked:

> The lower courts have been virtually unanimous in concluding that Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation.

Id. at 263 n.14.

22. *Id.* at 276.

23. Perkins v. Standard Oil Co. of California, 395 U.S. 642 (1969), was a price discrimination case in which the plaintiff claimed injuries sustained by reason of price differences between gasoline sold to him and that sold to Signal Oil Company which in turn sold the gasoline to Regal Stations Company—a competitor of Perkins. The plaintiff's claim against Standard Oil was denied on the basis that Regal was "too far removed" from Standard in the chain of distribution. The court of appeals also relied on Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (9th Cir. 1955), in holding that certain damages individually awarded Perkins were not proximately caused by the defendant's violation. It was reasoned that Perkins was not aimed at, and therefore, could not recover. Reversing, the Supreme Court held that the injured party must show a causal connection between the discrimination and the injury but refused to apply any standard whereby "links in a distribution chain" would operate to deny a plaintiff standing. In practical effect the "direct injury" analysis was thereby undermined. Although the "target area" test was not explicitly rejected, the Court concluded that "Perkins was no mere innocent bystander; he was the principal victim of the price dis-

of appeals have persisted in restricting standing in private antitrust suits.[24]

Restrictions on Private Antitrust Standing by the Lower Courts

As recognized by *Malamud*,[25] the effects of Section 4 have been improperly limited by employing the standing doctrine as a screening device to deny plaintiffs access to the courts. This has been accomplished by narrow judicial construction of the key phrase "by reason of"[26]—the causation provision of standing under Section 4 of the Clayton Act. Two major limiting interpretations—the "direct injury"[27] and "target area"[28] tests—emerge from an analysis of lower court decisions. Interestingly, neither the plain language of Section 4 nor Supreme Court decisions lend support to either of these doctrines.

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crimination . . . and was directly injured . . . ." *Id.* at 649. It can be argued that the Supreme Court views with disfavor any restriction being placed on the "by reason" clause of Section 4 of the Clayton Act.

24. *See* notes 28-29 *infra* and accompanying text.

25. 521 F.2d at 1148.

26. *See* 15 U.S.C. § 15 (1970).

27. The "direct injury" test has resulted in denial of standing to officers and employees of a corporation who allege illegal restraints directly injuring the corporate employer. Reibert v. Atlantic Richfield Co., 471 F.2d 727 (10th Cir.), *cert. denied*, 411 U.S. 938 (1973). A lessor is denied standing where the direct injury is to the lessee. Melrose Realty Co. v. Loew's, Inc., 234 F.2d 518 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956). Comparable logic bars a franchisor from suing where it is the franchisee who is directly injured. Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923 (1971); *cf.* Nationwide Auto Appraisers Service v. Association of Causualty & Surety Co., 382 F.2d 925 (9th Cir. 1967).

28. Initiated by the Ninth Circuit in the case of Conference of Studio Unions v. Loew's, Inc., 193 F.2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952), the "target area" doctrine emphasizes the economic area threatened by the antitrust violation. The actual impact of this approach became apparent with the decision in Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (9th Cir. 1955). The plaintiff in this later case manufactured automobile waxes which were sold to independent service stations for retail sale. The defendant, a producer of petroleum products, entered into sales contracts with service stations providing for exclusive dealing in automotive accessories. The court held that the manufacturer had standing to sue the defendant distributor although the manufacturer's own distributors were the parties in direct competition with the defendant and those immediately injured. The illegal practices effected a restraint upon the sale of a particular product. Since the violation was aimed at hindering the sale of such products, the manufacturers, suppliers, and distributors of those products were all the "target" of the defendant's violation. *See also* Calderone Enterprises Corp. v. United Artists Theatre Circuit, Inc., 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 406 U.S. 930 (1972); Sanitary Milk Producers v. Bergjans Farm Dairy, Inc., 368 F.2d 679 (8th Cir. 1966).

First enunciated in *Loeb v. Eastman Kodak Company,*[29] the "direct injury" test emphasizes the relationship between the claimant and the alleged antitrust violator. Simply stated, one of two conditions must be present for the private antitrust litigant to have standing under this test. Either the plaintiff must be in privity of contract with the defendant, or the plaintiff must be a competitor of the defendant unseparated by an intermediary party. To eliminate the possibility of duplicate recoveries, the lower courts have construed the doctrine to bar standing to sue for derivative injury, reasoning that the intermediary would be the proper party to sue for the purported violation.[30]

These stringent constraints engendered by the "direct injury" analysis have encountered much criticism during the past two decades. Courts have recognized that in many cases, standing has been unjustly denied to deserving plaintiffs although actual injury was not in dispute.[31] Requiring privity as an element of causation has had the logical effect of prohibiting all foreclosure suits. If he is foreclosed from a particular market, the plaintiff in question has been refused the opportunity of establishing privity with the antitrust violator. As a result, a plaintiff who is foreclosed from a market is denied the possibility of recovery for damages caused by a defendant's prohibitive actions in violation of the antitrust laws. Furthermore, the Supreme Court has implicitly undermined the "direct injury" test, reasoning that:

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29. 183 F. 704 (3d Cir. 1910).

30. The court in Ames v. American Tel. & Tel. Co., 166 F. 820, 823 (C.C.D. Mass. 1909), suggested the possibility of "sextuple damages" for the same unlawful act if stockholders of injured corporations could maintain treble damage actions. In Loeb v. Eastman Kodak Co., 183 F. 704, 709 (3d Cir. 1910), the court concluded that the damages, if any, should be recovered through the party which had been directly injured.

31. The Ninth Circuit Court of Appeals rejected the "direct injury" analysis in the case of *In re* Multidistrict Vehicle Air Pollution M.D.L. No. 31, 481 F.2d 122 (9th Cir.), *cert. denied,* 414 U.S. 1045 (1973). The court reasoned:

> Resurrecting notions of privity, [the "direct injury"] test arbitrarily forecloses otherwise meritorious claims simply because another antitrust victim interfaces the relationship between the claimant and the alleged violator. Moreover, the "direct injury" requirement has engendered among some adherents a regrettable tendency to deny standing to any plaintiff who happens to fall within certain talismanic rubrics: "creditor," "landlord," "lessor," "franchisor," "supplier." This disposition is, we think, unsatisfactory insofar as it transforms judicial inquiry into a mere search for labels.

Id. at 127.

> [T]he competitive harm done . . . is certainly no less because of the presence of an additional link in the particular distribution chain . . . . [W]e do not accept such an artificial limitation.[32]

In contrast to the "direct injury" test, the "target area" test focuses on the economic area threatened by the antitrust violation.[33] Two questions arise in analyzing the relationship of the claimant to the area of the economy endangered by a breakdown of competitive conditions. First, what is the area of the economy affected by the antitrust violation? Second, is the plaintiff's business or property within the area of the economy so affected? If the plaintiff's business or property comes within the affected area, the causal nexus has been established.

The "target area" analysis, however, has proven to be conceptually difficult to apply. A number of courts have manipulated the test by defining the target as the area of the economy aimed at by the alleged violator,[34] thus severely limiting the number of private antitrust litigants. Other jurisdictions have liberalized the test by using a foreseeability approach in defining the area of the economy affected by the antitrust violation.[35] Such a measure is overbroad as well as ambiguous. The net effect of this difficulty is to prevent litigation, contrary to the intent of Congress that antitrust laws be stringently enforced.[36] Yet, it is crucial for a complete understanding of antitrust standing to be cognizant of the policies which can militate against recovery for all injuries traced to an antitrust violation.

Construction of the Language of Section 4 of the Clayton Act: Two Competing Policies

There exists an inherent conflict in antitrust laws between the policy of enforcement achieved by a broad grant of standing, and the need to eliminate spurious claims lured by the possibility

32. Perkins v. Standard Oil Co. of California, 395 U.S. 642, 648 (1969).

33. *See* note 28 *supra.*

34. Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (2d Cir. 1970), *cert. denied,* 401 U.S. 923 (1971); Productive Inventions, Inc. v. Trico Products Corp., 224 F.2d 678 (2d Cir. 1955), *cert. denied,* 350 U.S. 936 (1956).

35. Mulvey v. Samuel Goldwyn Productions, 433 F.2d 1073 (9th Cir. 1970), *cert. denied,* 402 U.S. 923 (1971); Hoopes v. Union Oil Company of California, 374 F.2d 480 (9th Cir. 1967); Twentieth Century Fox Film Corp. v. Goldwyn, 328 F.2d 190 (9th Cir. 1964).

36. *See* note 3 *supra.*

of a treble damage windfall.[37] Numerous provisions of the Clayton Act create incentives for the private person to bring antitrust suits which have the effect of deterring violations and preserving the free market.[38] On the other hand, the courts' reluctance to grant standing may be attributable to the magnitude of the treble damage recovery.[39] Only one-third of such recovery is compensatory, while the final two-thirds is typically viewed as pure windfall.[40]

In actuality, however, the courts have over-estimated the amount of windfall recoverable. A recovery of treble damages is not as lucrative in fact as it first appears in theory. In computing damages, the time interval between the date of injury and the date on which damages are awarded is not included. There is no compensation for the loss of purchasing power and interest during those interval years.[41] Thus, it is simply not accurate to say that two-thirds of the recovery is totally windfall. Therefore, the fear of spurious claims motivated by the lure of treble damage windfall is not a totally convincing reason to limit standing.

THE FACTUAL CONTEXT IN *Malamud v. Sinclair Oil Corporation*

The Sixth Circuit reconciled the competing antitrust policy considerations by employing the *Data Processing* test in *Malamud v. Sinclair Oil Corporation.*[42] The antitrust action in *Malamud* was instituted against Sinclair Oil for alleged violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.[43]

37. Melrose Realty Co. v. Loew's, Inc. 234 F.2d 518 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956); Peller v. International Boxing Club, Inc., 227 F.2d 593 (7th Cir. 1955).

38. 15 U.S.C. § 15 (1970). *See* note 14 *supra* and accompanying text.

39. When construing and applying statutes, the Supreme Court has always been vigilant in requiring courts to consider "economic reality." United States v. Concentrated Phosphate Export Ass'n., 393 U.S. 199, 208 (1968). Analysis of the economic realities of antitrust suits has invariably led to the conclusion that treble damages is a very drastic remedy. Hawaii v. Standard Oil Co., 405 U.S. 251, 262 (1972); Image and Sound Service Corp. v. Altec Service Corp., 148 F. Supp. 237, 239 (D. Mass. 1956).

40. As stated in *Stigler, et al., Report of the Task Force on Productivity and Competition*, 2 ANTITRUST L. AND ECON. REV. 13, 34 (1969), "the excess over actual damage and costs represents a pure windfall to the private plaintiff."

41. Parker, *The Deterrent Effect of Private Treble Damage Suits: Fact or Fantasy*, 3 N.M.L. REV. 286, 288-90 (1973).

42. 521 F.2d 1142, 1144-45.

43. *Id.* at 1144.

For purposes of clarity, the plaintiffs are designated as follows: Jack and Anne Malamud (the officers, directors, and sole shareholders of the four remaining corporate plaintiffs); Malco Petroleum, Inc. (the petroleum distribution company); Brentwood Corporation, Malco Corporation, and Tobyneil Corporation (the three real estate investment companies).

In 1965, Sinclair and Malco Petroleum, Inc. executed a distribution agreement wherein Sinclair agreed to supply gasoline and other products to Malco and to financially assist the investment companies in acquiring new service stations. Upon Sinclair's subsequent refusal to assist the investment companies in any of their ventures, Jack Malamud negotiated a distribution agreement with Texaco, Inc., which was signed in August, 1966. Malamud, on behalf of Malco Petroleum, also unsuccessfully sought an early termination of the distribution contract with Sinclair. Due to Sinclair's refusal to permit an early termination of the contract and because of its failure to provide financing for expansion, the plaintiffs sued for antitrust violations, claiming substantial damage from lost profits by reason of unrealized sales growth. All of the plaintiffs except Malco also claimed damage from unrealized growth in real estate equity ownership.[44]

In a motion for reconsideration of the district court's denial of summary judgment, Sinclair argued that all the plaintiffs lacked standing since none of them had been directly injured.[45] The district court rejected this contention, holding that all the plaintiffs had standing as defined in *Data Processing*.[46] However, relying on one of its past decisions,[47] the district court also found that, as a matter of law, neither the individual plaintiffs nor the distributorship could possibly establish a sufficiently direct injury.[48] The court of appeals affirmed the lower court's recognition of standing as to the investment firms.[49] However, the appellate court rejected the "direct injury" and "target area" tests as applied by the lower court in limiting standing.[50] Reasoning

44. *Id.* at 1145.
45. *Id.*
46. *Id.*
47. Volasco Products Co. v. Lloyd A. Fry Roofing Co., 308 F.2d 383 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963). The sole suppliers of raw materials to direct victims of defendant-competitor were prevented from suing for losses they sustained through decreased sales, since they were too far removed from the direct injury allegedly aimed at the suppliers' customers.
48. 521 F.2d at 1145.
49. *Id.* at 1146.
50. *Id.* at 1149.

that both doctrines are too demanding at the pleading stage, the Sixth Circuit Court of Appeals viewed the *Data Processing* test as the proper standard for a determination of standing in private antitrust action.[51]

Malamud TEST FOR STANDING

Significantly, *Malamud* was the first court to apply the *Data Processing* test to standing in private antitrust action. The first criterion of the two-pronged test is "whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise."[52] In *Malamud,* the investment companies claimed an inability to expand their operations due to Sinclair's failure to provide financial assistance as agreed in the contract. This allegation satisfied the threshold requirement of standing.[53] Although the district court's dismissal of the claim of the individual plaintiffs and of the distributorship was not before the court on appeal, their averments of damage would also clearly sustain an allegation of injury, since there need be no showing of a direct injury as exacted under the "direct injury" and "target area" doctrines. The only prerequisite for standing is an allegation of injury by reason of the defendant's illegal practices.

The second criterion of *Data Processing* is "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[54] In *Malamud,* the investment firms sought to protect the expansion of their business by the acquisition and development of additional service station sites. As a means to that end, the parties entered into a financing agreement. The plaintiffs contended that Sinclair sought to maintain the status quo for the marketing of petroleum products in the area of distributorship, in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.[55] Certainly the plaintiffs' interest falls within the "zone of interests to be protected" by the antitrust statutes. These laws seek to protect the competitive economy from the effects of any combination of conspiracy in restraint of trade. When these competitive conditions are interfered with, as in *Malamud,* the force of the antitrust laws may be invoked through the private treble damage action. Since both

51. *Id.* at 1151.
52. 397 U.S. at 152.
53. 521 F.2d at 1151.
54. 397 U.S. at 153.
55. 521 F.2d at 1151.

requirements of the *Data Processing* test were satisfied, the Sixth Circuit affirmed the investment companies' standing to sue under the antitrust laws.[56]

After examining the "direct injury" and "target area" tests, the *Malamud* court concluded that "both theories really demand too much from the plaintiffs at the pleading stage of a case."[57] The court noted that while the directness of an injury must be determined upon a factual showing,

> standing is a preliminary determination ordinarily to be evaluated upon the allegations of the complaint. As a result, a party may make sufficient allegation to demonstrate the necessary standing to sue but fail to prove his case on the merits.[58]

Because the purpose of standing is to eliminate those plaintiffs barred from suing by Article III of the Constitution,[59] standing must focus "on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated."[60] The *Malamud* court found that this party was isolated by the Clayton Act's Section 4 prerequisite: that the party sustain injury by reason of the defendant's antitrust action.[61]

In the face of such a mandate, the lower courts have persisted in employing the "direct injury" and "target area" standing doctrines in attempts to arrest litigation at an early stage.[62] *Malamud* held that either approach enables the court to make a "determination on the *merits* of a *claim* under the guise of assessing the *standing* of a *claimant*."[63] Accordingly, the Sixth Circuit Court of Appeals discarded the "direct injury" and "target area" approaches traditionally employed by the lower courts in antitrust suits. Equally as important, the court adopted the *Data Processing* test for antitrust standing determinations, requiring only that the plaintiff allege that there was injury in fact, and that his interest is arguably within the zone of interests protected by the statutes.[64]

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56. *Id.* at 1152.
57. *Id.* at 1149.
58. *Id.* at 1150.
59. *Id.* at 1149.
60. *Id.* at 1147, *citing* Flast v. Cohen, 392 U.S. 83, 99 (1969).
61. *Id.* at 1148.
62. *Id.* at 1149-50.
63. *Id.* at 1150 (court's emphasis).
64. 397 U.S. 150, 152-53 (1970).

CONCLUSION

Despite the simple language of Section 4 of the Clayton Act and the various decisions by the Supreme Court, the lower courts have persisted in limiting standing in federal antitrust litigation. Both the "direct injury" and "target area" doctrines employed by the courts restrict private antitrust standing. Judicial interpretation of Section 4 has demanded that a plaintiff's loss must have been the result of a "direct injury" by the defendant or that he must have been within the "target area" of the antitrust violation. Therefore, in addition to the requirement that a causal nexus between the injury sustained and the defendant's violation be alleged, a plaintiff must also establish directness of injury. The resulting limitation on the number of antitrust litigants contradicts the primary purpose of the antitrust laws—preservation of a competitive economy. That Congress intended to confer a liberal grant of standing to further the competitive freedom of a market in buying and selling products, is supported by the broad language and the specific provisions of Section 4 and is buttressed by Supreme Court decisions and developing trends in case law.[65]

Unlike the above tests, the "zone of interest" approach espoused by the *Malamud* court, comprehends the entire market

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65. *Id.* In 1938, the Federal Rules of Civil Procedure abolished the need for fact pleading. At that time, arguments for requiring special pleading in antitrust cases were made. Yet, Congress created no special exception for antitrust suits under liberal notice pleading which provides the framework for the Federal Rules. Nagler v. Admiral Corp., 248 F.2d 319 (2d Cir. 1957). In Conley v. Gibson, 335 U.S. 41, 47 (1957), the Supreme Court held that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, the law requires "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* at 47. *See* FED. R. CIV. P. 8(a).

In Hart v. B. F. Keith Vaudeville Exchange, 262 U.S. 271 (1923), Mr. Justice Holmes defined the test for sufficiency of an antitrust complaint. The court must determine whether "the claim is wholly frivolous." *Id.* at 274. The Supreme Court has also warned that summary judgment "should be used sparingly in complex antitrust litigation. . . ." Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464, 473 (1962).

66. Developing case law has also emphasized the need for a broad construction of Section 4. Until recently, a plaintiff was burdened with proving injury to the public. The Supreme Court's decision in Radovich v. National Football League, 352 U.S. 445 (1957), removed this additional requirement for standing, since public injury was judged immaterial to the plaintiffs' complaint. Furthermore, the lower courts have shifted from the restrictive "direct injury" test to a more flexible analysis of causation in the "target area" approach.

affected by antitrust violations. The policy underlying the antitrust laws is better achieved by a broadening of standing under the *Data Processing* test. A more liberal application of Section 4 of the Clayton Act promotes this policy of exposing and deterring anti-competitive practices while guarding against the proliferation of spurious claims. Also, as opposed to the restrictive nature of the "direct injury" and "target area" test, the "zone of interest" analysis permits a distinction between the determination of a litigant's standing and a decision on the merits of his claim. Although limitations on the plain language of Section 4 of the Clayton Act are still present, the "zone of interest" approach accommodates both competing policy concepts while conforming more nearly to the Congressional intent expressed in the Act.