

CASE NO. A05-2148

**State of Minnesota
In Court of Appeals**

Diane Loric, individually and
on behalf of all others similarly situated,

Plaintiff-Appellant,

vs.

Crompton Corporation, Uniroyal Chemical Company, Inc.
Uniroyal Chemical Company Limited, and Bayer Corporation,

Defendants-Respondents.

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STATEMENT OF THE ISSUE

1. Whether the District Court properly held that Plaintiff, a purported indirect purchaser who is neither a consumer nor a competitor in the market where the allegedly anticompetitive activity occurred and who has no link or nexus to that relevant market or to the distribution chain in that market, lacked standing to sue based on her purchase of a product in a different market that is manufactured by third parties, not Defendants, and sold through multiple chains of distribution?

The District Court properly applied the analysis of the United States Supreme Court in *Associated General Contractors* to determine that Plaintiff's claimed injury was too "attenuated" relative to any alleged wrong-doing by Defendants to establish standing under the Minnesota Antitrust Act.

- *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 534 (1983).
- *Howard v. Minnesota Timberwolves Basketball Ltd. Partnership*, 636 N.W.2d 551, 556 (Minn. App. 2001).
- *Smith v. VISA U.S.A., Inc.*, No. C0-04-2096, 2005 WL 1936336, at *6-7 (Minn. Dist. Ct. July 12, 2005).
- *Gutzwiller v. Visa U.S.A. Inc.*, No. C4-04058, 2004 WL 2114991, at *10 (Minn. Dist. Ct. Sept. 15, 2004).

STATEMENT OF THE CASE

Plaintiff-Appellant ("Plaintiff") impermissibly seeks to stretch the scope of Minnesota's antitrust law to encompass alleged injuries based on her purchase of a product that Defendants-Respondents ("Defendants") do not make, sell, or distribute. Agreeing with several other courts that have addressed similar claims, the District Court ruled that Plaintiff's claims are so attenuated and remote from any alleged anticompetitive conduct that she lacks antitrust standing. The District Court accordingly dismissed the Complaint with prejudice. The District Court's ruling follows well-established Minnesota case law recognizing the limits of standing. It also is consistent

with the legislative history of the 1984 amendment to the Minnesota Antitrust Act, § 325D.57, the statute under which Plaintiff purports to bring her claims.

The facts are not in dispute. Defendants make and sell rubber processing chemicals. They sell them to tire companies (not Plaintiff), who use them as processing agents to transform crude rubber into commercially-usable rubber for use in automobile tires. Plaintiff, who does not buy rubber processing chemicals from anyone, but rather who only bought tires from retailers, and therefore who had no dealings with Defendants, claims that she was injured because Defendants allegedly conspired to sell rubber processing chemicals at inflated prices to tire companies. In short, Plaintiff seeks damages on behalf of a class of consumers who did not purchase the product she claims was sold at fixed prices (rubber processing chemicals), but who purchased a derivative product (automobile tires) that was purportedly manufactured using rubber that was processed with Defendants' chemicals.

The issue presented in this case is not, as Plaintiff asserts, whether indirect purchasers are categorically barred from suing under Minnesota's antitrust statute. They are not. Rather, the question before this Court is much narrower: Does Plaintiff, a purported indirect purchaser who is neither a consumer nor a competitor in the market where the allegedly anticompetitive activity occurred and who has no link or nexus to that relevant market or to the distribution chain in that market, have standing to sue based on her purchase of a product in a separate market that is manufactured by third parties, not Defendants, and sold through multiple chains of distribution? Minnesota case law,

the legislative history of the 1984 amendment to the state's antitrust statute and common sense all dictate that the answer to that question is no.

STATEMENT OF FACTS

Defendants Chemtura Corporation (formerly known as Crompton Corporation), Uniroyal Chemical Company, Inc., Uniroyal Chemical Company Ltd., and Bayer Corporation (“Defendants”) produce and sell rubber processing chemicals. Plaintiff Diane Lorix does not buy those chemicals. Instead, she claims to have purchased automobile tires, a product “manufactured utilizing rubber chemicals.” (Am. Compl. ¶ 9, Appellant’s Appendix (“App. App.”) at 3.) Those tires — manufactured by tire companies (not Defendants) using small quantities of rubber processing chemicals, some of which were sold to the tire companies by Defendants — were then sold to wholesalers or other distributors, who then sold them to retailers, who then sold them to consumers such as Plaintiff. None of those wholesalers, distributors, or retailers are parties in this litigation.

In short, Plaintiff complains about an alleged conspiracy to fix the prices of rubber processing chemicals, alleging that some of those chemicals may have been sold to tire companies at inflated prices and then used to manufacture tires (Plaintiff does not even allege whether she bought tires containing rubber processing chemicals manufactured by Defendants), which the tire companies later sold at prices that supposedly reflected the allegedly inflated prices for rubber processing chemicals to wholesalers or other distributors who then resold those tires, again supposedly at inflated prices, to retailers

who then resold them to consumers such as Plaintiff. Thus, even though she bought tires, Plaintiff declares herself an “indirect purchaser” of rubber processing chemicals.

Accepting these allegations as true and drawing all factual inferences in favor of Plaintiff, the District Court properly concluded that Plaintiff’s alleged injury was too “attenuated” relative to the purported anticompetitive conduct to confer antitrust standing. (Order of Aug. 25, 2005, at 5, App. App. at 93.) While “indirect purchasers” are not categorically barred from bringing damages actions under the Minnesota Antitrust Act as they are under federal law, the District Court adhered to the Minnesota Supreme Court’s holding that “Minnesota’s antitrust laws are generally interpreted consistently with federal courts’ construction of federal antitrust laws.” *Minn. Twins P’ship v. Hatch*, 592 N.W.2d 847, 851 (Minn. 1999); *see also Howard v. Minn. Timberwolves Basketball Ltd. P’ship*, 636 N.W.2d 551, 556 (Minn. App. 2001) (“Minnesota antitrust law should be interpreted consistently with federal court interpretations of federal antitrust law unless Minnesota law clearly conflicts.”). Accordingly, the District Court held it appropriate to use the United States Supreme Court’s multi-factor analysis set forth in *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 534 (1983), to determine whether Plaintiff had antitrust standing to maintain her claim. (Order of Aug. 25, 2005, at 4, App. App. at 92.)

Based on its careful consideration of these factors, the District Court determined that Plaintiff lacked antitrust standing because she neither claimed that she was a consumer in the market alleged to have been subject to the anticompetitive activity, nor that she had even purchased the allegedly price-fixed product. The District Court

reasoned that given the attenuated nature of Plaintiff's claims, it would be "neither judicially manageable nor efficient to extend standing so far down the economic chain." The District Court therefore granted Defendants' motion for judgment on the pleadings dismissing this lawsuit. (Order of August 25, 2005 at 5, App. App. at 93.)

STANDARD OF REVIEW

A motion for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03 is proper when, as here, the complaint fails to set forth a legally sufficient claim for relief. *See In re Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. Ct. App. 1996). When considering a motion for judgment on the pleadings, the court must accept the allegations contained in the pleading under attack as true. *See Wessin v. Archives Corp.*, 581 N.W.2d 380, 383 (Minn. Ct. App. 1998) (citing *State ex rel. City of Minneapolis v. Minnesota St. Ry. Co.*, 56 N.W.2d 564 (Minn. 1952)). All assumptions made and inferences drawn must favor the non-moving party. *See id.* (citing *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 30 (Minn. 1963)). However, "[c]ourts are *always* able to dismiss pleadings consisting solely of vague or conclusory allegations, wholly unsupported by fact." *In re Milk Indirect Purchaser Antitrust Litig.*, 588 N.W.2d 772, 775 (Minn. Ct. App. 1999) (emphasis in original).

The standard of review in this Court is de novo review. *Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. App. 2002) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)) ("Whether a party has standing to sue is an issue of law, which we [the Court of Appeals] review de novo."). "Issues of statutory construction and interpretation [also] present questions of law, which we review de

novo.” *Id.* at 61 (citing *Arvig Tel. Co. v. N.W. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978)).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT PLAINTIFF LACKED ANTITRUST STANDING TO ASSERT A CLAIM UNDER THE MINNESOTA ANTITRUST ACT.

The District Court correctly concluded that Plaintiff, who allegedly purchased a second, derivative product — automobile tires — manufactured by a third party using a small quantity of a product allegedly price-fixed by Defendants, suffered injury (if any) too attenuated and remote to have antitrust standing to maintain her action. Plaintiff contends the District Court erred because the Minnesota Antitrust Act, Minn. Stat. § 325D.51 (2002), permits “indirect purchasers” to sue for alleged antitrust violations and she has conveniently labeled herself an indirect purchaser of a product (rubber processing chemicals) that she never bought. While the Minnesota Antitrust Act does not categorically deny indirect purchasers the right to sue, which the District Court acknowledged, it does not categorically permit all claims in which a plaintiff can label herself as an indirect purchaser. Simply put, whether Plaintiff’s claim is too remote and tenuous, *i.e.*, whether she has antitrust standing, is an analytically distinct issue and one the District Court properly examined.

A. Standing Principles Limit Who May Sue For Damages.

Because Plaintiff did not purchase anything directly from Defendants, she is foreclosed from suing for damages under the federal antitrust laws. *See Ill. Brick Co. v. Illinois*, 431 U.S. 720 (1977). Under federal law, “indirect purchasers,” *i.e.*, persons who buy a defendant’s allegedly price-fixed product from an intermediary, are generally

precluded from bringing suit for damages as a matter of statutory construction. *Id.* at 745.

Seven years after the decision in *Illinois Brick*, the Minnesota legislature decided that indirect purchasers should not automatically be barred from recovery, amending the Minnesota Antitrust Act to permit “any person . . . injured directly or indirectly by a violation” of the act to seek redress under Minnesota law.¹ The Minnesota Supreme Court has held that the 1984 amendment meant that “indirect purchasers” would not categorically and automatically be precluded from suing under Minnesota law. *See State ex rel. Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 495 (Minn. 1996); *see also Gutzwiller*, 2004 WL 2114991, at *4-5. The amendment, however, does not mean that anyone who can claim indirect purchaser status is automatically entitled to sue. Rather, the amendment was intended to comport with existing standards demarcating the limits of standing. *See* Order of Aug. 25, 2005, at 5, App. App. at 93; *see also Smith*, 2005 WL 1936336, at *6-7; *Gutzwiller*, 2004 WL 2114991, at *4-5; *see also Blue Shield of Va. v.*

¹ Plaintiff’s implication that the United States Supreme Court in *California v. ARC America Corp.*, 490 U.S. 93, 101 (1989), endorsed indirect purchaser standing by state court plaintiffs is wholly unsupported by that decision. (*See* App. Br. at 11 n.9.) The *ARC America* decision simply reflects settled principles of federalism by finding that states are free to make their own policy decisions regarding the nature and scope of state antitrust claims and are not, as a matter of federal law, bound by federal decisions interpreting federal statutes. The *ARC America Court* did not reach the issue of antitrust standing under *Associated General Contractors*. Furthermore, the continuing validity of the *Associated General Contractors* antitrust standing analysis was recently affirmed in *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 416 (2004) (Stevens, J. concurring).

McCready, 457 U.S. 465, 473-77 (1982) (distinguishing limitations on the “classes of person” who may sue from standing limitations based on “particular forms of injury,” such as those “too remote” from the alleged wrongdoing); *Ill. Brick*, 431 U.S. 728 n.7 (noting “the question of which persons have been injured by an illegal overcharge . . . is analytically distinct from the question of which persons have sustained injuries too remote to give them standing to sue for damages”).

In defining the permissible limits of antitrust standing, the United States Supreme Court’s analysis in *Associated General Contractors* is instructive. In *Associated General Contractors*, the Supreme Court rejected the plaintiffs’ argument that antitrust standing under Section 4 of the Clayton Act extends to every alleged injury arguably flowing from an antitrust violation, even in contexts not governed by *Illinois Brick*. In so holding, the Supreme Court concluded that, to determine whether a plaintiff has antitrust standing, courts must evaluate the causal connection between the plaintiff’s alleged harm and the defendant’s alleged wrongdoing, *id.* at 537, according to several factors; *i.e.*: whether the plaintiff was a consumer or a competitor in the market where trade was restrained, *id.* at 538-39, the directness or indirectness of the asserted injury, *id.* at 540, the existence of more direct victims of the alleged antitrust violation with greater motivation to sue for redress, *id.* at 541-42, whether the plaintiff’s damages claim is highly speculative, *id.* at 542-43, and whether affording standing comports with the goal of “keeping the scope of complex antitrust trials within judicially manageable limits” by “avoiding either the risk

of duplicative recoveries on the one hand, or the danger of complex apportionment of damages on the other,” *id.* at 543-44.²

Antitrust violations can injure identifiable parties, but not all parties who can argue that they have in some sense been affected by an antitrust violation are sensible enforcers of the antitrust laws. Thus, while it is understood that an antitrust violation may “cause ripples of harm to flow through the Nation’s economy,” antitrust law does not permit “every person tangentially affected by an antitrust violation to maintain an action to recover[] damages for the injury to his business or property.” 459 U.S. at 534-

² Contrary to Plaintiff’s assertion, the antitrust standing doctrine set forth in *Associated General Contractors* was not developed to apply only to direct purchaser cases. As *Associated General Contractors* itself demonstrates, the plaintiffs there were not direct purchasers, but rather were unions alleging that the breach of a collective bargaining agreement by a corporation of contractors violated antitrust laws. The broad applicability of the *Associated General Contractors* antitrust standing analysis as a method for determining whether a plaintiff’s claimed injury is too remote and attenuated is further evidenced by the variety of factual contexts in which it has been applied. *See, e.g., South Dakota v. Kan. City S. Indus.*, 880 F.2d 40, 45-49 (8th Cir. 1989) (denying State-supplier of water rights antitrust standing to assert claims against railroad opposing coal pipeline); *McDonald v. Johnson & Johnson*, 722 F.2d 1370, 1374-79 (8th Cir. 1984) (holding former shareholders alleging fraud in sale of stock lacked antitrust standing under *Associated General Contractors*); *Henke Enters. Inc. v. Hy-Vee Food Stores, Inc.*, 749 F.2d 488, 489-90 (8th Cir. 1984) (denying antitrust standing pursuant to *Associated General Contractors* where hardware store alleged grocery store anticompetitively vacated shopping center and assigned lease); *2660 Woodley Rd. Joint Venture v. ITT Sheraton Corp.*, 369 F.3d 732, 740-43 (3rd Cir. 2004) (applying *Associated General Contractors* factors to find hotel owners lacked antitrust standing against hotel operating corporation for commercial bribery claim); *Crouch v. Crompton Corp.*, No. 02-CVS-4375, 2004 WL 2414027 (N.C. Super Ct. Oct. 28, 2004) (copy in Appendix) (applying *Associated General Contractors* analysis to claims of alleged indirect purchaser); *Luscher v. Bayer A.G.*, No. CV 2004-014835 (Ariz. Super. Ct., Sept. 14, 2005) (copy in Appendix) (same).

35 (quoting *McCready*, 457 U.S. at 476-77). Rather, the doctrine of antitrust standing requires a court “to evaluate the plaintiff’s harm, the alleged wrongdoing by the defendants, and the relationship between them.” *Id.* at 535.

The unwillingness of the courts to provide a remedy for every conceivable variety of antitrust injury, no matter how remote or distant from the claimed violation, reflects prudential concerns regarding the practical limits of the judicial inquiry into downstream effects. *See, e.g., Fla. Seed Co. v. Monsanto Co.*, 105 F.3d 1372, 1374 (11th Cir. 1997) (“[T]he doctrine of antitrust standing reflects prudential concerns and is designed to avoid burdening the courts with speculative or remote claims.”). Recognizing the existence of these concerns, the District Court properly concluded that while “Plaintiff may have felt some economic repercussions from Defendants’ anticompetitive actions upstream . . . it is neither judicially manageable nor efficient to extend standing so far down the economic chain to redress Plaintiff’s alleged injury.” (Order of Aug. 25, 2005, at 5, App. App. at 93.)

B. The District Court Correctly Applied An Antitrust Standing Analysis.

As the District Court concluded, whether the relationship between the plaintiff’s harm and the defendant’s conduct is sufficiently close to confer standing to sue can be found in the multi-factor analysis set forth in *Associated General Contractors*. *See* 459 U.S. at 537-44. Other courts both in Minnesota and around the country “regularly and consistently” have applied the *Associated General Contractors* test “as the passageway through which antitrust plaintiffs must advance.” *2660 Woodley Rd. Joint Venture*, 369

F.3d 732, 741 (3d Cir. 2004) (quoting *City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 264 (3d Cir. 1998)). In light of the 1984 amendment to the Minnesota Antitrust Act, the Minnesota courts that have considered the issue have unanimously concluded that the relevant factors to consider in the antitrust standing analysis include: (1) whether the plaintiff is a consumer in the allegedly restrained market (*Associated Gen. Contractors*, 459 U.S. at 538); (2) the speculative nature of the claimed damages (*id.* at 542-43); and (3) the potential for duplicative recovery or complex apportionment of damages (*id.* at 543-44). Order of Aug. 25, 2005, at 4, App. App. at 92; *Gutzwiller*, 2004 WL 2114991, at *6; *Smith*, 2005 WL 1936336, at *6. In applying the *Associated General Contractors* factors, no single factor is dispositive. *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999) (citing *R.C. Dick Geothermal Corp. v. Thermogenics, Inc.*, 890 F.2d 139, 146 (9th Cir. 1989)). Rather, a court must “balance the factors.” *Id.*

The principles of antitrust standing, developed by the Supreme Court in *Associated General Contractors*, apply with equal force to claims under the Minnesota Antitrust Act, because “Minnesota antitrust law should be interpreted consistently with federal court interpretations of federal antitrust law unless Minnesota law clearly conflicts.” *Howard*, 636 N.W.2d at 556; *see also Minn. Twins*, 592 N.W.2d at 851. As discussed above, the 1984 amendment to the Minnesota Antitrust Law removing the absolute bar on indirect purchaser actions specifically diverges from federal antitrust law. In all other respects, however, “Minnesota Appellate Courts have interpreted Minnesota’s antitrust laws in a manner which is consistent with the federal courts construction of federal antitrust law,” including application of *Associated General Contractor’s* multi-

factor analysis. *Gutzwiller*, 2004 WL 2114991, at *4; *see also Tremco, Inc. v. Holman*, No. C8-96-2139, 1997 WL 423575 (Minn. Ct. App. July 29, 1997) (citing *Associated Gen. Contractors*, 459 U.S. at 538) (copy in Appendix). Consistent with these standards, the District Court determined that Plaintiff, as a purchaser of a derivative product that is manufactured, sold, and distributed by independent third parties, had alleged an injury so attenuated, speculative, and remote that she lacked standing to bring this suit under Minnesota law. Both the District Court's decision to apply the *Associated General Contractors* antitrust standing analysis and the result of that analysis are correct and should be affirmed.

Plaintiff, on the other hand, claims that the standing inquiry in Minnesota incorporates no prudential considerations, but simply begins and ends with the bare question of whether a party can allege that it has suffered injury in fact. (App. Br. at 31-34.) But Plaintiff is just repeating the *sine qua non* of all standing; that is to say, injury in fact is the necessary condition of *constitutional* ("Article III") standing. "Essentially, a potential litigant must allege injury in fact, or otherwise have a sufficient stake in the outcome, to have a court decide the merits of a dispute." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 433 (Minn. App. 1995) (citing *Middlewest Motor Freight Bureau v. United States*, 525 F.2d 681, 683 (8th Cir. 1975)). Put another way, injury-in-fact is the requisite for "satisfaction of the constitutional element of standing" *Id.* But this appeal is not about whether Plaintiff can allege the bare minimum of injury-in-fact. As explained by the Supreme Court:

[T]he focus of the doctrine of ‘antitrust standing’ is somewhat different from that of standing as a constitutional doctrine. Harm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination of whether the plaintiff [in a given case] is a proper party to bring a private antitrust action.

Associated Gen. Contractors, 459 U.S. at 535 n. 31.

1. Plaintiff is not a consumer in the allegedly restrained market.

The Supreme Court made clear in *Associated General Contractors* that courts should focus on whether the plaintiff is “a consumer []or competitor in the market in which trade was restrained.” 459 U.S. at 539.³ “This inquiry focuses on the market the alleged restraint was designed to impact and the intent of the actor in engaging in the restraint.” *Crouch v. Crompton Corp.*, No. 02-CVS-4375, 2004 WL 2414027, at *18 (N.C. Super Ct. Oct. 28, 2004); *see also Associated Gen. Contractors*, 459 U.S. at 538. In the context of a purported indirect purchaser case, such as the case here, “[o]ne key question is whether the plaintiff claims injury in a market collateral to the market in which the alleged restraint took place,” *Crouch*, 2004 WL 2414027, at *18, as such an attenuated relationship between the plaintiff and defendant demonstrates the remoteness

³ *See also S.D. Collectibles, Inc. v. Plough, Inc.*, 952 F.2d 211, 213 (8th Cir. 1991) (rejecting plaintiff’s claim because “standing is generally limited to actual market participants, that is, competitors or consumers,” and plaintiff was neither); *Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538, 539-43 (9th Cir. 1987) (holding plaintiffs lacked antitrust standing because they “were neither consumers nor competitors in the relevant market” and because damages, which could have been affected by “several independent factors,” were speculative).

of any alleged injury. In *McCready*, the United States Supreme Court emphasized that although the Clayton Act “does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers,” as noted by Plaintiff (App. Br. at 19), the Court further explained that “analytically distinct from the[se] restrictions . . . is the conceptually more difficult question ‘of which persons have sustained injuries *too remote* from an antitrust violation to give them standing to sue for damages.’” 457 U.S. at 472, 476 (quoting *Ill. Brick*, 431 U.S. at 728 n.7) (emphasis in original). Thus, the *McCready* Court emphasized that although no *per se* limitation as to the identity of the plaintiff existed, the Court held that “Congress did not intend to allow every person tangentially affected by an antitrust violation to maintain an action to recover threefold damages for the injury to his business or property.” *Id.* at 477.

In this case, Plaintiff concedes that she did not purchase rubber processing chemicals. Rather, she alleges that she is a purchaser of a completely different product in a completely different market, *i.e.*, tires, a market in which no Defendant participates. (Am. Compl. ¶ 9, App. App. at 3.) There thus can be no dispute that Plaintiff fails to meet this factor, and the District Court properly concluded that “Plaintiff failed to allege . . . that she is either a consumer or competitor in the rubber chemical processing market.” (Order of Aug. 25, 2005, App. App. at 93.) Plaintiff’s claims, therefore, are unquestionably tangential to and remote from any alleged antitrust violation — as evidenced by the sheer remoteness of Plaintiff (a buyer of tires from retailers) from the claimed violation (the sale of rubber processing chemicals at artificially increased prices to companies that make tires). It is only by engaging in the artificial construct that

Defendants' products reached Plaintiff because they allegedly were used in the manufacture of tires, which were then sold to wholesalers or other distributors and then sold to retailers before the tires were sold to Plaintiff, that Plaintiff can describe herself as an indirect purchaser of a product (rubber processing chemicals) that she never bought.

The District Court also noted that "Plaintiff . . . failed to allege that the rubber processing chemicals become actual components of the tire." (Order of Aug. 25, 2005, at 5, App. App. at 93.) Instead, the Complaint repeatedly alleges that rubber processing chemicals are "used in the manufacture of tires," and words to the same effect. (Am. Compl. ¶¶ 1,2,3,6,7, App. App. at 1-3.) Plaintiff argues that because "[t]he complaint does not allege that the price-fixed rubber chemicals were *not* components of the tires purchased by [Plaintiff] . . . it was error for the District Court to assume that fact." (App. Br. at 25-26 (emphasis added).) The District Court did not err in reaching its conclusion, but rather accepted as true Plaintiff's allegations, which unequivocally aver that tires are manufactured using rubber processing chemicals. (Am. Compl. ¶ 9, App. App. at 3.) Notwithstanding, it does not matter whether the rubber-processing chemicals used to process the rubber that is used to make the tire become *components* of the tire or not. Plaintiff would not have standing in either case.

First, it is noteworthy that other courts have denied standing even while characterizing rubber-processing chemicals as "ingredients" in a tire. *See, e.g., Crouch*, 2004 WL 2414027, at *21 (discussing the *de minimis* value of any overcharge for "the chemicals in the tires"); *Weaver*, 2004 WL 3406119, at *1 (dismissing tire-purchasers' claims based on alleged price-fixing of "an ingredient placed in those tires"). Second,

even viewed as ingredients, the rubber-processing chemicals at issue are not identifiable components of the tire in any meaningful sense. They have no independent economic value and cannot be bought separately by consumers. They cannot be removed and replaced with something else. The consumer purchasing the tire does not put any value or weight on the chemicals that may have been used in the tire's manufacture, and does not know or care which chemicals or whose chemicals may have been used in manufacturing the tire.

The long causal chain connecting Plaintiff's alleged harm to the claimed anticompetitive conduct is far too attenuated to support antitrust standing. Simply put, Plaintiff's claims of financial harm are too many steps removed from the alleged wrongdoing.⁴

⁴ Courts regularly find that plaintiffs claiming far more direct injuries than Plaintiff's here lack antitrust standing. *See, e.g., Lovett v. Gen. Motors Corp.*, 975 F.2d 518, 521 (8th Cir. 1992) (affirming dismissal of derivative and remote antitrust claims by the owner of an automobile dealership allegedly damaged by the direct supplier defendant's conspiratorial conduct); *S.D. Collectibles*, 952 F.2d at 213 (affirming holding that broker of another company's product lacked standing to assert claims relating to alleged anticompetitive restrictions in the market for that product); *McDonald*, 722 F.2d at 1379 (holding insufficiently proximate the claims of former shareholders of a company who alleged that anticompetitive conduct of a second company that purchased their shares unfairly impacted the amounts they were paid for their shares); *Kan. City S. Indus.*, 880 F.2d at 47 ("Traditionally, suppliers of competitors in the relevant market have been denied standing because any alleged injury is considered derivative of the harm sustained by the competitor."), limited on other grounds, *Warfield v. KR Entm't, Inc. (In re Fed. Fountain, Inc.)*, 165 F.3d 600, 601 (8th Cir. 1999).

2. Plaintiff's damages are inherently speculative.

In antitrust standing analysis, “it is appropriate . . . ‘to consider whether a claim rests at bottom on some abstract conception or speculative measure of harm.’” *Associated Gen. Contractors*, 459 U.S. at 543 (quoting *McCready*, 457 U.S. at 475 n.11). Damages can be speculative due to the attenuated causal connection between the alleged misconduct and the claimed harm, or because it would be difficult to discern whether independent factors contributed to any alleged damages. *Id.* at 542; *see also Todorov v. DCH Healthcare Auth.*, 921 F.2d 1438, 1451 (11th Cir. 1991). Both concerns are present here.

“As damage claims move from direct to indirect and the distribution chain becomes more complex, the possibility of factors intervening to affect causation and price multiplies, and claims [of injury] become more speculative.” *Crouch*, 2004 WL 2414027, at *19. Rubber processing chemicals are only one component (and a very small one at that) employed in the process of manufacturing rubber that is used in tires. As the *Crouch* court observed, “[u]nlike a component that remains unchanged when incorporated in the final product, manufacturing costs are less directly passed through and may be affected by differing manufacturing processes used by producers.” *Id.* at *24; *see also B.W.I. Custom Kitchen v. Owens-Ill., Inc.*, 191 Cal. App. 3d 1341, 1352 (1987) (indicating that the effects of price-fixing might be “obscured by substantially

altering or adding to the item received from the manufacturer”).⁵ Thus, the effects of any alleged price fixing of rubber processing chemicals are diminished by the fact that they are but a very small component used in the manufacturing process of tires Plaintiff later purchased.

Even if one assumes that the Defendants sold rubber processing chemicals at artificially increased prices to tire manufacturers, that is not the end of the inquiry because that only permits a conclusion that direct purchasers may have a claim. Whether a tire that is later sold by that manufacturer contained a price increase affected by an overcharge and whether that overcharge affected the price to a consumer such as Plaintiff depends on a wide variety of factors at each subsequent stage — *e.g.*, the pricing of tires by the tire manufacturer, and the pricing of tires by wholesalers and the pricing of tires by retailers. At each stage a host of marketplace and other competitive factors come into play, including the other costs and components in the manufacture of the tire, the nature of supply and demand for tires, the amount and type of rubber processing chemicals used, the bargaining power of the parties, and any other specific market forces relating to that product at the time and place of a particular transaction. Essentially, a lower court here would be required, for an eleven-year period, to determine the overcharge, if any, paid by

⁵ The court in *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1352, recognized that the ingredient or component action, where the alleged price-fixed product was not the product actually purchased by the plaintiff, “presented a particularly complicated problem with respect to the pass-on issue” that is not found in the case where the price-fixed product passed in an unchanged form from the alleged price-fixing manufacturer to the indirect purchasers.

thousands of consumers who purchased *any* type of tire from *any* retailer, who in turn purchased from *any* wholesaler, who in turn purchased from *any* manufacturer and to determine whether the tire that the manufacturer produced and then sold contained rubber processing chemicals whose price had been raised to supracompetitive levels by the Defendants' acts. *See, e.g., Crouch*, 2004 WL 2414027, at *24 (“Unlike a component that remains unchanged when incorporated in the final product, manufacturing costs are less directly passed through and may be affected by differing manufacturing processes used by producers.”); *Fucile v. Visa U.S.A., Inc.*, No. S1560-03 CNC, 2004 WL 3030037, at *4 (Vt. Super. Ct. Dec. 27, 2004) (“Assuming that the merchants actually passed along added expenses in the price of goods sold, the court would need to determine the degree to which these expenses were passed along. . . . The court would then have to determine actual sales of goods to the plaintiff class during the relevant time period. . . . [T]hese alleged damages venture into uncharted territories of sheer guesswork.”). Under these circumstances, Plaintiff could, at best, show only a theoretical link between any alleged overcharge for rubber processing chemicals and the price she paid for tires. Accordingly, Plaintiff’s claim rests on speculative theories and hypotheses that are insufficient to support antitrust standing.

3. Plaintiff’s damages are unmanageably complex and likely to be duplicative.

There is a “strong interest,” as explained by the Supreme Court in *Associated General Contractors*, “in keeping the scope of complex antitrust trials within judicially manageable limits.” 459 U.S. at 543. The concern is twofold: “the risk of duplicate

recoveries on the one hand, or the danger of complex apportionment of damages on the other.” *Id.* at 544. The District Court noted these concerns and determined that while “Plaintiff may have felt some economic repercussions from Defendants’ anticompetitive actions upstream . . . it is neither judicially manageable nor efficient to extend standing so far down the economic chain.” (Order of Aug. 25, 2005, at 5, App. App. at 93.)

In circumstances where indirect purchasers have been permitted to sue, a concern exists over duplicate recovery among indirect purchasers. *See Crouch*, 2004 WL 2414027, at *19. Accordingly, “courts must be cognizant that the problems between direct and indirect purchaser cases replicate themselves in state indirect purchaser cases where there are multiple levels in the distribution chain and multiple distribution chains.” *Id.* As a general matter, in order “[t]o prevent double recovery for the same alleged injury there must be a reliable means of allocating the effects of the price-fixing among the various participants in the distribution chain.” *Id.* at *25.⁶

In this case, given the levels of the distribution chain, the remote nature of Plaintiff’s alleged injury and the size of the purported class, it would be impossible for a court to avoid undertaking a complex, if not impossible, apportionment of damages

⁶ The legislature recognized the problem of potentially duplicative recoveries and made at least an effort to address the problem. See Minn. Stat. 325D.57 (“In any subsequent action arising from the same conduct, the court may take any steps necessary to avoid duplicative recovery against a defendant.”). The statute does not state that such steps in subsequent proceedings should be the only means available to a court for preventing duplicative recoveries — indeed, in some cases, taking preventative steps in later proceedings would leave the court with no choice but to dismiss the later claims altogether.

among different levels of purportedly indirect purchasers. Indeed, to determine the price differential, if any, caused by the alleged price-fixing “would be a Herculean task and one . . . not free from speculation given the enormous number of disaggregating factors to be considered in the process.” *Id.* at *22.

These analytical and administrative burdens make clear that the scope of this case cannot be kept within judicially manageable limits. Given the complex apportionment of damages required here, which alone should be grounds for denying antitrust standing, it would be nearly impossible to avoid duplicate recoveries among indirect purchasers.

II. The Legislative History of the Amendment to the Minnesota Antitrust ACT Demonstrates that Indirect Purchaser Standing Is Not Limitless.

The legislative history of the 1984 amendment to the Minnesota Antitrust Act makes clear that the legislature, by amending the antitrust statute to permit indirect purchasers to sue, did not intend to permit recovery for every conceivable injury no matter how remote. In short, the legislature never intended for recovery to be limitless. For example, at the beginning of the first hearing to consider the 1984 amendment, Steve Kilgriff, the Assistant Attorney General in charge of the state’s Antitrust Division, assured the subcommittee that antitrust standing principles would bar any claims asserted by more attenuated litigants. The Assistant Attorney General stated in plain terms that “there is an established area of the law here that hopefully will control who is recovering

in antitrust cases.⁷ . . . [T]he only purpose of the language [‘]directly or indirectly[’] is specifically to deal with this [*Illinois Brick*] case. Nothing else changes with respect to the law.” See Transcript: *Hearing on S.F. 1807 Before the Sen. Judiciary Comm. Civil Law Subcomm.*, 1984 Leg., 73d Sess. 9, at 10, 11 (Minn., Mar. 19, 1984) (statement of Assistant Attorney General Kilgriff) (copy in Appendix).

To illustrate the amendment’s intended effect, Kilgriff used the example of a group of television manufacturers who conspire to fix the price of television sets to retailers. The retailers in turn sell the televisions to consumers. As Kilgriff explained, in a purchase chain that includes the manufacturer, a wholesaler, a retailer, and an ultimate consumer, the proposed amendment would give the ultimate consumer a right of recovery. Kilgriff specifically stated that in order to recover, one must be “in the chain of purchase.” *Id.* at 9.

The Assistant Attorney General further explained that some potential litigants would not be in the “chain of purchase,” and therefore, could not recover under the amendment. Kilgriff responded to one senator’s concern about how far the word “indirectly” might be stretched:

[T]here are doctrines in the antitrust law dealing with targets and who are the targets of a conspiracy. If you’re outside that target area[,] you cannot recover. So the taxpayer [who might be affected indirectly through higher taxes, when the State buys a price-fixed product] has been denied standing. The

⁷ The speaker here is listed as unidentified, but context indicates that it was the Assistant Attorney General.

person at the garage sale has also been denied standing under antitrust laws. We have to be in a chain of purchase.

Id. at 9. In total, this testimony demonstrates that Minnesota consciously chose to lift the absolute ban on indirect purchaser claims, but only with the understanding that the scope of these claims could not be limitless, but would be restricted by the doctrine of antitrust standing.

III. THE DISTRICT COURT'S DECISION IS CONSISTENT WITH DECISIONS FROM OTHER COURTS FACED WITH CLAIMS ANALOGOUS TO THOSE BROUGHT BY PLAINTIFF.

A. Numerous State Courts Have Dismissed Similar Claims Of Indirect Purchasers For Lack Of Antitrust Standing Under *Associated General Contractors*.

A number of courts from around the country, recognizing limitations on the type of indirect purchaser claims that may be maintained under their states' laws, have dismissed claims virtually identical or very similar to those at issue here. For example, in *Crouch*, 2004 WL 2414027, the North Carolina Business Court addressed the issue of whether a tire-purchaser plaintiff had antitrust standing for alleged injuries resulting from defendants' purported price-fixing of rubber processing chemicals. As is the case here, the *Crouch* plaintiff did not purchase rubber processing chemicals, but rather was the downstream purchaser of tires that contained rubber that had been made using the allegedly price-fixed chemicals. *Crouch* lacked standing as a matter of law because "there is a point beyond which the wrongdoer should not be held liable." *Crouch*, 2004 WL 2414027, at *9 (quoting *Ill. Brick*, 431 U.S. at 760). The Court based that conclusion

on the well-recognized limitation on antitrust standing articulated in *Associated General Contractors*.

In granting defendants' motion to dismiss, the *Crouch* court noted that North Carolina law "recognize[d] indirect purchaser standing, but engraft[ed] upon the statute the requirements of standing enunciated in [*Associated General Contractors*]." *Id.* at *18. Accordingly, the *Crouch* court found that the plaintiff did not participate in the relevant market because he did not purchase the allegedly price-fixed product, there was little direct impact given that rubber processing chemicals were used only in the manufacturing process of the tire plaintiff actually purchased, other indirect purchasers had potential claims raising the specter of duplicative recoveries, and any damage analysis would be speculative and complex. *See id.* at *25. Additionally, the *Crouch* court found that tracing purported damages to purchasers of end-use products, as Plaintiff asks the Minnesota court to undertake here, would be "a Herculean task and one which the Court believes would not be free from speculation given the enormous number of disaggregating factors to be considered in the process." *Id.* at *22. The court concluded that "[g]iven the many variables, the issues surrounding allocation of the alleged price fixing found in this case would be exceptionally complex and the results of economic analysis speculative." *Id.* at *25.

Other state courts reviewing allegations of secondary-market price effects similar to those of Plaintiff likewise have concluded that they fail to state antitrust claims in part because the alleged harm was too remote and speculative. *See, e.g., Weaver v. Cabot Corp.*, No. 03 CVS 04760, 2004 WL 3406119 (N.C. Super. Ct. Mar. 26, 2004) (copy in

Appendix) (dismissing tire purchaser case against carbon black companies); *Luscher*, No. CV 2004-014835 (dismissing a similar suit against manufacturers of ethylene propylene diene monomer (“EPDM”)).⁸

Weaver, when dismissing similar indirect-purchaser claims by tire purchasers (in that case the allegedly “indirectly purchased” ingredient was carbon black), found it impossible to conclude that tire prices were not subject to the normal competitive conditions for tires, explaining that:

To rule otherwise would put this Court in an impossible position of attempting to determine whether the alleged price-fixing by an oligopoly of an ingredient used to make tires had anything to do with the price paid by the Plaintiff when he bought the tires. This Court believes that without some allegation and proof that the tire manufacturers themselves were an oligopoly and were fixing prices, that it would be impossible to show the price the Plaintiff paid was not set by

⁸ *But see Anderson Contracting, Inc. v. Bayer AG*, Case No. CL 95959 (Polk County, Iowa Dist. Ct., May 31, 2005) (copy in Appendix), and *Investors Corp. of Vermont v. Bayer AG*, Case No. S1011-04 CnC (Chittenden County, Vt. Super. Ct., June 1, 2005) (copy in Appendix). In *Anderson Contracting*, the Iowa District Court declined to apply *Associated General Contractors* on the formalistic observation that the decision “involved no product, no purchase, and consequently, no price-fixing.” Order at 14. The Iowa court reached this conclusion notwithstanding that nothing in *Associated General Contractors* suggests that its reach is limited to cases involving antitrust offenses other than price-fixing. The Vermont trial court’s decision does not apply either. There, the court focused on the allegation that “EPDM [supposedly] comprises 80 to 85 percent of Ethylene-propylene elastomers.” Order at 3. Whether or not the Vermont court correctly read the complaint in that case, the court’s conclusion is irrelevant here: Plaintiff has made no similar allegation, and she cannot do so given that the rubber chemicals in a tire are entirely consumed in the rubber manufacturing process. More importantly, the Vermont court recognized that *Associated General Contractors* may apply to the claims of indirect purchasers to determine if they have such standing to assert their claims. Order at 3-6.

the normal laws of supply and demand in our open economic system, and that even if it were possible to show that, there would be no way for the Court to, in any fair or just way, determine an amount the Plaintiff was damaged. Therefore, it is the opinion of this Court that the General Assembly could not have intended that our Antitrust Statute be used by an indirect purchaser of tires against the manufacturer of an ingredient placed in those tires.

2004 WL 3406119, at *1.

In *Luscher*, the Arizona court that handles complex civil cases dismissed a suit brought by purchasers of products made with defendants' EPDM, a synthetic rubber used in a variety of products, reasoning that plaintiff did not purchase the allegedly price-fixed product but instead bought derivative products. *Luscher*, slip op. at 1. As is the case here, the ultimate consumers "still enjoyed the benefit of competition for the product" they purchased. *Luscher* went on to hold that the ultimate consumer was "so far removed from the conduct of the Defendants that the chain of causation between Defendants' conduct and the price of the good cannot be established." *Id.* at 3. Dismissing the claims for lack of antitrust standing, the court held that "the injuries alleged by the Plaintiff are so remote and the alleged damages so speculative, that although an indirect purchaser of EPDM, the Plaintiff and members of the putative class are not proper parties to bring this action." *Id.*⁹

⁹ As the District Court held, although indirect purchasers are not categorically barred from suing under Minnesota's antitrust laws, "[t]here is a line at which the connection to the anticompetitive activity is so attenuated that an alleged injury suffered by a plaintiff cannot be attributed to a defendant's ill deeds." (Order of Aug. 25, 2005, App. at 5.) As such, this case is consistent with recent decisions from other states in which courts have

As the aforementioned cases demonstrate, courts faced with claims similar to those brought by Plaintiff have found the claims too remote, speculative and tangential to support antitrust standing. Like the plaintiffs in those cases, Plaintiff here lacks antitrust standing, and the District Court's dismissal of Plaintiff's Complaint should be affirmed.

B. Neither *Philip Morris* Nor The Microsoft Cases Support A Finding Of Antitrust Standing Here.

Plaintiff's attempts to analogize her purchases to cases in which courts did find antitrust standing are unavailing. The legal principle that standing is not limitless even

dismissed causally-attenuated claims by self-proclaimed "indirect purchasers," even where — as in Minnesota — the state's antitrust laws permit claims by indirect purchasers. See, e.g., *Fucile*, 2004 WL 3030037 (Vt. Super. Ct. Dec. 27, 2004) (holding under Vermont Consumer Fraud Act that Vermont Supreme Court would draw on *Associated General Contractors* for guidance and that application of those factors mandated dismissal where causal chain is too long and damages highly speculative); *Southard v. Visa U.S.A. Inc.*, No. LACV 031729, 2004 WL 3030028 (Iowa Dist. Ct. Nov. 17, 2004) (granting motion to dismiss where *Associated General Contractors* factors indicated that plaintiff's claims were too remote); *Knowles v. Visa U.S.A. Inc.*, Civ. A. CV-03-707, 2004 WL 2475284 (Me. Super. Ct. Oct. 20, 2004) (holding that despite legislative *Illinois Brick* repealer, an indirect purchaser claim must be dismissed where the balancing of *Associated General Contractors* indicated that plaintiffs lacked standing); *Gutzwiller v. Visa U.S.A., Inc.*, No. C4-04-58, 2004 WL 2114991 (Minn. Dist. Ct. Sept. 15, 2004) (despite *Illinois Brick* repealer and prior case law affirming indirect purchaser cause of action, court relied on *Associated General Contractors* to dismiss claim of alleged "indirect purchasers" where there was no connection between plaintiff's purchases and defendant's alleged antitrust activities); *Stark v. Visa U.S.A. Inc.*, No. 03-055030-CZ, 2004 WL 1879003 (Mich. Cir. Ct. July 23, 2004) (dismissing claims of remote purchaser under *Associated General Contractors* and holding that "it does not necessarily follow that Michigan's repeal of the *Illinois Brick* rule also eliminated the *Associated General Contractors* standing requirements"); *Ho v. Visa U.S.A., Inc.*, No. 112316/00, 2004 WL 1118534 (N.Y. Sup. Ct. Apr. 21, 2004) (applying *Associated General Contractors* to dismiss remote claims brought under state antitrust and consumer protection statutes).

when injury in fact has been alleged was recognized by the Minnesota Supreme Court in *State el rel. Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490 (Minn. 1996). The issue there was whether Blue Cross had standing to sue tobacco companies under various theories, including an antitrust theory based on a claim of a conspiracy to suppress research findings regarding the ill effects of smoking on health, causing injury to Blue Cross in the form of “increased costs associated with increased medical care needed by its nicotine-addicted consumers” *Id.* at 496. Because Blue Cross and the smokers had been injured by increased costs *in the same market for healthcare*, the Court held that antitrust standing was appropriate . *Id.* at 492 (“Blue Cross is a direct purchaser of health care”); *but see Gutzwiller*, 2004 WL 2114991, at *7 (holding claimant not a purchaser or competitor, either directly or indirectly, of goods or services in the market allegedly restrained by antitrust violations).¹⁰

However, the *Philip Morris* Court was not presented with the issue of whether the *Associated General Contractors* factors should apply under Minnesota’s Antitrust Act because there Blue Cross was a purchaser of the product in question (health-care

¹⁰ Plaintiff’s attempts to distinguish *Gutzwiller*, *see* App. Br. at 7 n.4, 21-22, are unconvincing. First, the *Gutzwiller* court, like the District Court, recognized that limits exist on who may maintain an antitrust cause of action. These limits are informed by the antitrust standing analysis of *Associated General Contractors*. Simply labeling oneself as an indirect purchaser is insufficient. Second, nothing in *Gutzwiller* supports the view that consumers who bought a good manufactured with an input consumed during the manufacturing process have standing under Minnesota’s antitrust laws. Instead, the same considerations that compelled the *Gutzwiller* court to conclude that the plaintiff in that case had standing also apply here.

services). By contrast, as the District Court in this case and the district court in another recent case found, the *Associated General Contractors* factors are relevant for purposes of determining whether alleged indirect purchasers have standing to sue in Minnesota courts. *Smith*, 2005 WL 1936336, at *6-7. In particular, in holding that the plaintiffs were not “consumers or competitors in the alleged restrained market,” the *Smith* court also distinguished *Philip Morris*:

Accordingly, the Court finds that the instant case (like the *Gutzwiller* case) is clearly distinguishable from the facts in the *Philip Morris* case, where the district court concluded that [Blue Cross] was “clearly a link in the chain of interacting parties” and from a practical standpoint, was the “natural plaintiff best able to pursue the claim.” *State by Humphrey v. Philip Morris, Inc.*, 1995 WL 1937124 *36 (Minn. Dist. Ct.). The special role of [Blue Cross] in the healthcare field and its role as a major payor of healthcare expenses was an essential factor in the decision of the *Philip Morris* court to grant standing to that entity. The Supreme Court (in the *Philip Morris* case) emphasized that [Blue Cross] was a proper party to assert an antitrust claim since the company was the direct purchaser of health care, and thus had a right to sue to collect overcharges, even though each payment was made on behalf of an individual patient.

Id. at *7 (citations omitted).

Nor is it the case (contrary to Plaintiff’s argument) that her relationship with Defendants’ rubber processing chemicals sales “is closer than the analogous [sic] in *Humphrey*.” (App. Br. at 33.) To the contrary, Blue Cross was the party specifically responsible for paying health care expenses and directly purchased health care. 551 N.W.2d at 497. Plaintiff’s tire purchases, at the end of a long distribution chain in which

rubber processing chemicals are consumed by third parties in processing and incorporating rubber into her tires, simply are not direct purchases in a relevant market.

Plaintiff also directs the Court to *Gordon* and *Comes* (App. Br. at 22-23), two cases that did not address *Associated General Contractors* standing. The product in those cases (Windows software) was purchased by the indirect-buying customer either at retail or because it was contained in the computer that they purchased.¹¹ Indeed, unlike the rubber processing chemicals at issue here, the Windows operating system (even when purchased as installed software on a computer) is an identifiable product that can be removed and replaced with a different operating system, and the purchaser must enter into a licensing agreement with Microsoft regarding the use of the operating system, putting that “indirect purchaser” in privity with the company. Therefore, Plaintiff’s reliance on *Gordon* and *Comes* is particularly inapposite.

Moreover, the District Court’s dismissal does not “immunize” Defendants from antitrust liability. (See App. Br. at 24.) Direct purchasers of rubber processing chemicals have standing to sue, as would certain indirect purchasers, such as an entity who purchased rubber processing chemicals from a distributor. There, however, must be a point beyond which tangentially related parties no longer have standing. Plaintiff’s

¹¹ See, e.g., *Bellinder v. Microsoft Corp.*, No. 00-C-0855, 2001 WL 1397995, at *8 (Kan. Dist. Ct. Sept. 7, 2001) (certifying class of “[a]ll persons or entities who purchased, leased, or licensed either (1) an upgrade from Windows 95 to Windows 98; (2) a computer system which had Windows 95 or Windows 98 installed as the operating system; or (3) a stand alone Windows 95 or Windows 98 operating system”).

allegations, as a consumer of a different end-use product manufactured with a very small input consumed in the manufacturing process, are beyond that threshold.

Thus, as demonstrated by opinions from the Minnesota Supreme Court and well-reasoned decisions issued by other states' courts, antitrust standing analysis is properly applied to dismiss Plaintiff's claims.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court affirm the decision of the District Court dismissing Plaintiff's Complaint with prejudice.

Respectfully submitted,

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