Nippon Case Illustrates Challenges Of Proving Antitrust Injury

By **Cameron Regnery** (March 26, 2026)

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Those who have driven past a lawyer's billboard, or seen a late-night commercial about mesothelioma, are familiar with the popular question: Have you been injured?

Injuries are the fuel that powers the American legal system. At its heart, every civil lawsuit involves a plaintiff suing a defendant to remedy some form of injury. But the existence of an injury is not merely a lawyer's sales pitch, it is a constitutional necessity.

The U.S. Constitution only allows federal courts to decide cases and controversies. Courts are not town halls, legislative assemblies or corporate boardrooms.

Courts are forums to resolve specific disputes between parties. To that end, a case or controversy only exists where the plaintiff suffers an injury in fact, or an injury that is real and concrete, as opposed to abstract or speculative.[1]

Additionally, an injury in fact must be particular to the plaintiff, such that the plaintiff has a personal stake in the outcome of the case. As Justice Antonin Scalia aptly put it in a 1983 Suffolk University Law Review article, the injury in fact requirement asks: "'What's it to you?'"[2]

In an antitrust case, however, merely suffering an injury in fact isn't enough. The federal antitrust laws were enacted for a single purpose: to protect fair competition in the marketplace.

Therefore, in addition to an injury in fact, a plaintiff suing under those laws must suffer an antitrust injury. As the name suggests, an antitrust injury is an "injury of the type the antitrust laws were intended to prevent" under the Supreme Court's 1977 decision in Brunswick Corp. v. Pueblo Bowl-O-Mat Inc.[3]

Because such laws are intended to protect competition, an antitrust injury must result from anticompetitive conduct.

It follows that a plaintiff who suffers an injury in fact does not necessarily suffer an antitrust injury. This was the case in the March 17 decision in Freeland v. Nippon Steel,[4] which stemmed from a group of plaintiffs who filed an antitrust lawsuit to prevent Nippon's acquisition of U.S. Steel Corp.

The plaintiffs — who purchased steel products such as appliances, tools and the like — argued that the acquisition would lead to increased prices and reduced output of steel, causing a ripple effect on consumer goods made of the metal. The U.S. District Court for the Northern District of California held that the plaintiffs sufficiently alleged an injury in fact, as it was "not implausible to infer that a price increase in the primary market for steel may cause downstream economic injuries."[5]

The court dismissed the case, however, because the plaintiffs could not show an antitrust injury.

The court reasoned that the plaintiffs are not directly harmed by any anticompetitive conduct in the steel market. The plaintiffs are not even participants in that market. They do not purchase steel, but instead purchase products made of it.

Extending this logic, however, the court further observed that "this is not a case lacking potential plaintiffs."[6] In the event of increased prices or reduced output, competitors in the steel market — such as automakers and construction companies — may suffer an antitrust injury stemming from anticompetitive conduct. The same cannot be said for purchasers of products made of steel.

The additional antitrust injury requirement reflects the reality that an antitrust violation is multidimensional, with each dimension having one of three possible effects on competition. Some aspects of an antitrust violation may reduce competition, others may increase competition and still others may have a neutral effect on competition.[7]

For example, a monopoly may begin with a large manufacturer acquiring smaller manufacturers on the verge of bankruptcy, and end with that large manufacturer pricing its goods below cost to squeeze its rivals out of the market. The beginning stage of the monopoly arguably increases competition, since the acquisition of the smaller manufacturers prevented those manufacturers from going out of business.

Conversely, the ending stage of the monopoly reduces competition, since the large manufacturer's rivals are driven out of the market by the manufacturer's predatory pricing tactics. According to the Supreme Court's 1990 Atlantic Richfield Co. v. USA Petroleum Co. decision: "The antitrust injury requirement ensures that a plaintiff can recover only if the loss stems from a competition-reducing aspect or effect of the defendant's behavior."[8]

In the above example, therefore, the rivals will have suffered an antitrust injury as a result of the large manufacturer's below-cost pricing, since that predatory strategy cut the rivals out of the market and reduced competition. The rivals will not have suffered an antitrust injury as a result of the large manufacturer's initial acquisition of the smaller manufacturers, however, since that acquisition increased competition.

Even if that initial acquisition may have caused the rivals to suffer lost profits, decreased revenue or other economic injuries in fact, harm of this sort "is the essence of competition and should play no role in the definition of antitrust damages," according to the Atlantic Richfield Co. decision.[9] Indeed, the antitrust laws were enacted for the protection of competition generally, not individual competitors, the Supreme Court said in 1962's Brown Shoe Co. v. United States.[10]

The antitrust injury requirement is thus a useful weapon in the arsenal of defendants sued under the antitrust laws. The requirement applies to every antitrust lawsuit, both those seeking monetary damages, as in Brunswick[11] and those seeking nonmonetary relief,[12] such as an injunction prohibiting certain behavior as illustrated in the Supreme Court's 1986 decision in Cargill Inc. v. Monfort of Colorado Inc.

Even blatant, per se unlawful restraints on trade do not automatically qualify a plaintiff to bring an antitrust lawsuit — the plaintiff must still prove its injury is tied to a competition-reducing aspect of that unlawful restraint. While harm to the plaintiff may suffice to create a case or controversy, it does not authorize an antitrust lawsuit unless the plaintiff's injury is attributable to a broader harm to competition itself, the Supreme Court found in the 1983 decision in Associated General Contractors of California Inc. v. California State Council of

Carpenters.[13]

Furthermore, the lack of antitrust injury exacts a heavier toll on a plaintiff than the lack of injury in fact. If a plaintiff has not suffered an injury in fact, the court lacks jurisdiction to even hear the case.

In practice, this generally results in the court dismissing the case without prejudice, meaning that the plaintiff can refile if it later suffers an injury in fact, as the U.S. Court of Appeals for the Fourth Circuit and the U.S. Court of Appeals for the Fifth Circuit have found in recent years.[14]

If a plaintiff has not suffered an antitrust injury, though, it is unable to even state a claim under the antitrust laws. This will often result in a dismissal with prejudice, or barring the plaintiff from refiling at a later date, as illustrated by the U.S. Court of Appeals for the Third Circuit in 2016 and earlier in the U.S. Court of Appeals for the Sixth Circuit.[15]

Such was the case in Freeland, whereupon finding a lack of antitrust injury, the court dismissed the case with prejudice, citing fundamental legal deficiencies.[16]

Understanding the limitations of antitrust injury is critical for defendants sued under the antitrust laws. A plaintiff that has suffered an economic loss may have suffered an injury in fact sufficient to open the doors of a federal courthouse.

Unless that economic loss is attributable to some anticompetitive conduct by the defendant, though, the plaintiff will not have a valid claim under the antitrust laws.

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[1] Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992).

[2] Antonin Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 Suffolk U. L. Rev. 881, 882 (1983).

[3] Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977), extended by, Cargill, Inc. v. Montfort of Colo. Inc., 479 U.S. 104, 113 (1986).

[4] Case No. 25-cv-01240-EKL, 2026 WL 747417 (N.D. Cal. Mar. 17, 2026).

[5] Id. at *3 (citation modified).

[6] Id. at *4.

[7] Atl. Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 343-44 (1990).

[8] Id. at 344.

[9] Id.

[10] Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962).

[11] Brunswick, 429 U.S. at 489.

[12] Cargill, 479 U.S. at 113.

[13] See Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 535 n.31 (1983) ("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 whether the plaintiff is a proper party to bring a private antitrust action.").

[14] See, e.g., Adams Outdoor Advert. LP v. Beaufort Cnty., 105 F.4th 554, 566 (4th Cir. 2024); Denning v. Bond Pharm., Inc.,50 F.4th 445, 452 (5th Cir. 2022).

[15] See, e.g., Hartig Drug Co. Inc. v. Senju Pharm. Co. Ltd., 836 F.3d 261, 268-72 (3d Cir. 2016); NicSand, Inc. v. 3M Co., 507 F.3d 442, 449-50 (6th Cir. 2007) (en banc).

[16] Freeland, 2026 WL 747417, at *7.