

6-30-1999

Callahan v AEV Inc

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Callahan v. A.E.V., Inc., 182 F.3d 237 (1999)

1999-2 Trade Cases P 72,567, RICO Bus.Disp.Guide 9745, 52 Fed. R. Evid. Serv. 916



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Distinguished by [Read v. Profeta](#), D.N.J., May 29, 2019

182 F.3d 237

United States Court of Appeals,
Third Circuit.

Michael W. CALLAHAN; [Perry Beer Inc.](#); Peter G. Petousis; Norman Bernardi; Kathleen A. Kapres; Pete's Beer Inc.; Lisa Martin; [Anthony Santaguida](#); Thomas Santaguida; **A.L.** Abromovitz; Carl N. Altenhof; Douglas J. Berthold; Brew-Thru, Inc.; Allen E. Braun; [Spike's Beer Distributor, Inc.](#); Dino A. Deflavio; Carole A. DeMarco; Fred Demsher; [E & C Price Distributing, Inc.](#); Frisch Distributing Co. Inc.; Sara J. Kelly; Mary Lou Libell; The Beer Warehouse; Armando Novelli; Martin P. Pekor; T.C. Valley Beer & Pop Company, Inc.; Loretta J. Perri; [Green Valley Distributing Co., Inc.](#); Maryanne Santaguida; Ingeborg G. Schindler; Dennis Senneway; **Michael** T. Voelker; Voelker Distributing, Inc., Appellants,

v.

A.E.V., INC., a corporation, [Beer and Pop Warehouse, Inc.](#), a corporation; Brandt Distributors of Pittsburgh, a corporation; [Earl Brandt](#), an individual; Frank B. Fuhrer Wholesale Company, a corporation; Frank B. Fuhrer, Jr., an individual; Jet Distributors, Inc., a corporation; Alfred M. Lutheran Distributors, Inc., a corporation; James Lutheran, an individual; [Q.F.A., INC.](#), a corporation; Red Sky, Inc., a corporation; Retail Services and Systems, Inc., a corporation; David J. Trone, an individual.

No. 98-3456.

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Argued March 25, 1999.

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Filed June 30, 1999.

Synopsis

Small Pennsylvania beer distributorships brought suit against large distributorships and their alleged principal, alleging claims under antitrust laws and Racketeer Influenced and Corrupt Organizations Act (RICO). The United States District Court for the Western District of Pennsylvania, [Donetta W.](#)

[Ambrose](#), J., granted defendants summary judgment, and plaintiffs appealed. The Court of Appeals, [Becker](#), Circuit Judge, held that: (1) fact questions as to actual loss and causation in fact precluded summary judgment on antitrust claims, but (2) alleged causal connection between defendants' fraud and plaintiffs' losses was not sufficiently close to meet requirement of proximate causation for RICO claim.

Affirmed in part, reversed in part, and remanded.

[Wellford](#), Senior Circuit Judge, sitting by designation, concurred in part and dissented in part and filed opinion.

West Headnotes (9)

[1] Antitrust and Trade

Regulation **Maximum retail price maintenance**

29T Antitrust and Trade Regulation

29TX Antitrust and Prices

29TX(C) Resale Price Maintenance

29Tk828 Maximum retail price maintenance

(Formerly 265k17(2.4))

Although price discrimination, even when it violates Robinson-Patman Act, is usually not Sherman Act violation, that Act would be violated if price discrimination involves conspiracy to restrain trade or create monopoly in some market, along with substantial effect on competition in market. Sherman Act, § 1, as amended, 15 U.S.C.A. § 1; Clayton Act, § 2,

15 U.S.C.A. § 13.

2 Cases that cite this headnote

[2] Antitrust and Trade

Regulation **Causation**

29T Antitrust and Trade Regulation

29TXVII Antitrust Actions, Proceedings, and Enforcement

29TXVII(B) Actions

29Tk959 Right of Action; Persons Entitled to Sue; Standing; Parties

29Tk963 Injury to Business or Property

29Tk963(2) Causation

(Formerly 265k28(7.2))

Plaintiff in antitrust action must prove causal connection between antitrust violation and actual damage suffered. Sherman Act, §§ 1, 2, as amended, 15 U.S.C.A. §§ 1, 2.

6 Cases that cite this headnote

[3] **Evidence** 🔑 Other particular statements or assertions

157 Evidence

157IV Admissibility in General

157IV(D) Mental, Emotional, or Physical Condition; State of Mind

157k974 Statements or Assertions Concerning Such Matters

157k979 Other particular statements or assertions (Formerly 157k268)

Although reports of customers' statements that they no longer came to plaintiffs' beer distributorships because defendants' stores offered cheaper prices were hearsay when offered to prove that plaintiffs suffered losses and that defendants' antitrust violations caused the injuries, reports were admissible as evidence of customers' states of mind, i.e., their reasons for no longer shopping at plaintiffs' stores. Sherman Act, § 1, 2, as amended, 15 U.S.C.A. § 1, 2; Fed.Rules Evid.Rule 803(3), 28 U.S.C.A.

23 Cases that cite this headnote

[4] **Evidence** 🔑 Proof and Determination of Question of Admissibility

157 Evidence

157IV Admissibility in General

157IV(B) Statements or Assertions in General

157k949 Proof and Determination of Question of Admissibility

157k950 In general

(Formerly 157k309)

Admissibility of customers' statements that they no longer came to plaintiff's beer distributorships because defendants' stores offered cheaper prices, under hearsay exception as evidence

of customers' states of mind, did not require that particular customer-declarants be identified. Fed.Rules Evid.Rule 803(3), 28 U.S.C.A.

18 Cases that cite this headnote

[5] **Evidence** 🔑 Person Making Statement or Assertion; Nature of Declarant

157 Evidence

157IV Admissibility in General

157IV(B) Statements or Assertions in General

157k923 Person Making Statement or Assertion; Nature of Declarant

157k924 In general

(Formerly 157k314(1))

Testimony of beer distributors that they knew of customers who used to purchase beer from them, but no longer did, was direct evidence of actual loss of customers, and not hearsay.

7 Cases that cite this headnote

[6] **Federal Civil Procedure** 🔑 Antitrust and price discrimination cases

170A Federal Civil Procedure



170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)2 Particular Cases

170Ak2484 Antitrust and price discrimination cases

In action by small Pennsylvania beer distributorships against large distributorships, alleging antitrust violations in forcing wholesalers to sell them beer at price lower than that available to other retailers, testimony of customers that they no longer came to plaintiffs' beer distributorships because defendants' stores offered cheaper prices, testimony of plaintiff beer distributorships that they knew of customers who used to purchase beer from them, but no longer did, and expert's and rebuttal expert's reports were sufficient to create fact issues as to whether plaintiffs suffered loss of sales to defendants' distributorships and whether defendants' alleged antitrust violations caused those losses, precluding summary judgment.

Sherman Act, §§ 1, 2, as amended,  15
U.S.C.A. §§ 1,  2.

10 Cases that cite this headnote

[7] **Federal Civil Procedure**  Failure to respond; sanctions

Federal Civil Procedure  Matters considered

170A Federal Civil Procedure

170AX Depositions and Discovery

170AX(A) In General

170Ak1278 Failure to respond; sanctions

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment


170AXVII(C)3 Proceedings

170Ak2547 Hearing and Determination

170Ak2554 Matters considered

It was appropriate to consider report of plaintiff's rebuttal expert as evidence of causation in opposition to defendants' motion for summary judgment in antitrust action, and expert could also be used in plaintiffs' case-in-chief at trial.

57 Cases that cite this headnote

[8] **Racketeer Influenced and Corrupt Organizations**  Causal relationship; direct or indirect injury

319H Racketeer Influenced and Corrupt Organizations

319HI Federal Regulation

319HI(B) Civil Remedies and Proceedings


319Hk56 Persons Entitled to Sue or Recover

319Hk62 Causal relationship; direct or indirect injury

Causal connection simpliciter between defendants' actions and plaintiffs' injuries is insufficient to give rise to claim under Racketeer Influenced and Corrupt Organizations Act (RICO); plaintiff must show that that connection

is proximate, i.e., not too remote.  18 U.S.C.A. § 1962.

18 Cases that cite this headnote

[9] **Racketeer Influenced and Corrupt Organizations**  Causal relationship; direct or indirect injury


319H Racketeer Influenced and Corrupt Organizations

319HI Federal Regulation

319HI(B) Civil Remedies and Proceedings

319Hk56 Persons Entitled to Sue or Recover

319Hk62 Causal relationship; direct or indirect injury

With respect to Pennsylvania beer distributors' claim under Racketeer Influenced and Corrupt Organizations Act (RICO) that defendant distributors made false and fraudulent statements to Pennsylvania Liquor Control Board (LCB) in order to obtain or retain various liquor licenses, which allowed defendants to assemble chain of stores, aggregate their purchases and secure discriminatory discount, the alleged causal connection between defendants' fraud and losses sustained by plaintiffs was not sufficiently close to meet requirement of proximate causation; direct impact of fraud was primarily on LCB, not plaintiffs, whose losses were at most derivative of any injuries to LCB's regulatory mission, apportioning damages between plaintiffs and wholesalers would be difficult, and LCB or wholesalers could have taken steps to counter defendants' allegedly illegal actions.  18 U.S.C.A. § 1962.

21 Cases that cite this headnote

All Citations

182 F.3d 237, 1999-2 Trade Cases P 72,567, RICO Bus.Disp.Guide 9745, 52 Fed. R. Evid. Serv. 916