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PROVING FACTS IN AN ANTITRUST STORY

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To invoke the power of the judiciary, an injured person must state a claim on which relief may be granted. Such a person must describe his injury to the court, must name the defendant and must allege facts establishing the defendant's legal responsibility for the injury. Typically, the claimant's story of woe consists of two parts, which I will call descriptive and probative. The descriptive portion includes events that caused the injury and the defendant's conduct leading to those events. For example, a victim of a car accident might tell how the defendant driver negligently drove on the wrong side of the street and hit the victim's oncoming car.

The claimant's story is incomplete with solely a description of the events that are alleged to have led to the injury, however, if the defendant disputes this description's accuracy. The claimant must then convince the trier of fact of the veracity of this factual scenario. In order to do that, he will include certain probative allegations that by themselves do not give rise to liability, but rather lend support to the descriptive theory on which the plaintiff has predicated his claim. For example, people generally do not drive on the wrong side of the street, because that violates the law and endangers their own lives. To convince the trier of fact that the defendant did, in this particular instance, drive on the wrong side of the street (a description that would give rise to liability), the plaintiff must include some probative allegations that persuade the court that his story is true. Proof, then, is the second part of a claimant's story.

This Article discusses the nature of probative evidence that courts should demand from antitrust claimants and argues that an antitrust claim should contain an analytical theory that rationally explains the conduct of all market participants.[1]

The Article first contrasts analytical-type proof with eyewitness-testimony proof, which I argue is less useful in antitrust claims. The Article then illustrates the need for the kind of analytical proof that *explains* why defendants and other actors whose conduct precipitated the claim would behave in the manner alleged by the plaintiff. A recent Tenth Circuit

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1. I do not talk about the elements of particular antitrust offenses, a matter of some controversy that has been extensively addressed by courts and scholars alike. I do assume, however, that one element of many antitrust claims, on the proof of which a claim's success often hinges, is harm to consumer welfare.

decision, *Reazin v. Blue Cross and Blue Shield of Kansas*,[2] supplies the factual framework for the illustration. In *Reazin*, analysis of factors that motivated market participants to engage in certain allegedly illegal conduct throws substantial doubt on whether that conduct was, in fact, illegal.

Types of Proof

To be persuasive, a story underlying a claim must contain elements that make it believable. The story's authenticity depends on the credibility of the storytellers, the party's witnesses, and on its intrinsic plausibility. One type of proof designed to convince the trier of fact of the descriptive fact's plausibility requires a rational explanation of the defendant's conduct. The plaintiff in the car crash example above may include in his story testimony or physical evidence to the effect that the defendant's diminished mental capacity at the time of the accident caused him to choose to drive on the wrong side of the street.

Alternatively, rather than explaining the defendant's conduct, the plaintiff may simply bring a sufficient number of eyewitnesses to testify that they personally observed the defendant driving on the wrong side of the road and smashing into the plaintiff's car. With this kind of proof, lack of a sensible explanation for the defendant's conduct does not by itself preclude a finding of liability. The claimant is only required to convince the trier of fact that the defendant negligently[3] engaged in conduct actually and proximately causing a legally cognizable injury to the plaintiff; an inquiry into the etiology of the defendant's conduct may help persuade the trier of fact of the veracity of the allegations, but is not essential. The victim in this hypothetical may use the defendant's inebriation to prove the facts in his story, but he may also rely exclusively on the accounts of people who witnessed the accident.

Thus, a story in a typical non-antitrust case often does not require any plausible explanation of the person's conduct as a prerequisite for the finding of liability. An allegation of injurious conduct, even if ostensibly implausible, if proved to the required standard of certainty and not otherwise excusable, is sufficient for a finding of liability.

An antitrust complaint is different. An antitrust offense is committed usually by a business person or entity in pursuit of some form of commercial advantage.[4] Courts have made clear through their interpretations of antitrust statutes over the years that, at least in cases where the

2. 899 F.2d 951 (10th Cir.), *cert. denied*, 110 S. Ct. 3241 (1990).

3. I am not discussing negligence in this example. It is possible for the defendant to come back with his own story that, while admitting the factual scenario alleged by the claimant, offers a rational explanation for the defendant's conduct, and argues that the conduct was justified and not negligent. The point, however, is that the plaintiff's failure to explain *why* the defendant would behave in a way that does not make much sense, does not negate the presumption of liability, once it is otherwise established.

4. Most of the federal antitrust law is codified in the Sherman Act, 15 U.S.C. §§ 1-7 (1988), the Clayton Act, 15 U.S.C. §§ 12-27 (1988), and the Federal Trade Commission Act, 15 U.S.C. §§ 41-58 (1988). Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, provide formal definitions of "Antitrust Laws" and "Antitrust Acts" respectively.

rule of reason applies, they can remedy an injury under the antitrust laws only when the defendant's conduct has, on balance, harmed consumers.[5] Where the complainant is the defendant's competitor,[6] merely showing that the defendant caused damage to the plaintiff is generally insufficient when antitrust laws are the authority for the requested remedy. In addition to linking his own injury with the defendant's actions, the plaintiff must also demonstrate that people other than himself have been harmed by the defendant's conduct.

The requirement of consumer harm in a particular product and geographic market creates a peculiar problem of proof in antitrust cases, since eyewitness-type accounts by themselves are never sufficient to prove allegations of harm to consumer interests.

First, injury to a large class of consumers may be imperceptible even to the consumers themselves. For example, an anticompetitive merger of two soft-drink concentrate manufacturers[7] could cause a reduction in the production of soft drinks accompanied by an increase in their price. Many consumers, however, might remain blissfully unaware of the harm they suffer, since a few cents' increase in the price of a six-pack of soda would not significantly dent anyone's budget.[8]

Second, no matter how many individual consumers testify about the perceived harm to them personally, this is inadequate to prove a violation of the antitrust laws. Such testimony is insufficient to establish liability unless it supports a broader theory that demonstrates the likelihood of harm to all consumers of the particular product, most of whom are unavailable to the court.

Finally, consumer testimony regarding higher prices does not establish a causal link between the price increase and the defendant's conduct. Legitimate market forces, rather than the defendant, could be responsible for the increase. Analogously, prices may remain unchanged even when the defendant acts to suppress competition; this would happen when market forces exert a downward pressure on price,

5. Under that approach, a "restraint of trade" must be unreasonable to be illegal. The Supreme Court's often repeated admonition that "[a]ntitrust laws are designed for the protection of *competition*, not *competitors*," Brown Shoe v. United States, 370 U.S. 294, 320 (1962) (emphasis in original), elegantly encapsulates what has by now become almost a truism to an antitrust lawyer.

This Article does not address *per se* restraints of trade, such as collective price setting by competitors, and this discussion does not apply to such cases.

6. Section 4 of the Clayton Act, 15 U.S.C. § 15, authorizes any person to sue for three times the damages sustained as a result of the defendant's violation of antitrust laws.

7. *See* FTC v. Coca-Cola, 641 F. Supp. 1128 (D.D.C. 1986) (preliminary injunction under Section 7 of the Clayton Act against acquisition of Dr. Pepper Company by Coca-Cola). For an extensive discussion of the FTC's successful challenges to abortive attempts at consolidation in the soft-drink industry (Coke/Dr. Pepper and Pepsi/Seven-Up), see White, *Application of Merger Guidelines: The Proposed Merger of Coca-Cola and Dr. Pepper*, THE ANTITRUST REVOLUTION (J. Kwoka & L. White eds. 1989).

8. The aggregate harm obviously is significant. This is a classic example of a collective action problem which shows the need for government enforcement of antitrust laws. The Clayton Act authorizes the Attorney General to sue on behalf of the United States to enjoin anticompetitive mergers. 15 U.S.C. § 9 (1988). The Federal Trade Commission also possesses that authority. 15 U.S.C. § 19 (1988).

but the defendant's anticompetitive conduct prevents the market from working and keeps the price higher than it should be.

The need to demonstrate consumer harm thus requires that the probative aspects of any story of antitrust injury, whether told by a public or a private plaintiff, contain a logical, inductive interpretation of the injurious conduct. Analysis of the market participants' motives explains their actions and clarifies the effects of those actions on consumer welfare. "[I]f the factual context renders [an antitrust] . . . claim implausible — if the claim is one that simply makes no economic sense . . . ,"[9] then the plaintiff's burden in proving consumer harm is almost hopelessly heavy.

WESLEY'S STORY

When Hospital Corporation of America (HCA), a health care financing company, acquired Wesley Medical Center, a large hospital in Wichita, Kansas, Wesley suddenly found itself in the middle of a dispute between the area's two large health insurers.[10] HCA (Wesley's new owner) sold a variety of medical insurance products, including HMO memberships, which placed it in direct competition with Wichita's largest health insurer, Blue Cross and Blue Shield of Kansas, the recipient of some sixty-two percent of the total insurance premiums in the area.[11] Blue Cross, understandably unhappy about the entry of a new competitor, publicly announced its intention to terminate its contracting provider agreement with Wesley. Under the contracting provider agreements Blue Cross had with all major hospitals in the area, participating hospitals agreed to accept from Blue Cross payment rates set out in the Blue Cross schedule for the Wichita area as payment in full. In return, hospital patients benefitted from direct submission and payment of hospital claims, as well as from the predictability of costs and the assurance of the hold-harmless provisions. In short, Wesley's status as a Blue Cross contracting provider was valuable to hospitals interested in doing business in Wichita, and lack of such status would leave Wesley at a significant competitive disadvantage by increasing its costs of doing business.

Simultaneous with Blue Cross' termination of Wesley, the insurer obtained an agreement from two of Wesley's chief competitors to lower the rate schedule which those competitors had to follow for all Blue Cross patients, as contracting providers. The court found "ample evidence" that Wesley's competitors' acquiescence to lower rates had been

9. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

10. *See* Reazin v. Blue Cross and Blue Shield of Kansas, 899 F.2d 951 (10th Cir.), *cert. denied* 110 S.Ct. 3241 (1990). Discussion that follows draws on this opinion and on two published trial court decisions, Reazin v. Blue Cross and Blue Shield of Kansas, Inc., 635 F. Supp. 1287 (D. Kan. 1986) (pre-trial motions), and Reazin v. Blue Cross and Blue Shield of Kansas, Inc., 663 F. Supp. 1360 (D. Kan. 1987) (post-trial motions). All three opinions address a large number of significant issues and contain many factual details that are not essential to the argument in this Article.

11. *Reazin*, 899 F.2d at 969 n.26.

conditioned on Wesley's termination.[12] These competitors, according to the court's findings, expected that they would gain some of Wesley's patients as Wesley's costs of doing business increased (i.e., Wesley had to make an extra effort in order to retain patients who were inconvenienced by Wesley's loss of preferred provider status). For the promise of such additional patients, they had been willing to accept lower prices for their services from Blue Cross.[13]

The principal element in Wesley's story was the alleged agreement between Blue Cross and the two hospitals competing with Wesley. First, Wesley asserted that it was a victim of that agreement. As a result of the agreement, Wesley sustained financial losses, and the causal linkage that existed between those losses and Blue Cross' actions was legally sufficient in its directness and proximity.[14] Second, attempting to meet the rule of reason requirements, Wesley insisted that it was not the only victim of Blue Cross' conduct, but also that Blue Cross' actions had hurt consumers as well. Blue Cross' liability for Wesley's injuries hinged on this allegation. As in most antitrust cases, it is this accusation that was most disputed and most controversial.

WESLEY'S PROOF

Wesley's story thus consisted of two parts. The first part had to do with harm to Wesley, while the second part was about harm to consumers.

The descriptive aspect of the first half of the story, which involves the showing of harm to Wesley, is fairly straightforward. It focuses on the existence of an agreement between Blue Cross and Wesley's hospital competitors, the harm that Wesley sustained, and the causal link between the agreement and the harm. The probative requirements of the personal harm story can be satisfied without having to answer the "why" question. Wesley could prove each element of this part of its story through eyewitness-type evidence and did not have to supply a plausible rationale for Blue Cross' and competing hospitals' actions. The evidence of an agreement between Blue Cross and Wesley's competitors, and the evidence of a financial loss sustained by Wesley could stand on their own and do not require an explanation of how the parties to the agreement benefitted from it. If the first part of Wesley's story amounted to a *per se* antitrust offense and constituted the whole story, the probative aspect of that story would not be particularly noteworthy.

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12. *Id.* at 964.

13. *Id.* at 964 n.18.

14. This is a familiar requirement originating in the common law, a historic source of modern antitrust statutes. Among the most frequently cited common law antitrust decisions are Mitchel v. Reynolds, 24 Eng. Rep. 347 (K.B. 1711) and Darcy v. Allein (Case of Monopolies), 77 Eng. Rep. 1260 (K.B. 1602). As in the law of torts, defendant's conduct must be both the direct cause of the alleged antitrust injury, but for which the injury would not have occurred, and also a proximate cause of such injury, meaning, essentially that defendant's conduct in a particular situation is inherently prone to result in an antitrust injury.

In fact, the trial judge apparently did have a great deal of evidence of the agreement, the injury, and the link between the two.

The second part of Wesley's story is particularly difficult to convey, however. On the descriptive side, there were allegations that consumers—Wichita residents who bought medical insurance—had been harmed by Blue Cross' conduct, because Blue Cross' actions would lead to higher medical insurance costs to consumers. Blue Cross vigorously denied that such an outcome was likely. What type of probative evidence should the court have found persuasive?

Probative Evidence of Harm to Consumers

Testimony from a small sample of consumers who expected their overall medical costs to rise was unlikely to help the court with either translating such an expectation of a price hike into an actual increase in prices or with directly linking the perceived increase to Blue Cross' past conduct. Testimony from officials of Blue Cross, or from the two hospitals with which it entered into an agreement, to show they had never intended to accomplish the anticompetitive goals ascribed to them would similarly be insufficiently persuasive. This is not because an antitrust defendant's motives do not matter, but rather because the source of the evidence concerning the parties' true intentions must be independent and objective.[15] For obvious reasons, testimony from the parties to an allegedly illegal agreement does not meet that test, and other evidence is necessary in order to establish what the parties' reasons really were for entering into the agreement.

Before considering what alternative evidence there might be and what that evidence should have told the court, the threshold objection to the actual relevance of Blue Cross' and the hospitals' "true" intentions must be resolved. For antitrust liability to exist, there is no requirement that the defendant has either planned or predicted the negative external effects of its actions on competition in any particular market. As a practical matter, sophisticated antitrust defendants, such as Blue Cross, are unlikely to argue as a bona fide defense that they were not aware of the effects of their conduct on competition. It is safe to assume that Blue Cross, as well as Wesley's hospital competitors, all carefully considered the costs and benefits of terminating Wesley. This was not a decision made in blind rage by Blue Cross and the two hospitals, without regard for the ultimate costs involved. Rather, it was a move carefully calculated to reduce their costs and increase revenues, taking both the short- and long-run consequences into account. The question of why Blue Cross terminated Wesley and why Wesley's competitors acquiesced to lower rates can be restated as how their agreement would improve their profitability. If the increase in Blue Cross' net revenue came ultimately at the expense of the consumer, then Blue

15. Just like in the car wreck hypothetical discussed above, why Blue Cross acted the way it did must be answered from the evidence not subject to manipulation by either party.

Cross acted unlawfully. Alternatively, if termination of Wesley helps Blue Cross without hurting consumers, then Blue Cross might not have to compensate Wesley for its losses.[16]

Analogously, Wesley's rivals could have only agreed to lower rates if that led to greater earnings for them. If lower rates and greater earnings for other hospitals did not ultimately harm consumers, then Wesley probably did not sustain a remediable antitrust injury.

Wesley alleged that Blue Cross benefitted in two ways from the termination. First, it obtained an agreement from Wesley's competitors to charge lower rates in return for the promise of additional patients. Second, it sent a message to other hospitals that they too could be terminated if they should become Blue Cross' direct competitors in the health insurance business.

Why would Wesley's competitors enter into the agreement with Blue Cross? Increasing marginal costs is a standard assumption of microeconomic theory. Assuming that Wesley's competitors' marginal costs rose above the relevant range of hospital services, those competitors would inevitably lose money, at least in the short run, as a result of the agreement. Not only would their costs per patient increase due to the influx of patients newly lured away from Wesley, but also their receipts per patient would decrease, pursuant to the agreement with Blue Cross.

As in any predatory pricing case, one must consider the magnitude of the short-term losses and the ability of the defendant to recoup such losses in the long run. A predatory pricing argument focuses on the ability of the defendant to sustain short-term losses to exclude a competitor from the market for a long enough period of time to recover those losses and to make a profit.[17]

There is no evidence that Wesley's competitors had the ability to shut Wesley out completely and then keep it out long enough to allow them to profit from the scheme. While Wesley's receipts per patient would decrease by an even greater amount than those of its competitors (reduced payments from Blue Cross plus the added costs from not being a preferred provider), Wesley's costs per patient would also fall (assuming increasing marginal costs, fewer patients mean lower costs per pa-

16. This could be essentially a Kaldor-Hicks superior move. If we were concerned with welfare effects only on Blue Cross and consumers, the move as a result of which Blue Cross is better off while consumers are either as well off as or better off than they were originally is Pareto-efficient. With Wesley in the picture, the consequences are more ambiguous. The total size of welfare improvement to Blue Cross and consumers must exceed the harm suffered by Wesley in order for Blue Cross' actions to be societally efficient. Antitrust law generally assumes Kaldor-Hicks efficiency in cases when there is *any* perceptible benefit to a large group of consumers, since in the aggregate such benefits are always expected to outweigh the harm to a single competitor.

17. The seminal article on predatory pricing is Areeda & Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697 (1975). It has given rise to a wave of critical literature on the subject, *see, e.g.*, Scherer, *Predatory Pricing and the Sherman Act: A Comment*, 89 HARV. L. REV. 869 (1976); Williamson, *Predatory Pricing: A Strategic and Welfare Analysis*, 87 YALE L.J. 284 (1977).

tient), unlike the average costs of its competitors, which would go up. Thus, it seems likely that if we assume rising marginal costs of providing hospital services, Wesley's competitors would sustain greater losses than Wesley itself. Under this assumption, it is unclear how Wesley's competitors could expect to outlast Wesley in the market.

The second objection is more peculiar to the present situation. Wesley alleged, and the court agreed, that Blue Cross had substantial market power in Wichita. Assuming the court's finding to be correct, it is unclear how Wesley's competitors could hope to recoup their losses even if they did manage to drive Wesley permanently out of the market. By exercising its monopsonistic market power over hospitals, Blue Cross would always have the ability to prevent them from charging supra-competitive prices (i.e., prices above marginal cost). Again, assuming rising marginal costs, despite the short-term losses that Wesley's competitors would sustain, there is no realistic hope for them to recover their losses in the future.

Consequently, if there was an agreement of the kind alleged by Wesley between Blue Cross and Wesley's competitors, the assumption of increasing marginal costs would be inappropriate. If maximizing profits were the chief objective of Wesley's competitors,[18] and if the cost to them of treating each additional patient was higher than the cost of treating the preceding patient, then their agreement with Blue Cross would be completely nonsensical. Why would they want to attract additional patients when the cost of serving them exceeded the additional revenue they brought in?

Resolution of this paradox is the key to understanding this case. The agreement can only make sense if the assumption of increasing marginal costs is abandoned. If the hospitals competing with Wesley for patients are rational economic actors, then excess capacity and resulting scale economies are the only logical explanation for their actions. Suppose that a miscalculation many years ago in the extent of demand for hospital services led to an overbuilding of hospitals. There could have been many reasons for such a miscalculation, ranging from unpredicted population shifts, to improvements in outpatient treatment and shortening of required lengths of hospital stays, to effectiveness of preventive medicine. Most significantly, improvements in medical technology may now lead to speedier recovery, again resulting in overcapacity.

Under these circumstances, hospitals would be expected to react to decreasing marginal costs by reducing their prices and expanding output. The complicating factor here, however, is that Blue Cross acts as a monopsonistic and-monopolistic intermediary between hospitals and

18. Some of Wesley's competitors may be non-profit organizations. That, however, does not affect this analysis: while a not-for-profit hospital may have goals other than profit maximization, reduction of costs and increase of revenues is always an essential concern. A non-profit hospital may be willing to treat certain indigent patients at below marginal cost, foregoing some revenue in pursuit of its non-profit imperatives. Such a hospital is unlikely, however, to posit sheer bigness as an imperative and to be willing to lose money simply in order to exclude a competitor.

their ultimate consumers—patients. If any one hospital unilaterally lowered the rates it charged Blue Cross, additional patients would not necessarily flock to that hospital. A hospital cannot compete with other hospitals based on price, and thus cannot attract additional patients by lowering its prices.

Let us now consider the dynamics of the process by which Wichita hospitals can actually adjust to the emergence of excess capacity and bring their prices and output into equilibrium. Suppose a hospital had lowered its Blue Cross rates. Since patients pay a fixed amount to Blue Cross, they would not shift their consumption to the lower priced facility without some type of prodding from Blue Cross. As a result, the hospital that lowered its rates would merely lose revenue, with no compensatory savings from additional patients or a decrease in per-patient costs.

Blue Cross might lower the rates it charged its current subscribers and try luring new subscribers from other medical insurers in the area. This reshuffling of insureds to Blue Cross from other insurance companies, however, would be of little consequence to the actual providers of medical services—the hospitals. Even after Blue Cross obtains additional subscribers, the one hospital that had lowered its rates might never see a sufficient increase in the number of patients that it treats.

More fundamentally, Wichita may already have more hospital beds than its residents could use at any price that is at or over the cost of providing them.[19] Even if all Wichita hospitals lowered the rates they charged all their patients and insurers, none of the hospitals would necessarily enjoy a sufficient output increase to offset the lower rates. In an unconcentrated market saddled with overcapacity, such as the Wichita hospital market, a supplier could not lower its prices without an assurance that elimination of some of its extra capacity would accompany this price reduction and allow it to expand output.

Blue Cross attempted to provide precisely the mechanism that Wichita consumers needed. By imposing new costs on Wesley, causing a reduction in Wesley's market share, Blue Cross tried to guarantee Wesley's competitors at least some new patients. Patients would have had the incentive to leave Wesley for one of its preferred-provider competitors, which, in turn, would have either reduced or eliminated these competitors' extra capacity. By reducing the number of hospital options for its insureds, Blue Cross decreased the cost of treatment at remaining hospitals. Some of the reduction in cost would have been passed to the consumers in the form of lower health insurance premiums, possibly strengthening Blue Cross' market power in the health financing market. Since a decrease in the number of hospitals an insurer has to deal with lowers the insurer's costs, some increase in concentration in both the financing and hospital markets would have been the longer term prospect.

19. In addition to hospital expenses, a patient incurs other costs by being hospitalized. Even if hospitals treated patients for free, patients would limit their consumption of hospital services because of the value of time they would have to spend in treatment.

Greater market concentration, however, was unlikely to cause either an actual monopolization of both markets or a significant increase in consumer prices, as alleged by Wesley. Once unneeded hospital beds were permanently eliminated, remaining hospitals would function at more efficient levels, presumably nearer to capacity. Competition in the health financing market could then pick up, since hospitals would no longer have to fear Blue Cross' retaliation for doing business with its competitors. Blue Cross found a way to reduce its costs by bringing the number of hospital beds down to an efficient level. Although in the short run, Blue Cross' conduct might chill competition in the insurance market, in the long run, assuming no other inordinate entry barriers, competition would regain its vigor, and consumers would enjoy lower insurance premiums.

THE MORAL OF THE STORY

Wesley told the court a convincing story about the harm Blue Cross had inflicted upon it. The trial court ordered Blue Cross to pay Wesley's damages and the Tenth Circuit panel affirmed. Whether "fairness" and "justice" have been served by the outcome of this case is not this Article's concern, for this all depends on one's understanding of those exalted concepts. Have the courts applied the antitrust laws correctly in order to justify their decision? Can Blue Cross' liability be legitimately predicated on the Sherman Act?

To answer this question properly, in this case and in most other antitrust cases, courts must recognize the special requirements of proof that antitrust claimants must meet. Whenever the law requires proof of injury to consumer welfare, courts should seek the most rational explanation for the conduct of all market participants. Angry testimony from injured representatives of the "consuming public" cannot be sufficient; someone should have to explain why the defendant acted in a certain way and why the defendant's ultimate objectives were incompatible with maximizing consumer welfare.

In *Reazin v. Blue Cross and Blue Shield*, the probative evidence needed to support the allegation of consumer harm actually points the other way.[20] The objective served by the alleged agreement between Blue Cross and the hospitals was not incompatible with the consumers' interest in lower hospital prices and lower health insurance premiums.

20. *Reazin*, 899 F.2d at 960-66.