

748 F.2d 602, *, 1984 U.S. App. LEXIS 15990, **;
1984-2 Trade Cas. (CCH) P66,311; 40 Fed. R. Serv. 2d (Callaghan) 954

[HN2] The prerequisites to a private cause of action under section 4 of the Clayton Act are well established: the plaintiff must show (1) a violation of the antitrust laws, in this case sections 1 and 2 of the Sherman Act, (2) injury to its "business or property," and (3) a causal relationship between the antitrust violation and the injury. *Nichols v. Mobile Board of Realtors, Inc.*, 675 F.2d 671, 675 (5th Cir. Unit B 1982); **[**12]** ² *Jot-Em-Down (JEDS) Store, Inc. v. Cotter & Co.*, 651 F.2d 245, 247 (5th Cir. 1981). ³ The last two elements require the valuation of the plaintiff's injury in terms of money damages with some degree of certainty. *Id.*

² In *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982), this court adopted as binding precedent all decisions of Unit B of the former Fifth Circuit handed down after September 30, 1981.

³ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

In the instant case, the distributors moved for summary judgment against SAFFCO on the ground that SAFFCO failed to establish the third element of its antitrust claims, the causal relationship between the distributors' alleged anticompetitive behavior and SAFFCO's injury. The distributors presented a two-part argument. First, the distributors **[**13]** noted that SAFFCO failed to obtain contributions from exhibitor on-screen advertising revenues because Cinemavision collapsed and that Cinemavision collapsed because it could not persuade anyone to advertise on its network of theatre screens. Second, they pointed out that there was no proof that they had ever contacted any of Cinemavision's potential advertisers in an attempt to discourage them from engaging in on-screen advertising. Absent any interference on their part with Cinemavision's sources of income, the distributors concluded, they could not be held responsible for SAFFCO's injury. The district court accepted their argument and gave them summary judgment.

We begin our assessment of the validity of the distributors' argument, and hence the summary judgment, by observing that [HN3] the law does not require an antitrust plaintiff to show that the defendant's wrongful action was the *sole* proximate cause of the injury sustained. The plaintiff need only prove, with a fair degree of certainty, that defendant's illegal conduct *materially contributed* to the injury. *Comfort Trane Air Conditioning v. Trane Co.*, 592 F.2d 1373, 1383 (5th Cir. 1979); **[**14]** *Alabama v. Blue Bird Body Co., Inc.*, 573 F.2d 309, 317 (5th Cir. 1978); *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 20 (5th Cir.), *cert. dismissed*, 419 U.S. 987, 95 S. Ct. 246, 42 L. Ed. 2d 260 (1974). [HN4] "It is enough that the illegality is shown to be a material cause of the injury; a plaintiff need not exhaust all possible alternative sources of injury in fulfilling his burden of proving compensable injury under § 4 [of the Clayton Act]." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 114 n. 9, 89 S. Ct. 1562, 1571-72 n. 9, 23 L. Ed. 2d 129 (1969). The causation argument the distributors advanced in the district court, and repeat, here, ignores this rule of law, for it does not address the question of whether the distributors' threats to boycott or otherwise penalize any exhibitor who engaged in on-screen advertising played a role in the decision of Cinemavision's putative advertisers not to participate in its advertising program.

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