



v.

ON PETITION FOR A WRIT OF CERTIORARI
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Illinois Brick Co. Illinois passim
Kansas UtiliCorp United Inc.

McCarthy Recordex Serv., Inc.

Riley California

et seq.

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Brick Co. Illinois

Illinois

Illinois Brick

i.e.

Hanover Shoe

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plies with no less force to the assertion of pass-on theories by plaintiffs than it does to the assertion by defendants.” *Id.* at 732.

Having held that offensive and defensive uses of pass-on analysis should stand or fall together, this Court stated that the Illinois Brick plaintiffs could not “recover on their pass-on theory” unless the Court “overrule[d] *Hanover Shoe*.” 431 U.S. at 736. The Court declined to take that step. The Court stated that “[p]ermitting the use of pass-on theories under [Section] 4 essentially would transform treble-damages actions into massive efforts to apportion the recovery among all potential plaintiffs that could have absorbed part of the overcharge,” ranging “from direct purchasers to middlemen to ultimate consumers” *Id.* at 737. The Court concluded that “[h]owever appealing this attempt to allocate the overcharge might seem in theory, it would add whole new dimensions of complexity to treble damages suits.” *Ibid.*

c. In *Kansas v. UtiliCorp United Inc.*, 497 U.S. 199 (1990) public utilities sued natural-gas producers and a natural-gas pipeline company alleging that those entities “had conspired to inflate the price of their gas in violation of the antitrust laws.” *Id.* at 204. Kansas and Missouri sued the same defendants on behalf of residents who had purchased gas from the utilities, alleging that the utilities had passed on the overcharges by increasing their state-regulated gas prices. *Id.* at 204-205. The States argued that the Court should make an exception to the *Illinois Brick* rule for cases “involving regulated public utilities that pass on 100 percent of their costs to their customers.” *Id.* at 208.

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Report and Recommendations
AMC Report

Il l inois Brick

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Ibid.

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2. Respondents assert (Br. in ~~pp.~~ 14) that, although the court of appeal criticized the Eighth Circuit's decision on ~~Ch~~, [the difference in outcomes in the two cases] stems from "different factual allegations" rather than from any legal disagreement. But the court of appeal emphasized that it ~~d[id]~~ not rest [its] analysis "on the specifics of respondents' allegations or on the details of the App Store operations Pet. App. 20a. Instead, the court held that ~~I~~ ~~Bk~~ does not prohibit consumers from suing distributors" with which they deal directly.

CONCLUSION