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BLOGS
Antitrust

Fourth Circuit Rejects Distributor's Attempted Use of *Leegin* Decision

The Supreme Court's landmark 2007 antitrust decision applying rule of reason analysis to resale price maintenance claims brought under federal law was most recently addressed by the Fourth Circuit Court of Appeals in *Valuepest v. Bayer*, 2009 WL 756901 (4th Cir. March 24, 2009). The defendant suppliers in this case sold through what they called "agency" relationships, as distributors merely facilitated sales to the ultimate purchasers. The resale price maintenance claim arose out of the contractual rights of the manufacturer defendants to set the price at which the product was sold to the end-users. Valuepest, which was one of the end-users, filed a class action lawsuit alleging vertical price fixing between the manufacturers and their distributors. Two weeks after the *Leegin* decision was issued, a North Carolina federal district court granted the defendants' motions for summary judgment. The district court held that the contracts with distributors represented genuine agency relationships that did not support liability under Section 1 of the Sherman Act because, when a distributor is simply an agent of the manufacturer, then there can be no illegal "agreement" between two parties.

On appeal to the Fourth Circuit, the plaintiffs argued that *Leegin* implicitly overruled the "agency defense" established eight decades ago in *United States v. General Electric Co.* In *General Electric*, the Supreme Court had held that a manufacturer may lawfully set minimum prices for its products when there is a genuine principal-agent relationship between the manufacturer and its distributors. In upholding summary judgment for the defendants, the Fourth Circuit held that "*Leegin* did not eliminate the agency defense to a claim of resale price maintenance . . .".

Under this ruling, manufacturers protected by the agency defense should not be subject even to rule of reason analysis because the lack of an agreement between two parties would render immaterial any question whether trade is restrained unreasonably.