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In a 5-4 decision, the U.S. Supreme Court overruled Dr. Miles Medical, a 96-year-old antitrust precedent that prohibited manufacturers from maintaining retail prices for their products. Plaintiffs had sued Leegin under Section 1 of the Sherman Act, claiming Leegin’s suggested retail price policy was per se illegal. The district court and appellate court had found in the plaintiffs’ favor.

At the beginning of the case, Fenwick & West and the Law Offices of Gary Freedman, counsel for Leegin, retained Cornerstone Research and Professor Kenneth G. Elzinga of the University of Virginia to address whether Leegin’s resale price maintenance (RPM) policy was pro- or anticompetitive. Professor Elzinga’s research focuses on antitrust economics, especially pricing strategy and market definition. In addition, he has testified in several precedent-setting antitrust cases and has written more than seventy academic publications.

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Relying on the per se rule, both the district court and the intermediate appellate court found Dr. Elzinga’s analysis irrelevant and refused to allow him to testify. However, as anticipated, Dr. Elzinga’s analysis proved important at the Supreme Court. Gibson, Dunn & Crutcher prepared the certiorari petition in conjunction with Tyler Baker of Fenwick & West. The petition cited Professor Elzinga’s report extensively. Theodore B. Olson of Gibson Dunn argued the case at the Supreme Court on March 26, 2007.

In his report, Professor Elzinga explained the modern view among economists that RPM encourages competition. In this case, he found that Leegin’s suggested retail pricing policy enhanced competition in the markets for women’s fashion accessories. The Court’s majority opinion used the same economic reasoning to
determine that RPM arrangements should be considered under a rule of reason. It explained how restricting price competition among retailers can enhance consumer welfare by providing incentives for retailers to offer more and better services.

The Court remanded the case to the lower court for proceedings consistent with a rule-of-reason treatment.