

Draft - Nov. 26, 2007

RECENT SUPREME COURT DECISIONS FAVOR ANTITRUST DEFENDANTS

CASE	OUTCOME	DATE	HOLDING	DECISION BELOW FAVORED/ CIRCUIT	GOVT. AMICUS BRIEF FAVORED	SUPREME COURT DECISION FAVORED	SUPREME COURT VOTE
Verizon v. Trinko	Reversed and remanded	1/13/2004	Refusal to share not a Section 2 violation	Plaintiff (Second Circuit)	Defendant	Defendant	9-0
Empagran v. F. Hoffmann LaRoche	Vacated and remanded	6/14/2004	No Sherman Act claim for conduct alleging foreign effects	Plaintiff (D.C. Circuit)	Defendant	Defendant	8-0
Illinois Tool Works, Inc. v. Independent Ink	Vacated and remanded	3/6/2006	Patent does not necessarily confer market power	Plaintiff (Federal Circuit)	Defendant	Defendant	8-0
Texaco Inc. v. Dagher	Reversed	2/28/2006	Not per se illegal for legitimate joint venture to set prices	Plaintiff (Ninth Circuit)	Defendant	Defendant	8-0
Volvo v. Reeder Simco GMC	Reversed and remanded	1/10/2006	For R-P claim defendant, must be selling to same retail customer	Plaintiff (Eighth Circuit)	Defendant	Defendant	7-2

CASE	OUTCOME	DATE	HOLDING	DECISION BELOW FAVORED/ CIRCUIT	GOVT. AMICUS BRIEF FAVORED	SUPREME COURT DECISION FAVORED	SUPREME COURT VOTE
Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.	Reversed and remanded	2/20/2007	<i>Brooke Group</i> standard applies to predatory buying claims	Plaintiff (Ninth Circuit)	Defendant	Defendant	9-0
Bell Atlantic v. Twombly	Reversed and remanded	5/21/2007	Antitrust claims must be plausible to survive motion to dismiss	Plaintiff (Second Circuit)	Defendant	Defendant	7-2
Credit Suisse First Boston Ltd. v. Billing	Reversed	6/18/2007	IPO underwriters have implied antitrust immunity for certain actions under Securities laws	Plaintiff (Second Circuit)	Defendant	Defendant	7-1
Leegin Creative Leather Products, Inc. v. PSKS, Inc.	Reversed and remanded	6/28/2007	Vertical resale price fixing/restraints analyzed under the rule of reason	Plaintiff (Fifth Circuit)	Defendant	Defendant	5-4