U.S. Supreme Court Docket, October 2015 Term — Antitrust & Trade Regulation Cases

Granted Opinions	Docket No.	Subject	Status, Deadlines	Holding
Herson v. City of Richmond Granted 10/5/15	14-1322 (4/30/15)	Advertising	Petition granted; Ninth Circuit judgment vacated; and case remanded for further consideration in light of *Reed v. Town of Gilbert*. Attorneys: Joshua Reuben Furman for Petitioners. Matthew D. Zinn (Shute Mihaly & Weinberger LLP) for Respondent. Respondent Brief (6/5/15) Petitioner Reply Brief (6/19/15) Supreme Court Docket	Whether Richmond's mere assertion of a content-neutral justification renders its facially content-based sign code content-neutral and justifies Richmond's ban on noncommercial signs—including political signs—where commercial signs are allowed. Ninth Circuit decision (10/21/14)
RJR Nabisco, Inc. v. The European Community Granted 10/1/15	15-138 (7/27/15)	RICO	Respondent Brief (8/21/15) Petitioner Reply Brief (9/9/15) Attorneys: Gregory G. Katsas (Jones Day) for Petitioners. John J. Halloran Jr. (John H. Halloran, Jr., P.C.) for Respondents. Supreme Court Docket	Whether, or to what extent, the Racketeer Influenced and Corrupt Organizations Act applies extraterritorially. Second Circuit decision (4/23/14)
Campbell-Ewald Co. v. Gomez Granted 5/18/15	14-857 (1/16/15)	Privacy	10/14/15—Oral Argument Transcript; Oral Argument Audio Respondent Brief (3/23/15) Petitioner Reply Brief (4/7/15)	Whether a case becomes moot, and thus beyond judicial power of Article III, when the plaintiff receives an offer of complete relief on his claims. Whether the answer to the first

Last updated: 11/18/2015

©2015 CCH Incorporated. All rights reserved.

			Respondent Supp. Brief (4/16/15) Petitioner Supp. Reply Brief (4/14/15) Petitioner Brief (7/16/15) Respondent Brief (8/24/15) Petitioner Reply Brief (9/22/15) Select Amicus Briefs: United States; U.S. Chamber of Commerce; Consumer Data Industry Association; Lawyers for Civil Justice; Trans Union LLC; Washington Legal Foundation Attorneys: Gregory G. Garre (Latham & Watkins, LLP) for Campbell-Ewald Co. Michael J. McMorrow (McMorrow Law PC) and Jonathan F. Mitchell for Respondent. Supreme Court Docket	question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified. Whether the doctrine of derivative sovereign immunity recognized in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), for government contractors is restricted to claims arising out of property damage caused by public works projects. Ninth Circuit decision (9/19/14)
DIRECTV, Inc. v. Imburgia Granted 3/23/15	14-462 (10/21/14)	Advertising	10/6/15—Oral Argument Transcript; Oral Argument Audio Merit Briefs: Respondent Brief (1/28/15) Petitioner Reply Brief (2/10/15) Select Amicus Briefs: U.S. Chamber of Commerce; Atlantic Legal Foundation; Washington Legal Foundation; Arbitration and Contracts Scholars; Law Professors Attorneys: Christopher Landau (Kirkland & Ellis LLP) for DIRECTV, Inc. Thomas G. Goldstein (Goldstein & Russell, P.C.) for Respondents. Supreme Court Docket	Whether the California Court of Appeal erred by holding, in direct conflict with the Ninth Circuit, that a reference to state law in an arbitration agreement governed by the Federal Arbitration Act requires the application of state law preempted by the Federal Arbitration Act. California Court of Appeal decision (4/7/14)

©2015 CCH Incorporated. All rights reserved.

Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Marshall v. National Football League	15-645 (11/12/15)	Advertising	Response due 12/16/15 Attorneys: Eric J. Magnuson (Robins Kaplan LLP) for Petitioners. Supreme Court Docket	Whether a Rule 23(b)(3) class settlement that provides no guaranteed benefit to readily identifiable class members in exchange for the release of their damages claims satisfies the requirement of Rule 23(e)(2) that a settlement binding class members must be "fair, reasonable, and adequate." Whether Rule 23(e)(2) and principles of aggregate litigation require the district court, as a fiduciary, to evaluate the potential value of the damages claims released by class members. Eighth Circuit decision (5/21/15)
Ortho-McNeil-Janssen Pharmaceuticals, Inc. v. South Carolina	15-600 (11/5/15)	State Unfair Trade Practices	Response due 12/9/15 Attorneys: Paul D. Clement (Bancroft PLLC) for Petitioners.	Whether a state violates the First Amendment by penalizing a defendant for the content of its speech without requiring proof that the speech contains a knowing or reckless falsehood. Whether the Federal Food, Drug, and Cosmetic Act preempts a state enforcement action that serves no compensatory purpose and instead simply seeks to penalize a pharmaceutical company for actions that are comprehensively regulated and overseen by the Food and Drug Administration. Whether the imposition of a $124 million civil penalty, without any showing of actual deception, reliance, or injury, violates the Excessive Fines Clause.

Last updated: 11/18/2015

©2015 CCH Incorporated. All rights reserved.

			Supreme Court Docket	South Carolina Supreme Court decision (2/25/15)
Brink v. Continental Insurance Co.	15-604 (11/4/15)	RICO	Response due 12/9/15 Waiver of Respondent Academi, LLC Attorneys: Scott J. Bloch for Petitioners. Leslie Paul Machado (LeClair Ryan) for Academi, LLC. Supreme Court Docket	Whether RICO can apply to an "enterprise" created by contracting Companies, their insurance carriers, and third party administrators who utilize the enterprise to commit fraudulent acts that proximately caused independent harm to covered workers and their families, and thousands similarly situated persons. D.C. Circuit decision (6/2/15)
Allergan plc v. New York	15-587 (11/4/15)	Antitrust	Response due 12/7/15 Attorneys: Lisa S. Blatt (Arnold & Porter LLP) for Petitioners. Supreme Court Docket	Whether exercising rights granted by the Patent Act—in particular, not selling one patented product and selling a different patented product instead—can violate the Sherman Antitrust Act? Whether drug manufacturers have a federal antitrust duty to facilitate the operation of state drug substitution laws to maximize competitors' sales? Second Circuit decision (5/22/15)
American Freedom Defense Initiative v. King County	15-584 (11/2/15)	Advertising	Response due 12/7/15 Attorneys: Robert Joseph Muise (American Freedom Law Center) for Petitioners.	Whether King County created a public forum by accepting for display on its property a wide array of controversial political and public-issue ads, including ads that address the same subject matter as Petitioners' anti-terrorism ad, and thus violated the First Amendment by rejecting Petitioners' ads on its message. Regardless of the nature of the forum, whether King County's rejection of

©2015 CCH Incorporated. All rights reserved.

			Supreme Court Docket	Petitioners' advertisement based on a claim that this public-issue ad was false or misleading violates the First Amendment. Whether Petitioners must demonstrate that there are no alternative ways to express their public issue message in order for the court to find irreparable harm based on King County's rejection of their ad. Ninth Circuit decision (8/12/15)
Apple Inc. v. U.S.	15-565 (10/28/15)	Antitrust	Response due 1/4/16 Attorneys: Seth P. Waxman (Wilmer Cutler Pickering Hale and Dorr LLP) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondents. Supreme Court Docket	Whether vertical conduct by a disruptive market entrant, aimed at securing suppliers for a new retail platform, should be condemned as *per se* illegal under Section 1 of the Sherman Act, rather than analyzed under the rule of reason, because such vertical activity also had the alleged effect of facilitating horizontal collusion among the suppliers. Second Circuit decision (6/30/15)
Direct Digital, LLC v. Mullins	15-549 (10/26/15)	Advertising	Response due 12/28/15 Attorneys: E. Joshua Rosenkranz (Orrick, Herrington & Sutcliffe LLP) for Petitioner. Samuel Issacharoff for Respondent. Supreme Court Docket	May a court certify a class under Federal Rule of Civil Procedure 23(b)(3) where the plaintiff fails to make any showing of a reliable and administratively feasible means for ascertaining class membership? Seventh Circuit decision (7/28/15)
Katz v. Cellco Partnership	15-542 (10/26/15)	State Unfair Trade Practices	Response due 11/27/15 Respondent Waiver Attorneys: William R. Weinstein (Law Offices of William R.	Whether the application of the Federal Arbitration Act ("FAA") to state-law private rights brought within the jurisdiction of the federal courts violates Article III of the United

©2015 CCH Incorporated. All rights reserved.

			Weinstein) for Petitioner. Andrew G. McBride (Wiley, Rein LLP) for Respondent. Supreme Court Docket	States Constitution. Whether Congress' adoption of the alternative scheme of adjudication under the FAA combined with the federal courts' enforcement of the statute as mandated by Congress constitutes "state action." Second Circuit decision (7/28/15)
POM Wonderful v. FTC	15-525 (10/23/15)	Advertising	Response due 11/25/15 Attorneys: Thomas C. Goldstein (Goldstein & Russell, P.C.) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondent. Supreme Court Docket	Whether a finding by the FTC that a truthful advertisement nonetheless implies a misleading message to a minority of consumers, and therefore receives no First Amendment protection, must be reviewed *de novo*. D.C. Circuit decision (1/30/15)
Cox Communications, Inc. v. Healy	15-466 (10/13/15)	Antitrust	Response due 12/4/15 Attorneys: J. Scott Ballenger (Latham & Watkins LLP) for Petitioner. Todd M. Schneider for Respondent.	Whether, in a putative class action, a defendant waives the right to compel arbitration of the claims of absent class members by not filing its motion to compel arbitration of those class members until after the court has obtained jurisdiction over them by certifying a class. Whether, as the D.C. Circuit has held and the Tenth Circuit suggested, a defendant waives its right to compel arbitration by filing a motion for summary judgment simultaneously with a motion to compel arbitration or, as the Fifth Circuit has held, a defendant may file alternative motions to compel arbitration or for judgment on the merits. Whether a reduction in the size of a class constitutes prejudice to plaintiffs sufficient to support a

©2015 CCH Incorporated. All rights reserved.

			Supreme Court Docket	waiver of the defendant's arbitration rights with respect to absent class members. Tenth Circuit decision (6/24/15)
Grover v. Choice Hotels International, Inc.	15-443 (10/5/15)	Franchising & Distribution	Respondent Brief (11/9/15) Attorneys: Matthew J. Anderson (Anderson Agostino & Keller, P.C.) for Petitioners. Supreme Court Docket	Whether abandonment by an attorney may provide a basis for relief in a monetary civil action under Fed. R. Civ. P. 60(b)(6). Whether a client is obligated to diligently follow his own case when he is unknowingly relying on the misrepresentation of his attorney. Seventh Circuit decision (7/7/15)
Boehringer Ingelheim Pharmaceuticals, Inc. v. FTC	15-560 (10/2/15)	Antitrust	Response due 12/2/15 Attorneys: Lawrence D. Rosenberg (Jones Day) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondent. Supreme Court Docket	Did the D.C. Circuit err when it held, in conflict with the Second Circuit, that analyses of a proposed settlement's expected cost and value, directed by an attorney and under the framework and using the inputs provided by the attorney, were fact rather than opinion work product if they were prepared in part for a business purpose? Did the D.C. Circuit err when it held, in conflict with the Fourth, Sixth, Seventh, Tenth, and Eleventh Circuits, that to make a showing of "substantial need" sufficient to override work product protection for fact work product, a party need not show that the requested material has any heightened relevance to the case? D.C. Circuit decision (2/20/15)
Heinz v. U.S.	15-432 (10/2/15)	Antitrust	Response due 12/7/15 Attorneys: Nathaniel Z. Marmur for Petitioners. Donald B.	Whether 18 U.S.C. §3293(2), which extends the statute of limitations for mail or wire fraud from five to ten years if the fraud

©2015 CCH Incorporated. All rights reserved.

			Verrilli Jr., U.S. Department of Justice. Supreme Court Docket	"affects a financial institution," applies where the defendants is a bank employee, the bank is a culpable actor, and the alleged effect is that the bank made payments to settle, or incurred legal fees to defend, certain civil, regulatory and criminal actions. In other words, does the statute apply where the bank "affects itself"? Second Circuit decision (6/4/15)
American Freedom Defense Initiative v. Massachusetts Bay Transportation Authority	15-141 (7/27/15)	Advertising	Respondent Brief (11/9/15) Attorneys: Robert Joseph Muise (American Freedom Law Center) for Petitioners. Jeffrey J. Pyle (Prince Lobel Tye, LLP) for Respondents. Supreme Court Docket	Whether the Massachusetts Bay Transportation Authority (MBTA) created a public forum by accepting for display on its property a wide array of controversial political and public-issue ads, including ads that address the same controversial subject matter as Petitioners' pro-Israel ad, and thus violated the First Amendment by rejecting Petitioners' ad based on its content. Regardless of the nature of the forum, whether the MBTA's rejection of Petitioners' advertisement based on an advertising guideline that prohibits ads considered by MBTA officials to be "demeaning and disparaging" was a viewpoint-based restriction of speech in violation of the First Amendment. First Circuit decision (3/30/15)
The Harvard Drug Group, LLC v. Barr	14-1194 (3/27/15)	Privacy	Respondent Brief (5/12/15) Petitioner Reply Brief (5/26/15)	Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete

©2015 CCH Incorporated. All rights reserved.

			Attorneys: Stephen E. Glazek (Barris, Scott, Denn & Driker, PLLC) for Petitioner. Scott L. Nelson (Public Citizen Litigation Group) for Respondent. Supreme Court Docket	relief on his claim. Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23 and receives an offer of complete relief before any class is certified. Eleventh Circuit decision (1/29/15)
The Dow Chemical Co. v. Industrial Polymers, Inc.	14-1091 (3/9/15)	Antitrust	Respondent Brief (5/11/15) Petitioner Reply Brief (5/22/15) Select Amicus Briefs: DRI—The Voice of the Defense Bar Attorneys: Carter G. Phillips (Sidley Austin LLP) for Petitioner. Cory L. Andrews for the Washington Legal Foundation. Paul D. Clement (Bancroft PLLC) for Industrial Polymers, Inc. Supreme Court Docket	Whether, in certifying a class under Federal Rule of Civil Procedure 23(b)(3), courts may presume class-wide injury from an alleged price-fixing agreement, even when prices are individually negotiated and individual purchasers frequently succeed in negotiating away allegedly collusive overcharges. Whether a class may be certified or a class-wide damages judgment affirmed where plaintiffs' common "proof" of damages is a model that (a) does not purport to determine the actual damages of most class members, but instead applies an "average" overcharge estimated from a sample of transactions of very different purchasers, or (b) assumes that defendants engaged in multiple antitrust violations, even though plaintiffs attempted to prove only one violation at trial. Tenth Circuit decision (9/29/14)

©2015 CCH Incorporated. All rights reserved.

Denied Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Aircraft Check Services Co. v. Verizon Wireless	15-519 (10/19/15)	Antitrust	Petition denied 11/16/15 Response due 11/20/15 Respondents waiver Attorneys: Steven F. Hubacheck for Petitioner. Ruth A. Bahe-Jachna (Greenberg Traurig, LLP) for CTIA–The Wireless Association. Aaron M. Panner for T-Mobile USA, Inc. and Verizon Wireless. John E. Schmidtlein (William & Connolly, LLP) for Sprint Communications, Inc. Supreme Court Docket	Whether the summary judgment standard articulated in *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), applies when plaintiffs offer direct evidence of conspiracy. Whether a finding of bad faith is required before a trier of fact may draw an adverse inference from the destruction of evidence. Whether a trier of fact may draw an adverse inference from the destruction of evidence only if the trial court first makes the factual findings that authorize such an inference. Seventh Circuit decision (4/9/15)
Eastman Kodak Co. v. Collins Inkjet Corp.	15-412 (6/15/15)	Antitrust	Petition dismissed 11/10/15 Response due 11/4/15 Attorneys: Marc G. Schildkraut (Cooley LLP) for Petitioner. Supreme Court Docket	Whether it constitutes unlawful tying, and whether the plaintiff has antitrust standing to claim unlawful tying, when the plaintiff cannot be excluded by defendant's pricing and in fact can profitably retain its full market share and enhance competition by competing on price? Whether an antitrust plaintiff can suffer irreparable injury as a result of potential loss of market share when the plaintiff could retain its entire market share by lowering its prices without going below its own cost? Sixth Circuit decision (3/16/15)
Westgate Resorts,	15-327	Consumer	Petition denied 11/9/15	Whether a punitive damages award that is

©2015 CCH Incorporated. All rights reserved.

Ltd., L.P. v. Overton	(9/14/15)	Protection & Privacy	Response due 10/16/15 Respondent Waiver Attorneys: John H. Pelzer (Greenspoon Marder, P.A.) for Petitioner. Supreme Court Docket	nearly fourteen times the compensatory damages, primarily based upon the defendant's nationwide wealth, violates the due process clause of the Constitution? Whether awarding punitive damages that are nearly fourteen times compensatory damages based on conduct meeting only one of the *Campbell* reprehensibility factors violates the due process clause of the Constitution? Tenn. App. decision (11/20/14)
A.V.E.L.A., Inc. v. Fifty-Six Hope Road Music, Ltd.	15-264 (6/29/15)	Advertising	Petition denied 11/2/15 Response due 10/2/15 Attorneys: Michael R. Adele (Technology Litigation Center) for Petitioners. Supreme Court Docket	Does Lanham Act § 43(a) protect a deceased celebrity's persona-successor without it showing that the celebrity's persona acquired secondary meaning so that it identifies the persona-successor as the source of sponsorship or approval? Does a Plaintiff satisfy 43(a)'s "consumer confusion" requirement even without evidence that its sponsorship or approval would have any consequence to purchasers? Ninth Circuit decision (2/20/15)
Mercer Outdoor Advertising, LLC v. City of Hermitage, Pennsylvania	15-19 (6/30/15)	Advertising	Petition denied 10/5/15 Respondent Brief (7/29/15) Petitioner Reply Brief (8/14/15) Attorneys: E. Adam Webb (Webb, Klase & Lemon, L.L.C.) for Petitioner. Samuel Hood Foreman (Weber Gallagher) for Respondents.	Whether the judgment below should be vacated and the case remanded for further consideration in light of *Reed v. Town of Gilbert*. Third Circuit decision (4/2/15)

Last updated: 11/18/2015
©2015 CCH Incorporated. All rights reserved.

			Supreme Court Docket	
LaCertosa v. Blackman Plumbing Supply Co., Inc.	14-1509 (6/21/15)	RICO	Petition denied 10/5/15 Response due 7/23/15 Respondent Waiver Attorneys: John LaCertosa, *pro se*. Joseph T. Roccanova (Yuen, Roccanova & Seltzer, P.C.) for Respondents. Supreme Court Docket	Whether the District Court for the Eastern District of New York and the 2nd Circuit Court of Appeals erred in their judgment by rendering such judgment with reliance and reference to *Manson v. Stacescu*, 11 F.3d 1127, 1131 (2d Cir. 1993). Whether the 2nd Circuit Court of Appeals erred in not recognizing the "special duty" exception when considering the petitioner's individual standing. Whether the District Court for the Eastern District of New York and the 2nd Circuit Court of Appeals erred in their judgment by ordering their judgment without considering the evidence the petitioner referenced in his allegations and pleadings. Second Circuit decision (11/6/14)
Fred Martin Motor Co. v. Spitzer Autoworld Akron, LLC	14-1455 (6/11/15)	Franchising & Distribution	Petition denied 10/5/15 Respondent Brief (7/10/15) Petitioner Reply Brief (9/4/15) Attorneys: Kannon K. Shanmugam (Williams & Connolly LLP) for Petitioner. Anthony B. Giardini (Anthony B Giardini Co. LPA) and Tiberio Trimmer (Dawda, Mann, Mulcahy & Sadler, PLC) for Spitzer Autoworld Akron, LLC. Supreme Court Docket	Whether by reopening the final order of a federal bankruptcy court and permitting a private arbitrator to reverse it, Section 747 of the Consolidated Appropriations Act of 2010 is unconstitutional. Sixth Circuit decision (1/16/15)

©2015 CCH Incorporated. All rights reserved.

Felder's Collision Parts, Inc. v. All Star Advertising Agency, Inc.	14-1299 (4/27/15)	Antitrust	Petition denied 10/5/15 Respondent Brief (6/29/15) Attorneys: Harvey S. Bartlett III. (Jones Swanson Huddell & Garrison, LLC) for Petitioner. Mark A. Cunningham (Jones Walker, L.L.P.) for Respondents. Supreme Court Docket	Whether, for purposes of a predatory pricing claim under the Sherman Act, 15 U.S.C. §§ 1 and 2, cost should be measured at the time of the point-of-sale to the end-consumer, which is when the anticompetitive harm occurs, or whether the predatory competitor is entitled to factor in after-sale kickbacks from a conspiring supplier to show that the sale was not made below its cost. Fifth Circuit decision (1/27/15)
City of San Jose v. Office of the Commissioner of Baseball	14-1252 (4/15/15)	Antitrust	Petition denied 10/5/15 Respondent Brief (6/17/15) Petitioner Reply Brief (6/30/15) Attorneys: Joseph W. Cotchett (Cotchett, Pitre & McCarthy) for Petitioners. John W. Keker (Keker & Van Nest LLP) for Respondents. Supreme Court Docket	Whether professional baseball is exempt from antitrust law in matters relating to franchise relocation. Ninth Circuit decision (1/15/15)

Last updated: 11/18/2015

©2015 CCH Incorporated. All rights reserved.