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	3/21/16—Oral Argument Transcript; Oral Argument Audio Respondent Brief (8/21/15) Petitioner Reply Brief (9/9/15) Petitioner Brief (12/11/15) Respondent Brief (2/4/16) Petitioner Reply Brief (3/7/16) Select Amicus Briefs: United States; National Foreign Trade Council; Washington Legal Foundation Attorneys: Gregory G. Katsas (Jones Day) for Petitioners. David C. Frederick (Kellogg, Huber, Hansen, Todd, Evans &	Whether, or to what extent, the Racketeer Influenced and Corrupt Organizations Act applies extraterritorially. Second Circuit decision (4/23/14)

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			Figel, P.L.L.C.) and John J. Halloran Jr. (John H. Halloran, Jr., P.C.) for Respondents. Supreme Court Docket	
Campbell-Ewald Co. v. Gomez Granted 5/18/15	14-857 (1/16/15)	Privacy	1/20/16—Decided (Ginsburg, R.) 10/14/15—Oral Argument Transcript; Oral Argument Audio Respondent Brief (3/23/15) Petitioner Reply Brief (4/7/15) 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	Held: (1) An unaccepted settlement offer or offer of judgment does not moot a plaintiff's case, so the District Court retained jurisdiction to adjudicate Gomez's complaint; and (2) Campbell's status as a federal contractor does not entitle it to immunity from suit for its violation of the TCPA. 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 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	12/14/15—Decided (Breyer, S.) 10/6/15—Oral Argument Transcript; Oral Argument Audio	Held: Because the California Court of Appeal's interpretation is preempted by the Federal Arbitration Act, that court must enforce the arbitration agreement.

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			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)

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Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Herson v. City of Richmond	15-1239 (3/31/16)	Advertising	Response due 5/4/16 Respondent Waiver Attorneys: Dennis Scott Zell (Zell and Associates) for Petitioners. Supreme Court Docket	When this Court grants, vacates, and remands ("GVR"s) a case back to a circuit court of the United States "for further consideration in light of" a recently decided opinion of this Court, what exactly does this Court expect; is adding an *ipse dixit* footnote to the original opinion sufficient, or must the circuit court *discuss* how the law applies to the facts in light of the recently decided opinion of this Court? When this court grants, vacates, and remands ("GVR"s) a case back to a circuit court of the United States "for further consideration in light of" a recently decided opinion of this Court, may the circuit court deem the substantive issue to have been procedurally forfeited even though the substantive issue was raised below and the same procedural forfeiture arguments were unsuccessfully argued to this Court in opposition to the original petition for *certiorari*? In light of this Court's recent opinion in *Reed v. Town of Gilbert*, did the city abridge the First Amendment? Ninth Circuit decision (1/22/16)
Husqvarna Professional Products, Inc. v. New Hampshire	15-1218 (3/25/16)	Franchising & Distribution	Response due 6/20/16 Attorneys: Thomas J. Collin (Thompson Hine LLP) for Petitioner.	Whether a court deciding a Contract Clause case may use "rational speculation" review to uphold retroactive application of a law substantially impairing private contracts based on legislative findings that are

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			Supreme Court Docket	contradicted by undisputed evidence. Whether a court deciding an Equal Protection case may rely upon legislative findings to hold that a classification has a rational basis when the findings are contradicted by undisputed evidence. Whether a statute requiring disputes between a manufacturer and its dealers to be submitted to a state administrative agency for adjudication violates the Supremacy Clause as to disputes subject to arbitration under the manufacturer's dealer contracts. New Hampshire Supreme Court decision (12/29/15)
Deere & Co. v. New Hampshire	15-1213 (3/28/16)	Franchising & Distribution	Response due 6/20/16 Attorneys: Catherine E. Stetson (Hogan Lovells US LLP) for Petitioners. Supreme Court Docket	Whether the Contract Clause prohibited the New Hampshire legislature from retroactively voiding petitioners' private contracts, in the name of "leveling the playing field" between the parties to those contracts. New Hampshire Supreme Court decision (12/29/15)
O'Bannon v. National Collegiate Athletic Association	15-1167 (3/14/16)	Antitrust	Response due 5/18/16 Attorneys: Jonathan S. Massey (Massey & Gail, LLP) for Edward C. O'Bannon, Jr. Supreme Court Docket	Whether, in determining an appropriate remedy for a violation of Section 1 of the Sherman Act under the "Rule of Reason," a court may treat the restraint itself—here, the agreement among the NCAA and its members prohibiting college athlete compensation, or what the NCAA calls "amateurism"—as a legitimate procompetitive effect. Whether, after finding a violation of Section 1 of the Sherman Act under the Rule of Reason, a

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				court is restricted to awarding relief that the plaintiff proves is "virtually as effective" as the restraint in serving its alleged purposes, "without significantly increased cost." Ninth Circuit decision (9/30/15)
Village Supermarkets, Inc. v. Hanover 3201 Realty, LLC	15-1156 (3/10/16)	Antitrust	Respondent Brief (4/14/16) Attorneys: Stuart M. Gerson (Epstein, Becker & Green, P.C.) for Petitioners. James Edward Cecchi (Carella, Byrne, Cecchi, Olstein, Brody & Agnello) for Respondent. Supreme Court Docket	Whether an antitrust plaintiff that is neither a competitor nor a consumer in the alleged market has standing under the antitrust laws, particularly when there are other potential plaintiffs that would be more likely to have antitrust standing. Whether this Court's "objectively baseless" standard for the sham exception to *Noerr-Pennington* immunity described in *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 56 (1993) ("*PRE*") applies to a "series" of underlying cases notwithstanding this Court's prior decision in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), and if not, whether four proceedings, each challenging the same construction project, can constitute such a "series" of cases. Third Circuit decision (11/12/15)
Gourley v. Google, Inc.	15-1141 (3/10/16)	Privacy	Response due 6/9/16 Attorneys: Edward D. Robertson Jr. (Bartimus, Frickleton and Robertson, PC) for Petitioners. Edward P. Boyle (Venable, LLP) for Vibrant Media, Inc. Douglas H. Meal (Ropes & Gray, LLP) for WPP PLC. Anthony J. Weibell (Wilson, Sonsini, Goodrich & Rosati, P.C.) for Google, Inc.	Whether third-parties who access Internet cookies without authorization and thereby acquire the content of Internet communications between Internet users and websites are immune from Wiretap Act liability as actual parties to communications between Internet users and those websites.

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			Supreme Court Docket	Whether the Stored Communications Act protects data detailing an Internet user's web browsing history stored within a web browser provider's files that are accessible by an Internet user's web-browser provider and contained on the personal computing device of the user. Third Circuit decision (12/21/15)
Peake v. U.S.	15-1134 (3/9/16)	Antitrust	Response due 6/13/16 Attorneys: David Oscar Markus (Markus/Moss PLLC) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice. Supreme Court Docket	Whether the First Circuit erred in determining that Puerto Rico is a State for purposes of the Sherman Act. Whether the First Circuit erred in applying a "preponderates heavily against the verdict" standard rather than an "effect on the jury" standard in its harmless error analysis, thereby ignoring the prejudicial effect of the prosecution's repeated improper argument and questioning that followed the prosecution's assurances to the trial court that such arguments would not be made. First Circuit decision (10/14/15)
Google Inc. v. Pulaski & Middleman, LLC	15-1101 (3/1/16)	Advertising	Respondent Brief (5/2/16) Attorneys: Neal Kumar Katyal (Hogan Lovells US LLP) for Google, Inc. Noah M. Schubert (Schubert Johckheer & Kolbe LLP) for Pulaski & Middleman, LLC. Supreme Court Docket	Whether individual damage calculations alone can overwhelm questions common to the class, precluding certification under Rule 23(b)(3). Whether plaintiffs may use a formula that relies on a uniform measure of harm derived from the average experience of all class members as common proof of damages. Ninth Circuit decision (9/1/15)

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GlaxoSmithKline LLC v. Allied Services Division Welfare Fund	15-1078 (2/23/16)	RICO	Respondent Brief (4/29/16) Attorneys: John H. Beisner (Skadden Arps Slate Meagher & Flom LLP) for GlaxoSmithKline LLC. Samuel Issacharoff for Respondents. Supreme Court Docket	Whether a TPP states a plausible RICO injury by alleging that a manufacturer's failure to disclose risk information inflated the price of a medication. Whether the independent decisions of prescribing doctors break the causal chain under RICO where a TPP alleges that it paid more because a manufacturer's misrepresentations caused doctors to write more prescriptions for a medication. Whether a TPP must allege specific facts tying an alleged fraud to its own decision to cover a drug under its prescription plan in order to properly plead factual causation. Third Circuit decision (11/25/15)
SmithKline Beecham Corp. v. King Drug Company of Florence, Inc.	15-1055 (2/19/16)	Antitrust	Respondent Brief (5/2/16) Attorneys: Jay P. Lefkowitz (Kirkland & Ellis LLP) for SmithKline Beecham Corp. Bruce E. Gerstein (Garwin Gerstein & Fisher, LLP) for King Drug Company of Florence, Inc. Supreme Court Docket	Whether the Third Circuit's sweeping holding that a patentee's grant of an exclusive license must undergo antitrust scrutiny by courts and juries—even though such a license is specifically permitted under the patent laws—is inconsistent with this Court's decision in *Actavis* and decades of this Court's earlier precedents. Third Circuit decision (6/26/15)
Visa Inc. v. Stoumbos	15-962 (1/27/16)	Antitrust	Respondent Brief (3/30/16) Petitioner Reply Brief (4/11/16) Attorneys: Anthony J. Franze (Arnold & Porter LLP) for Petitioners. Supreme Court Docket	Whether allegations that members of a business association agreed to adhere to the association's rules and possess governance rights in the association, without more, are sufficient to plead the element of conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as the Court of Appeals held

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				below, or are insufficient, as the Third, Fourth, and Ninth Circuits have held. D.C. Circuit decision (8/4/15)
Visa Inc. v. Osborn	15-961 (1/27/16)	Antitrust	Respondent Brief (3/30/16) Petitioner Reply Brief (4/11/16) Attorneys: Boris Bershteyn (Skadden Arps Slate Meagher & Flom LLP) for Petitioners. Supreme Court Docket	Whether allegations that members of a business association agreed to adhere to the association's rules and possess governance rights in the association, without more, are sufficient to plead the element of conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, as the Court of Appeals held below, or are insufficient, as the Third, Fourth, and Ninth Circuits have held. D.C. Circuit decision (8/4/15)
Price v. Philip Morris, Inc.	15-947 (1/22/16)	Advertising	Respondent Brief (3/23/16) Petitioner Reply Brief (4/6/16) Attorneys: David C. Frederick (Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.) for Petitioners. Michele L. Odorizzi (Mayer Brown, LLP) for Philip Morris, Inc. Supreme Court Docket	Whether it violates the Due Process Clause of the Fourteenth Amendment for a judge to participate in a case where the judge has made pejorative public statements about a litigant or an attorney, and there exists a reasonable public perception that one of the parties funded the judge's election campaign. Illinois Supreme Court decision (11/4/15)
Black & Decker U.S. Inc. v. SD3, LLC	15-942 (1/27/16)	Antitrust	Response due 5/20/16 Attorneys: Jonathan S. Franklin (Norton Rose Fulbright US LLP for Petitioners. Jonathan W. Cuneo (Cuneo Gilbert & LaDuca, LLP) for SD3, LLC. Supreme Court Docket	At the pleading stage, must an antitrust plaintiff similarly plead facts that tend to exclude an innocent explanation of the conduct in order to show that its allegations are plausible under *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007)? Must a court accept unsupported allegations about a defendant's intentions or state of mind, such as

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				allegations that offers to do business with the plaintiff were "disingenuous" and "pretextual"? Fourth Circuit decision (9/15/15)
The Dow Chemical Co. v. Industrial Polymers, Inc.	14-1091 (3/9/15)	Antitrust	Held in abeyance (3/7/16) 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)

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Denied Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
International Franchise Association, Inc. v. Seattle	15-958 (1/25/16)	Franchising & Distribution	Petition denied 5/2/16 Respondent Brief (3/30/16) Petitioner Reply Brief (4/13/16) Attorneys: Paul D. Clement (Bancroft PLLC) for Petitioners. Gregory C. Narver, Seattle City Attorney's Office, for Respondent. Supreme Court Docket	Whether a state or local law that discriminates against certain in-state businesses based solely on their ties to interstate commerce discriminates against interstate commerce. Ninth Circuit decision (9/25/15)
Plambeck v. Allstate Insurance Co.	15-949 (1/22/16)	RICO	Petition denied 5/2/16 Respondent Brief (3/30/16) Petitioner Reply Brief (4/21/16) Attorneys: Peter Michael Jung (Strasburger & Price, LLP) for Petitioners. Wad C. Crosnoe (Thompson Coe Cousins & Irons, LLP) for Allstate Insurance Co. Supreme Court Docket	When, if ever, can the plaintiff in a civil RICO case predicated on mail and wire fraud establish proximate causation without showing that someone—the plaintiff or a third party—relied on the defendants' misrepresentations to the plaintiff's detriment? Fifth Circuit decision (9/17/15)
POM Wonderful v. FTC	15-525 (10/23/15)	Advertising	Petition denied 5/2/16 Respondent Brief (3/28/16) Petitioner Reply Brief (4/12/16) Attorneys: Thomas C. Goldstein (Goldstein & Russell, P.C.) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondent.	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)

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			Supreme Court Docket	
The Knit With, A Pennsylvania Partnership v. Knitting Fever, Inc.	15-1008 (2/3/16)	Advertising	Petition denied 4/18/16 Response due 3/10/16 Respondent Waiver Attorneys: James Francis Casale for The Knit With, A Pennsylvania Partnership. Supreme Court Docket	Does the scope of a false advertising action categorically bar a retailer's redress of marketplace injuries resulting from its wholesaler mis-labeling products supplied for re-sale to consumers when a federal statute mandates product labeling accurately disclose the products' composition? Does the holding in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496-97 (1985)(A plaintiff only has 1964(c) standing if, and can recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.) no longer reflect this Court's determination whether a plaintiff has a cause of action (standing) under 18 U.S.C. 1964(c) or may courts determine a claim made to the measure of damages provided by 1964(c) negates a cause of action to redress injury to business of property by reason of another's conduct of an enterprise through a pattern of racketeering activity? Third Circuit decision (9/2/15)
Vermont v. MPHJ Technology Investments, LLC	15-838 (12/28/15)	State Unfair Trade Practices	Petition denied 4/18/16 Respondent Brief (1/29/16) Petitioner Reply Brief (3/4/16) Attorneys: Bridget C. Asay, Office of the Attorney General, for Vermont. Supreme Court Docket	Did the Federal Circuit erroneously take jurisdiction over this appeal of the remand order? Federal Circuit decision (9/28/15)

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Dickey's Barbecue Restaurants, Inc. v. Chorley Enterprises, Inc.	15-719 (11/30/15)	Franchising & Distribution	Petition denied 4/18/16 Respondent Brief (3/9/16) Petitioner Reply Brief (4/1/16) Attorneys: Roger B. Kaplan (Greenberg Traurig, LLP) for Dickey's Barbecue Restaurants, Inc. Russell J. Gaspar (Cohen Mohr, LLP) for Chorley Enterprises, Inc. Supreme Court Docket	Is an otherwise preempted state law, rule or regulation that is required by a state regulator to be included in a contract, as a condition and prerequisite for doing business in the state, not preempted on the ground that it was "voluntarily" included in the contract because the party (i) could have simply declined to do business in the state or (ii) could have filed a declaratory action challenging the state regulator's position before including the otherwise preempted contract clause in its agreements? Fourth Circuit decision (8/5/15)
The Procter & Gamble Co. v. Rikos	15-835 (12/28/15)	Advertising	Petition denied 3/28/16 Respondent Brief (2/24/16) Attorneys: Glen D. Nager (Jones Day) for The Procter & Gamble Co. Samuel Issacharoff for Respondent. Supreme Court Docket	Whether a district court at the class certification stage must elevate the evidence regarding whether putative class members in fact suffered a common injury, and thus that the class is sufficiently cohesive to bind all putative class members under plaintiffs' proffered theory of liability, or whether such an inquiry should occur only at the merits stage. Whether Article III permits a class to be certified based on (a) the standing of the named plaintiffs or (b) the violation of a state statute, where the record demonstrates that many unnamed class members have not suffered an injury caused by the defendant's alleged conduct. Whether a class may be certified under Federal Rule of Civil Procedure 23(b)(3) where the named plaintiffs fail to demonstrate a reliable and feasible way to ascertain class membership

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				beyond relying on class members' affidavits. Sixth Circuit decision (8/20/15)
McWane, Inc. v. FTC	15-706 (11/4/15)	Antitrust	Petition denied 3/21/16 Respondent Brief (2/5/16) Petitioner Reply Brief (2/23/16) Attorneys: Miguel A. Estrada (Gibson, Dunn & Crutcher LLP) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondent. Supreme Court Docket	Whether McWane's partial exclusive-dealing arrangement is unlawful under antitrust principles as implemented in Section 5 of the FTC Act, notwithstanding the successful entry of a competitor in the relevant market during the period at issue and notwithstanding McWane's nonexclusionary business justifications for the conduct. Eleventh Circuit decision (4/15/15)
Ewing Industries Corp. v. Bob Wines Nursery, Inc.	15-844 (12/29/15)	Privacy	Petition denied 3/7/16 Respondent Brief (2/1/16) Petitioner Reply Brief (2/17/16) Attorneys: Phillip A. Bock (Bock & Hatch LLC) for Ewing Industries Corp. Supreme Court Docket	Does the prior pendency of a class action that was dismissed before reaching the merits of class certification toll the statute of limitations for absent class members to bring a subsequent class action? Eleventh Circuit decision (8/3/15)
American Freedom Defense Initiative v. King County	15-584 (11/2/15)	Advertising	Petition denied 3/7/16 Respondent Brief (12/22/15) Petitioner Reply Brief (1/5/16) Attorneys: Robert Joseph Muise (American Freedom Law Center) for Petitioners. David Hackett, Office of the Prosecuting Attorney – Civil, for Respondent. Supreme Court Docket	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 Petitioners' advertisement based on a claim

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				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	Petition denied 3/7/16 Respondent Brief (12/23/15) Petitioner Reply Brief (1/15/16) Attorneys: Seth P. Waxman (Wilmer Cutler Pickering Hale and Dorr LLP) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for the United States. Scott A. Keller, Office of the Attorney General of Texas, for Texas. 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)
Alliance of Automobile Manufacturers, Inc. v. Currey	15-438 (10/6/15)	Franchising & Distribution	Petition denied 3/7/16 Response due 1/28/16 Respondent Brief (1/28/16) Petitioner Reply Brief (2/16/16) Attorneys: Daniel L. Goldberg (Morgan, Lewis & Bockius LLP) for Petitioner. Mark F. Kohler, Office of Attorney General, for Melody A. Currey, Commissioner, Connecticut Department of Motor Vehicles. James T. Cowdery (Cowdery & Murphy, LLC) for Alliance of Automobile Manufacturers, Inc. James C. McGrath (Seyfarth Shaw LLP) for Association of Global Automakers, Inc.	Whether there is cognizable burden on interstate commerce under a dormant Commerce Clause analysis where a state requires motor vehicle manufacturers and distributors (all out-of-state) to pay significantly increased amounts to in-state dealers for warranty repairs, but prohibits the manufacturers and distributors from recovering those increased costs within the state, thereby ensuring that the costs of the state's regulations imposed on interstate commerce are borne entirely out-of-state. Whether a state statute that imposes

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			Supreme Court Docket	significantly increased costs for warranty reimbursements on manufacturers and distributors, but, for the first time in the state's legislative history, interferes with the manufacturers' and distributors' longstanding contractual rights to price their products sold in the state by prohibiting recovery of those costs in the state, is subject to challenge under the Contract Clause of the U.S. Constitution. Second Circuit decision (4/7/15)
The Muecke Company, Inc. v. CVS Caremark Corp.	15-813 (12/18/15)	RICO	Petition denied 2/29/16 Response due 1/21/16 Respondent Waiver Attorneys: Miguel S. Rodriguez (Taylor Dunham and Rodriguez LLP) for Petitioners. Michael D. Leffel (Foley & Lardner LLP) for Respondents Supreme Court Docket .	Whether the Fifth Circuit erred in failing to apply Arizona's law of equitable estoppel applicable to contracts generally as required by *Arthur Andersen v. Carlisle*, 556 U.S. 624 (1009) in order to determine whether the non-signatories to an arbitration agreement could compel arbitration. Whether the Fifth Circuit erred in failing to honor the terms of an arbitration agreement that specifically prohibited third parties such as Respondents from enforcing its terms. Fifth Circuit decision (8/25/15)
Marshall v. National Football League	15-645 (11/12/15)	Advertising	Petition denied 2/29/16 Respondent Brief (1/19/16) Attorneys: Eric J. Magnuson (Robins Kaplan LLP) for Petitioners. Daniel E. Gustafson (Gustafson Gluek PLLC) for National Football League.	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

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			Supreme Court Docket	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)
Direct Digital, LLC v. Mullins	15-549 (10/26/15)	Advertising	Petition denied 2/29/16 Respondent Brief (12/29/15) Petitioner Reply Brief (1/12/16) 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)
The Harvard Drug Group, LLC v. Barr	14-1194 (3/27/15)	Privacy	Petition denied 1/25/16 Respondent Brief (5/12/15) Petitioner Reply Brief (5/26/15) Attorneys: Stephen E. Glazek (Barris, Scott, Denn & Driker, PLLC) for Petitioner. Scott L. Nelson (Public Citizen Litigation Group) for Respondent. Supreme Court Docket	Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete 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)
Boehringer Ingelheim Pharmaceuticals, Inc. v. FTC	15-560 (10/2/15)	Antitrust	Petition denied 1/19/16 Respondent Brief (12/16/15) Petitioner Reply Brief (12/30/15)	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

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			Attorneys: Lawrence D. Rosenberg (Jones Day) for Petitioner. Donald B. Verrilli Jr., U.S. Department of Justice, for Respondent. Supreme Court Docket	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)
Ortho-McNeil-Janssen Pharmaceuticals, Inc. v. South Carolina	15-600 (11/5/15)	State Unfair Trade Practices	Petition denied 1/11/16 Respondent Brief 11/25/15 Attorneys: Paul D. Clement (Bancroft PLLC) for Petitioners. John B. White Jr. (Harrison, White, Smith & Coggins) for Respondent. Supreme Court Docket	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. South Carolina Supreme Court decision (2/25/15)
Brink v. Continental	15-604	RICO	Petition denied 1/11/16	Whether RICO can apply to an "enterprise" created by contracting Companies, their

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Insurance Co.	(11/4/15)		Response due 12/9/15 Attorneys: Scott J. Bloch for Petitioners. Leslie Paul Machado (LeClair Ryan) for Academi, LLC. Supreme Court Docket	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)
Cox Communications, Inc. v. Healy	15-466 (10/13/15)	Antitrust	Petition denied 1/11/16 Respondent Brief (12/4/15) Attorneys: J. Scott Ballenger (Latham & Watkins LLP) for Petitioner. Todd M. Schneider for Respondent. Supreme Court Docket	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 waiver of the defendant's arbitration rights with respect to absent class members. Tenth Circuit decision (6/24/15)
Heinz v. U.S.	15-432 (10/2/15)	Antitrust	Petition denied 1/11/16 Respondent Brief (12/7/15)	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 "affects a financial institution," applies where

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			Attorneys: Nathaniel Z. Marmur for Petitioners. Donald B. Verrilli Jr., U.S. Department of Justice. Supreme Court Docket	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	Petition denied 1/1/16 Respondent Brief (11/9/15) Petitioner Reply Brief (11/19/15) 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)
Grover v. Choice Hotels International, Inc.	15-443 (10/5/15)	Franchising & Distribution	Petition denied 12/14/15 Respondent Brief (11/9/15)	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

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			Attorneys: Matthew J. Anderson (Anderson Agostino & Keller, P.C.) for Petitioners. Supreme Court Docket	own case when he is unknowingly relying on the misrepresentation of his attorney. Seventh Circuit decision (7/7/15)
Katz v. Cellco Partnership	15-542 (10/26/15)	State Unfair Trade Practices	Petition denied 12/7/15 Response due 11/27/15 Respondent Waiver Attorneys: William R. Weinstein (Law Offices of William R. Weinstein) for Petitioner. Andrew G. McBride (Wiley, Rein LLP) for Respondent. Supreme Court Docket	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 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)
Allergan plc v. New York	15-587 (11/4/15)	Antitrust	Petition dismissed 11/30/15 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)
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	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

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			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	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, Ltd., L.P. v. Overton	15-327 (9/14/15)	Consumer Protection & Privacy	Petition denied 11/9/15 Response due 10/16/15 Respondent Waiver Attorneys: John H. Pelzer (Greenspoon Marder, P.A.) for Petitioner. Supreme Court Docket	Whether a punitive damages award that is 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

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				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. Supreme Court Docket	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)
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	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

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			(Yuen, Roccanova & Seltzer, P.C.) for Respondents. Supreme Court Docket	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)
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.

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				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)

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