U.S. Supreme Court Docket, October 2016 Term — Antitrust & Trade Regulation Cases

Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Photos Etc. Corp. v. Home Depot, U.S.A., Inc.	16-710 (11/23/16)	Antitrust	Response due 12/29/16 Attorneys: Paul D. Clement (Kirkland & Ellis LLP) for Photos Etc. Corp. Supreme Court Docket	Whether the "adequacy" requirement in Rule 23(a)(4) necessitates subclasses and separate counsel for plaintiffs seeking money damages under Rule 23(b)(3) and those also seeking injunctive relief under Rule 23(b)(2). Second Circuit decision (6/30/16)
Holtzman v. Turza	16-646 (11/10/16)	Privacy	Response due 12/16/16 Attorneys: Phillip A. Bock (Bock & Hatch LLC) for Petitioner. Supreme Court Docket	Whether a proportionate share of the fees awarded to lawyers who represented a successful class may be assessed against the unclaimed portion of the fund created by the judgment? Seventh Circuit decision (7/8/16)
Koninklijke Philips N.V. v. Washington	16-559 (10/19/16)	Antitrust	Response due 12/21/16 Attorneys: Aaron M. Streett (Baker Botts, L.L.P.) for Koninklijke Philips N.V. Jay D. Geck, Washington Office of Attorney General. Supreme Court Docket	Does the Due Process Clause permit a forum state to exercise specific personal jurisdiction over a nonresident defendant based solely on that defendant's placing component parts into the stream of commerce by selling them to third parties who make finished products that foreseeably may come to the forum state?

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				Washington Supreme Court decision (7/21/16)
Bank of America Corp. v. Gelboim	16-545 (10/20/16)	Antitrust	Response due 12/9/16 Attorneys: Seth P. Waxman (Wilmer Cutler Pickering Hale and Dorr LLP) for Bank of America Corp. Thomas C. Goldstein (Goldstein & Russell, P.C.) for Ellen Gelboim. Supreme Court Docket	Whether a plaintiff may plead a violation of the antitrust laws based on alleged collusion in a non-competitive context and alleged injuries that do not stem from the impairment or restraint of any competitive process. Whether a plaintiff may plead an antitrust conspiracy based on alleged conduct that is equally indicative of parallel, non-conspiratorial activity. Second Circuit decision (5/23/16)
Paldo Sign and Display Co. v. Wagener Equities, Inc.	16-528 (10/17/16)	Privacy	Respondent Brief (11/18/16) Attorneys: Phillip A. Bock (Bock & Hatch LLC) for Paldo Sign and Display Co. Robert Connor Heist (R Connor & Associates, P.C.) for Wagener Equities, Inc. Supreme Court Docket	Should the Court reverse the Seventh Circuit for refusing to apply an FCC regulation, 47 C.F.R. §64.1200(f)(10), defining the "sender" of an unsolicited fax advertisement as the person "whose goods or services are advertised or promoted in the unsolicited advertisement," and instead applying a common law agency standard to instruct a jury that an advertiser is not liable for a fax sent by its hired fax broadcaster when the fax advertised the advertiser's goods and services? Seventh Circuit decision (6/16/16)
Fanning v. FTC	16-397 (8/8/16)	Consumer Protection	Respondent Brief (11/28/16) Attorneys: Peter F. Carr II (Eckert Seamans Cherin & Mellott, LLC) for Petitioner. Ian Gershengorn, U.S. Department of Justice.	Whether the Federal Trade Commission's enforcement of content-based restrictions on alleged "misleading" commercial speech under Section 5(a) of the Federal Trade Commission Act violated Petitioner's

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			Supreme Court Docket	protected First Amendment rights governed by *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) and *Reed v. Town of Gilbert, Ariz.*, 576 U.S.___, 135 S.Ct.2218 (2015), and not the conflicting holding of *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980)? Whether the Federal Trade Commission and the First Circuit Court of Appeals erred in failing to apply strict scrutiny analysis in ruling that content-based commercial speech violated the Federal Trade Commission Act, or in curtailing future speech by Petitioner as a sanction imposed for violating the Federal Trade Commission Act? First Circuit decision (5/9/16)
Zik v. Global Fitness Holdings, LLC	16-383 (9/16/16)	State Unfair Trade Practices	Response due 1/17/17 Attorneys: Joshua Taylor Rose (Craig Henry PLC) for Robert J. Zik. Pierre H. Bergeron (Squire Patton Boggs (US) LLP) for Global Fitness Holdings, LLC. Supreme Court Docket	Should this Court resolve the split between the Circuits on whether class counsel may receive fees based on a phantom class benefit that would never be realized? Should class members only be required to submit claims to receive payment when necessary and not as a mechanism to drastically dilute the class's recovery to the benefit of defendant and class counsel? Whether the Sixth Circuit and the district court failed to appreciate the scope of their duty to closely scrutinize the requirements of F.R.C.P. 23(a) and (b) in approving the class settlement, as directed by this Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620-628 (1997)?

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				Sixth Circuit decision (5/13/16)
Arkansas State Police v. Wren	16-313 (8/26/16)	Privacy	Respondent Brief (11/16/16) Attorneys: Nicholas J. Bronni, Deputy Solicitor General, for Arkansas State Police. Matthew Keith Wren (Wren Law Firm) for Daniel E. Wren. Supreme Court Docket	Whether personal information from state motor vehicle records incorporated in documents on vehicular accidents (*e.g.*, accident reports drafted by the police) is excluded from the Driver's Privacy Protection Act of 1994's prohibition on further disclosure, or whether personal information in such documents may only be further disclosed for a reason enumerated in Section 2721(b). Supreme Court of Arkansas decision (4/28/16)

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Denied Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Trudeau v. U.S.	16-37 (7/6/16)	Consumer Protection	Petition denied 12/5/2016 Respondent Brief (10/26/16) Petitioner Reply Brief (11/14/16) Attorneys: Steffen N. Johnson (Winston & Strawn LLP) for Kevin M. Trudeau. Ian Heath Gershengorn for U.S. Department of Justice. Supreme Court Docket	Whether a violation of 18 U.S.C. § 401 should be classified as a Class A felony under 18 U.S.C. § 3559 (as the First and Fourth Circuits hold), similarly to the closest analogous offense (as the Sixth, Seventh, and Ninth Circuits hold), or *sui generis* based on the penalty actually imposed by the court (as the Third, Fifth, and Eleventh Circuits hold). Whether the willfulness *mens rea* of criminal contempt requires the government to prove that the defendant's wrongful conduct was knowing (as the Fifth, Seventh, and D.C. Circuits hold), reckless (as the Fifth, Seventh, and D.C. Circuits hold), or negligent (as the Eighth and Ninth Circuits hold). Seventh Circuit decision (2/5/16)
Petrie v. Virginia Board of Medicine	16-524 (10/12/16)	Antitrust	Petition denied 11/28/16 Response due 11/17/16 Respondent Waiver Attorneys: Vincent M. Amberly (Amberly Law) for Petitioner. Stuart A. Raphael, Solicitor General of Virginia, Office of the Attorney General, for Virginia Board of Medicine. Supreme Court Docket	Should the Court relieve lower federal courts of the supposed rule of *FTC v. Indiana Federation of Dentists*, 476 U.S. 447 (1986) that whenever a professional regulatory board limits competition in the relevant market, a Rule-of-Reason analysis is the required approach in assessing an antitrust violation and instead enunciate a new rule that when a practice restriction is imposed on a group of competitors like chiropractors by a professional board dominated by medical doctors who actively participate in the market and compete with this restricted class

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				of competitors, lower courts will treat the action as a group boycott and employ a *per se* or "quick look" mode of analysis as the required approach? Fourth Circuit decision (5/16/16)
Fjord v. Kelleher	16-465 (9/8/16)	Acquisitions & Mergers	Petition denied 11/28/16 Response due 11/10/16 Respondent Waiver Attorneys: Joseph M. Alioto (Alioto Law Firm) for Petitioner. Kent D. Krabill (Lynn Pinker Cox & Hurst, LLP) for Herbert D. Kelleher. Supreme Court Docket	Whether this court should exercise its supervisory power on the ground that the grant of the motion to quash under Rule 45(d)(3)(A)(iv) has so far departed from the accepted and usual course of judicial proceedings as to become precedent to any meetings of any executives of competing companies? When a party seeks by subpoena *ad testificandum* admittedly relevant information regarding a known meeting held by two people, is it an "undue burden" to require the non-party to appear for deposition for the purposes of corroboration and impeachment, when the other party to the conversation has already been deposed? Whether this Court should decide an important question of federal law that has not been, but should be, settled by this Court, with regard to the application of the standards governing "undue burden" under Fed. R. Civ. P. 45(d)(3)(A)(iv). Fifth Circuit decision (6/10/16)
Havens v. Mobex	16-344 (9/12/16)	Antitrust	Petition denied 11/28/16 Respondent Brief (10/17/16)	May a federal district court deny a private action Sherman Act §1 claim against FCC licensed telecommunications carriers where the court finds insufficient evidence of an

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			Attorneys: Warren Havens, *pro se*. Robert W. Mauriello Jr. (Graham Curtin) for Respondents. Supreme Court Docket	explicity co-conspirator anticompetitive agreement but where "plus factor" evidence demonstrates a co-conspiracy to violate FCC rules for fair competition to obtain and use the licenses, and where Congress made clear by the "antitrust savings clause" in 47 U.S.C. §152 and the amendment in Pub. L. No. 104-104, §601(b)(1)(1996), and by §47 USC §313 which requires revocation of FCC licenses upon finding of antitrust violation, the critical importance of viable antitrust remedies in the markets for obtaining and using the licenses? Given the federal law preemption of all state law remedies in this case of alleged violations of the Communications Act and Sherman Act, did the decisions of the district and circuit courts that found no federal law remedies exist under the subject Communications Act and FCC rule sections constitute deprivation of property without due process of law under the Fifth Amendment of the United States Constitution? Third Circuit decision (4/14/16)
Visa Inc. v. Stoumbos Granted 6/28/16	15-962 (1/27/16)	Antitrust	Dismissed as improvidently granted (11/17/16) Oral Argument—12/7/16 Respondent Brief (3/30/16) Petitioner Reply Brief (4/11/16) Petitioner Brief (9/1/16) Select Amicus Briefs: United States; U.S. Chamber of	Visa Inc. v. Stoumbos Granted 6/28/16

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			Commerce; American Antitrust Institute; Financial Industry Associations; Antitrust Law Professors Attorneys: Anthony J. Franze (Arnold & Porter LLP) for Petitioners. Steve W. Berman (Hagens Berman Sobol Shapiro LLP) for Respondents. Supreme Court Docket	
Visa Inc. v. Osborn Granted 6/28/16	15-961 (1/27/16)	Antitrust	Dismissed as improvidently granted (11/17/16) Oral Argument—12/7/16 Respondent Brief (3/30/16) Petitioner Reply Brief (4/11/16) Petitioner Brief (9/1/16) Select Amicus Briefs: United States; U.S. Chamber of Commerce; American Antitrust Institute; Financial Industry Associations; Antitrust Law Professors Attorneys: Boris Bershteyn (Skadden Arps Slate Meagher & Flom LLP) for Petitioners. Steve W. Berman (Hagens Berman Sobol Shapiro LLP) for Respondents. Supreme Court Docket	Visa Inc. v. Osborn Granted 6/28/16
Archangel Diamond Corp. Liquidating Trust v. Lukoil	16-151 (7/28/16)	RICO	Petition denied 11/7/16 Respondent Brief (10/3/16) Attorneys: Bruce S. Marks (Marks & Sokolov, LLC) for Petitioner. Douglas B. Tumminello (Lewis Roca LLP) for OAO Lukoil.	Absent extraordinary circumstances, should federal courts deny *forum non conveniens* dismissal of an American resident plaintiff's RICO claims in order to fulfill Congress' policy that RICO plaintiffs be incentivized through treble damages and attorney fees to act as private attorney generals to remedy serious national problems for which public

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			Supreme Court Docket	prosecutorial resources are inadequate? Tenth Circuit decision (2/9/16)
SmithKline Beecham Corp. v. King Drug Company of Florence, Inc.	15-1055 (2/19/16)	Antitrust	Petition denied 11/7/16 Respondent Brief (5/2/16) Petitioner Reply Brief (5/16/16) Solicitor General Invitation (6/6/16) Select Amicus Briefs: United States 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)
Farmer v. D&O Contractors, Inc.	16-94 (7/18/16)	RICO	Petition denied 10/31/16 Respondent Brief (9/15/16) Attorneys: G. Robert Blakey for Petitioner. M. Patrick McDowell (Brunini) for D & O Contractors, Inc. Supreme Court Docket	Whether this Court's adoption in 1987 by analogy to the antitrust four-year period for the statute of limitations for RICO inferentially carried with it a one-year extension from the termination of the government's investigation. Whether "due diligence" under equitable tolling includes delay in filing occasioned while a civil RICO plaintiff waits for the government to provide the admissible evidence required for a successful filing of a civil RICO claim for relief. Whether the standard for "due diligence" should, not be, in this Petition, as it is, "reasonable," that is, negligence, but rather at least "recklessness," that is, conscious avoiding a known duty of care, and, in

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				particular, by also taking into consideration the injury or prejudice, if any, occasioned by the delay. Whether under the different equitable circumstances of this case, the Fifth Circuit's denial of equitable tolling by inflexible adherence to existing case law for lack of "diligence" in filing the RICO claims and lack of "extraordinary circumstances" preventing the filing of the RICO claims is in conflict with this Court's recognition that "equitable principles of tolling" may be employed by the courts to address equitable circumstances that do not fit the basic rules under present case law. Fifth Circuit decision (2/18/16)
JSW Steel (USA), Inc. v. MM Steel, L.P.	15-1492 (6/9/16)	Antitrust	Petition denied 10/31/16 Respondent Brief (9/26/16) Petitioner Reply Brief (10/11/16) Attorneys: Neal Kumar Katyal (Hogan Lovells US LLP) for JSW Steel (USA), Inc. Reagan W. Simpson (Yetter Coleman, LLP) for MM Steel, L.P. Supreme Court Docket	Whether, under the Sherman Act, a vertical restraint that would otherwise be subject to the rule of reason can be condemned as *per se* unlawful just because it was entered upon to facilitate a horizontal conspiracy. Whether it is permissible to infer that a manufacturer knowingly joined an antitrust conspiracy based solely on evidence that the manufacturer terminated a distributor in response to or following complaints and threats by other distributors. Fifth Circuit decision (11/25/16)
Doble v. Interstate Amusements, Inc.	16-306 (9/6/16)	Consumer Protection	Petition denied 10/17/16 Response due 10/11/16 Respondent Waiver	Whether the Idaho Supreme Court and District Court's punishment of Petitioner's attempts to determine whether Respondent's conduct violated the Idaho

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			Attorneys: H. Peter Doble II, *pro se*. Supreme Court Docket	Consumer Protection Act in a "case of first impression"—by deeming them as frivolous and without merit—violated Petitioner's rights under the Idaho State Constitution. Whether the lower court abused its discretion in upholding the Idaho District Court's determination that Petitioner's claim was frivolous and therefore justified in awarding Respondent attorneys' fees and costs of suit. Whether the lower court abused its discretion in awarding Respondent additional attorney's fees and costs of suit on appeal. Supreme Court of Idaho decision (5/3/16)
Edstrom v. Anheuser-Busch InBev SA/NV	16-270 (8/30/16)	Antitrust	Petition denied 10/3/16 Response due 10/3/16 Respondent Waiver Attorneys: Joseph M. Alioto (Alioto Law Firm) for Petitioners. M. Miller Baker (McDermott Will & Emery LLP) for Constellation Brands, Inc. Craig Sunshine (Skadden, Arps, Slate, Meager & Flom, LLP) for Anheuser-Busch InBev SA/NV. Supreme Court Docket	Whether §7 of the Clayton Act, 15 U.S.C. §18, which prohibits acquisitions that may "substantially…lessen competition, or to tend to create a monopoly" and the standards announced by this Court in *U.S. v. Falstaff Brewing Corp.*, 410 U.S. 526 (1973) require separate analysis of a transaction's elimination of an actual and potential competitor exercising present beneficial competitive influence on the market? Whether §7 of the Clayton Act requires an increase in concentration in order to state a claim and avoid dismissal under Fed. R. Civ. P. 12(b)(6)? Ninth Circuit decision (4/4/16)
Bridgeview Health	16-91	Privacy	Petition denied 10/3/16	Does the Telephone Consumer Protection Act, 47 U.S.C. § 227, and its regulations as

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Center, Ltd. v. Clark	(7/18/16)		Response due 8/19/16 Respondent Waiver Attorneys: David M. Oppenheim (Bock, Hatch, Lewis & Oppenheim LLC) for Petitioner. Vincent A. Lavieri (Gardiner Koch Weisberg & Wrona) for Respondent. Supreme Court Docket	they existed prior to August 1, 2006, which hold that the party "on whose behalf" an unsolicited facsimile advertisement is sent is directly liable under the statute and the regulations *sub silentio* import common law agency requirements? Seventh Circuit decision (3/21/16)
Sergeants Benevolent Association Health and Welfare Fund v. Sanofi-Aventis U.S. LLP	15-1525 (6/17/16))	RICO	Petition denied 10/3/16 Respondent Brief (8/18/16) Petitioner Reply Brief (9/6/16) Attorneys: Matthew W.H. Wessler (Gupta Wessler PLLC) for Petitioners. William N. Withrow Jr. (Troutman Sanders LLP) for Respondents. Supreme Court Docket	Where purchasers allege that a manufacturer misrepresented a drug's safety to prescribing doctors to increase sales, does the presence of the doctors break the causal chain—for purposes of RICO causation—between the misrepresentations and the purchasers' economic injuries? Second Circuit decision (11/13/15)
Antonacci v. Chicago	15-1524 (6/17/16)	RICO	Petition denied 10/3/16 Response due 7/18/16 Respondent Waiver Attorneys: Louis B. Antonacci (Antonacci Law PLLC), *pro se*. Suzanne M. Loose, Office of the Corporation of the City of Chicago, for City of Chicago. Supreme Court Docket	Whether this Court's ruling in *Bell v. Hood*, 327 U.S. 678 (1946) prohibits the dismissal of Petitioner's well-pleaded RICO claims (18 U.S.C. §§ 1961 *et seq.*) for lack of subject matter jurisdiction. Whether dozens of alleged acts of extortion, mail fraud, and wire fraud, perpetrated over a two-year period by lawyers, state court judges, and court reporters, sufficiently alleges a "pattern" of racketeering activity under RICO, when the criminal enterprise has undue influence over the state courts and attorney admission process and thus presents a clear threat of continued racketeering activity. Whether a plaintiff may file an amended complaint,

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				pursuant to FRCP 59(e), after a district court has already dismissed the complaint and entered judgment thereon. Whether a district court may *sua sponte* dismiss a case for lack of diversity jurisdiction, and enter judgment thereon, without allowing any jurisdictional discovery, because the plaintiff used the word "resident" rather than "citizen" when describing the particular citizenship of the parties. Whether a district court may *sua sponte* dismiss a case for lack of diversity jurisdiction, and enter judgment thereon, without allowing any jurisdictional discovery, despite the plaintiff's allegation that there is complete diversity of "citizenship" between the plaintiff and the defendants. Whether the unsupported affidavit of alleged Seyfarth Shaw LLP partner Joseph Damato, submitted with the brief of appellee, may destroy diversity jurisdiction and, if so, whether Seyfarth may properly be dismissed as a dispensable party, pursuant to this court's holding in *Newman-Green Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989). Seventh Circuit decision (3/18/16)
National Collegiate Athletic Association v. O'Bannon	15-1388 (5/13/16)	Antitrust	Petition denied 10/3/16 Respondent Brief (7/1/16) Petitioner Reply Brief (7/19/16) Attorneys: Seth P. Waxman (Wilmer Cutler Pickering Hale and Dorr LLP) for Petitioner. Jonathan S. Massey (Massey & Gail, LLP) for Respondents.	Whether the Ninth Circuit erred in holding that NCAA rules defining "the eligibility of participants" in NCAA-sponsored athletic contests, *NCAA v. Board of Regents of Univ. of Okla.*, 468 U.S. 85, 117 (1984), violated the Sherman Act. Whether the First Amendment protects a speaker against a state-law right-of-publicity claim based on the realistic

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			Supreme Court Docket	portrayal of a person in an expressive work (here, a student-athlete in a college-sports videogame). Ninth Circuit decision (9/30/15)
Husqvarna Professional Products, Inc. v. New Hampshire	15-1218 (3/25/16)	Franchising & Distribution	Petition denied 10/3/16 Respondent Brief (6/20/16) Petitioner Reply Brief (7/5/16) Attorneys: Thomas J. Collin (Thompson Hine LLP) for Petitioner. Laura E. B. Lombardi, Attorney General's Office, for New Hampshire. Supreme Court Docket	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 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	Petition denied 10/3/16 Respondent Brief (6/20/16) Petitioner Reply Brief (7/1/16) Attorneys: Catherine E. Stetson (Hogan Lovells US LLP) for Petitioners. Gregory A. Holmes (Holmes Law Offices, PLLC) for Frost Farm Service, Inc. Laura E. B. Lombardi, Attorney	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)

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			General's Office, for New Hampshire. Peter J. McNamara for New Hampshire Automobile Dealers Association. Supreme Court Docket	
O'Bannon v. National Collegiate Athletic Association	15-1167 (3/14/16)	Antitrust	Petition denied 10/3/16 Respondent Brief (5/13/16) Petitioner Reply Brief (5/26/16) Attorneys: Jonathan S. Massey (Massey & Gail, LLP) for Edward C. O'Bannon, Jr. Seth P. Waxman (Wilmer Cutler Pickering Hale and Dorr LLP) for Respondent. 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 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)
Gourley v. Google, Inc.	15-1141 (3/10/16)	Privacy	Petition denied 10/3/16 Respondent Brief (8/11/16) Petitioner Reply Brief (8/31/16) 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. Supreme Court Docket	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. 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

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				of the user. Third Circuit decision (12/21/15)
Peake v. U.S.	15-1134 (3/9/16)	Antitrust	Petition denied 10/3/16 Respondent Brief(8/19/16) Petitioner Reply Brief (9/1/16) 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)
The Dow Chemical Co. v. Industrial Polymers, Inc.	14-1091 (3/9/15)	Antitrust	Petition dismissed 9/30/16 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

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				violations, even though plaintiffs attempted to prove only one violation at trial. Tenth Circuit decision (9/29/14)

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