U.S. Supreme Court Docket Oct. 2014 Term—Products Liability Cases

Docket No.	Date filed	Petitions Granted	Subject	Status	Questions
13-1067	3/5/2014	OBB Personenverkehr AG v. Sachs (petition granted 1/23/2015)	Jurisdiction	Oral argument – no date set Merit Briefs: Respondent brief: (4/2/2014) Petitioner reply brief (4/15/2014) Solicitor General invited to file a brief in this case expressing the views of the United States (5/19/2014) Amicus briefs: Government of the Kingdom of the Netherlands (4/7/2014) International Rail Transport Committee (CIT) (4/7/2014) United States (12/15/2014) Supplemental brief of petitioner OBB Personenverkehr AG filed (12/26/2014) DISTRIBUTED for Conference of January 16, 2015 (12/30/2014) DISTRIBUTED for Conference of January 23, 2015 (1/20/2015) Supreme Court Docket	(1) Whether, for purposes of determining when an entity is an "agent" of a "foreign state" under the first clause of the commercial activity exception of the FSIA, the express definition of "agency" in the FSIA, the factors set forth in *First National City Bank v. Banco para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983), or common law principles of agency, control? and (2) Whether, under the first clause of the commercial activity exception of the FSIA, a tort claim for personal injuries suffered in connection with travel outside of the Unites States is "based upon" the allegedly tortious conduct occurring outside of the United States or the preceding sale of the ticket in the United States for travel entirely outside the United States? Ninth Circuit decision (*sub nom Sachs v. Republic of Austria*, December 6, 2013)
Docket No.	**Date filed**	**Petitions Denied**	**Subject**	**Status**	**Questions**
13-956	2/11/2014	Teva Pharmaceuticals USA, Inc. v. Superior Court of Orange County (Pikerie) (cert. denied 1/20/2015)	Preemption	Oral argument – no date set Merit Briefs: Respondent brief (6/4/2014) Petitioner reply brief (6/10/2014) 6/30 – Solicitor General invited to solicit comments Brief amicus curiae of United States filed (12/16/2014) DISTRIBUTED for Conference of January 16, 2015 (12/30/2014) Supplemental brief of petitioners filed (12/30/2014) Supreme Court Docket	Whether the California Court of Appeal erred when it deepened an acknowledged circuit split and held—contrary to the U.S. Supreme Court's decisions in *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), and *Mensing*; the decisions of the Fifth and Eleventh Circuits in *Morris v. PLIVA, Inc.*, 713 F.3d 774 (5th Cir. 2013), and *Guarino v. Wyeth, LLC*, 719 F.3d 1245 (11th Cir. 2013); and the plain language of the FDCA—that federal law does not preempt state tort claims predicated on allegations that a generic drug manufacturer violated the FDCA by failing to immediately implement or otherwise disseminate notice of labeling changes that the FDA had approved for use on a generic drug product's brand name equivalent. California Court of Appeal decision (June 13, 2013)
13-1252	4/15/2014	Estate of Henry Barabin v. AstenJohnson, Inc. (cert. denied 10/6/2014)	Expert Testimony	Oral argument – no date set Merit Briefs: Respondent (AstenJohnson, Inc.) brief (5/19/2014) Petitioner reply brief (6/2/2014) Respondent (Scapa Dryer Fabrics, Inc.) brief (7/11/2014) Petitioner reply brief (7/28/2014) Amicus Briefs: None filed Supreme Court Docket	Whether, in a federal jury case, a district judge's procedural failure to make detailed *Daubert* findings regarding important expert testimony requires the appellate court to order a new trial, regardless of whether there was actually any substantive error in the expert testimony heard or not heard by the jury. Ninth Circuit decision (January 15, 2014)
14-71	7/18/2014	Diacetyl Plaintiffs v. Aaroma Holdings, LLC (cert. denied 11/3/2014)	Successor Liability	Oral argument – no date set Merit Briefs: Respondent brief (9/22/2014) Petitioner reply brief (10/1/2014) Amicus Briefs: American Association for Justice, et al. (8/21/2014) Supreme Court Docket	(1) Whether the Third Circuit erred in concluding, contrary to the decisions of this Court and the law in the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits, that a trustee in bankruptcy can settle the tort claims of those injured by a company that filed for bankruptcy when the debtor company could neither bring the claim at the commencement of the bankruptcy nor was injured in any way by the underlying allegations? (2) Whether the Third Circuit erred in concluding, contrary to the law in the First, Ninth, and Federal Circuits, that a claim is general and belongs to the estate simply because other claimants could take advantage of a finding of successor liability, rather than finding it is specific and can go forward because it is unique to these plaintiffs. Third Circuit decision (*sub nom. In re Emoral*, January 24, 2014)
14-119	7/31/2014	Leite v. Crane Co. (cert. denied 10/14/2014)	Federal Officer Removal Jurisdiction	Oral argument — no date set Merit Briefs: Respondent brief (9/3/2014) Supreme Court Docket	(1) Can federal officer removal jurisdiction be based solely upon an expert affidavit stating that the Navy issued "detailed specifications" on warnings (to colorably meet the element of "reasonably precise specifications" under Boyle v. United Technologies Corp., 487 U.S. 500 (1988)), without considering the plain language of the Navy specifications at issue which is vague in general, thus conflicting with over one hundred years of federal evidentiary law that holds experts cannot opine on the meaning of documents and regulations? (2) Whether a causal nexus to support federal officer removal jurisdiction under 28 U.S.C. §1442 can be established solely by accepting the federal contractor's contentions that it acted under the direction of a federal officer in committing the act that allegedly violated state law, or whether there must be some admissible evidence of causal connection as required by this Court's case law. Ninth Circuit decision (April 25, 2014)
14-297	9/8/2014	SQM North America Corp. v. City of Pomona (cert. denied 12/15/2014)`	Expert Testimony	Oral argument — no date set Merit Briefs: Respondent brief (11/13/2014) Reply of petitioner (11/24/2014) Amicus Briefs: Coalition for Litigation Justice, Inc. (10/14/2014) American Coatings Association, et al. (10/14/2014) DRI - The Voice of the Defense Bar (10/14/2014) Atlantic Legal Foundation, et al. (10/14/2014) Reply of petitioner SQM North America Corp. filed (11/24/2014) DISTRIBUTED for Conference of December 12, 2014 (11/25/2014) Supreme Court Docket	Whether, as the Ninth Circuit held, in open and admitted conflict with other courts of appeals, a district court may exclude expert testimony as unreliable only when it is based on a "faulty methodology or theory," or whether, as the Third Circuit and other circuits have held, "any step that renders the analysis unreliable … renders the expert's testimony inadmissible. Ninth Circuit decision (*sub nom. City of Pomona v. SQM North America Corp.*, May 2, 2014)
14-365	9/26/2014	Mead Johnson & Co., LLC v. Johnson (cert. denied 11/10/2014)	Expert Testimony	Oral argument — no date set Merit Briefs: None available Supreme Court Docket	(1) Did Rule 702 so liberalize federal law on the admission of expert opinion testimony that appellate courts must rigorously scrutinize district court orders excluding such testimony, resolving all doubts in favor of reversal? (2) Is a district court required, when exercising its Daubert gatekeeper role, to admit expert causation testimony when the expert has failed to use reliable methodology, reliably applied, to rule out any alternative causes for plaintiff's injuries? Eighth Circuit decision (sub nom. *Johnson v. Mead Johnson & Co., LLC.*, June 6, 2014)

14-544	11/10/2014	PLIVA, Inc. v. Huck (cert. denied 3/30/2015)	Preemption; Failure to Update Generic Drug Label	Oral argument – no date set Waiver of right of respondent Theresa Huck to respond filed (1/8/2015) DISTRIBUTED for Conference of February 20, 2015 (1/14/2015) Brief of respondent Theresa Huck in opposition filed (2/23/2015) Opposition of respondent to motion of Generic Pharmaceutical Association for leave to file brief amicus curiae (2/23/2015) Reply of petitioners PLIVA, Inc., et al. filed (3/10/2015) DISTRIBUTED for Conference of March 27, 2015 (3/11/2015) Supreme Court Docket	The petition presents the same question as Teva Pharmaceuticals USA, Inc. v. Superior Court, No. 13-956, in which the Supreme Court called for the veiws of the Solicitor General on June 30, 2014. Whether the Iowa Supreme Court erred when it deepened an acknowledged circuit split among the federal and state appellate courts and held—contrary to the Supreme Court's decisions in *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), and *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011); the Fifth Circuit's decisions in *Johnson v. Teva Pharmaceuticals USA, Inc.*, 758 F.3d 605 (5th Cir. 2014), *Lashley v. Pfizer, Inc.*, 750 F.3d 470 (5th Cir. 2014), and *Morris v. PLIVA, Inc.*, 713 F.3d 774 (5th Cir. 2013); the Sixth and Eleventh Circuits' decisions in *In re Darvocet, Darvon, & Propoxyphene Products Liability Litigation*, 756 F.3d 917 (6th Cir. 2014), *Strayhorn v. Wyeth Pharmaceuticals, Inc.*, 737 F.3d 378 (6th Cir. 2013), and *Guarino v. Wyeth, LLC*, 719 F.3d 1245 (11th Cir. 2013); and the plain language of the federal Food, Drug, and Cosmetic Act (FDCA)—that federal law does not bar state tort claims predicated on allegations that a generic drug manufacturer violated the FDCA by failing to immediately implement or otherwise disseminate notice of labeling changes that the U.S. Food and Drug Administration (FDA) approved for use on the generic drug product's brand-name equivalent. Iowa Supreme Court decision (*sub nom. Huck v. Wyeth, Inc.*, July 11, 2014)
14-608	11/21/2014	Lewis v. Pine Belt Multipurpose Community Action Acquisition Agency, Inc. (cert. denied 2/23/2015)	Jurisdiction	Oral argument – no date set Brief of respondent Moser Rides, S.r.l. in opposition filed (12/9/2014) Waiver of right of respondent Lowery Carnival Company, Inc. to respond filed (1/7/2015) DISTRIBUTED for Conference of February 20, 2015 (1/14/2015) Supreme Court Docket	A minor child was trapped and severely injured by a carnival ride manufactured by Italian manufacturer Moser S.r.L., which had delivered the ride to a buyer in California knowing its intended use was in traveling carnivals which could be set up anywhere in the United States. Additionally, Moser had previously sold a separate carnival ride to a buyer in Louisiana for permanent placement in the State of Louisiana. The Question Presented is whether the Court of Appeals of Louisiana, Second Circuit, erred when it held that personal jurisdiction could not be exercised over a foreign manufacturer who had placed its products into the stream of commerce, knowing that its products are routinely utilized within the State, and who has directly sold and delivered its product to a Louisiana consumer for permanent placement within the State. Louisiana Court of Appeal, Second Circuit decision (April 9, 2014)
14-706	12/15/2014	Crane Co. v. Wood (cert. denied 2/23/2015)	Jurisdiction	Oral argument – no date set DISTRIBUTED for Conference of February 20, 2015 (1/21/2015) Supreme Court Docket	Once an action is properly in federal court based upon a federal-law defense that carries with it a strong presumption in favor of federal jurisdiction, can a district court relinquish that jurisdiction without first dismissing all claims giving rise to the defense that provides the basis for the district court's original jurisdiction? Fourth Circuit decision (*sub nom. Wood v. Crane Co.*, August 15, 2014)
14-711	12/16/2014	In re: Reglan®/Metoclopramide Litigation (Teva Pharmaceuticals USA, Inc. v. Bentley) (cert. denied 4/27/2015)	Preemption	Oral argument – no date set DISTRIBUTED for Conference of February 27, 2015 (2/11/2015) Brief of respondents in opposition filed (3/23/2015) DISTRIBUTED for Conference of April 24, 2015 (4/8/2015) Reply of petitioners Teva Pharmaceuticals USA, Inc., et al. filed (4/8/2015) Petition denied; Justice Alito took no part in the consideration or decision of this petition (4/27/2015) Supreme Court Docket	This petition presents two questions. The first raises the same issue pending in *Teva Pharms. USA, Inc. v. Superior Court*, No. 13-956, where the parties' briefing is complete and the Court sought the Solicitor General's views on June 30, 2014. That question is: Whether the Pennsylvania Superior Court erred when it deepened an acknowledged circuit split among the federal and state appellate courts and held—contrary to this Court's decisions in *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), and *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011); six different decisions from the Fifth, Sixth, Eighth, and Eleventh Circuits; and the plain language of the federal Food, Drug, and Cosmetic Act ("FDCA")—that federal law does not preempt state tort claims predicated on allegations that a generic drug manufacturer violated the FDCA by failing to immediately implement or otherwise disseminate notice of labeling changes that the United States Food and Drug Administration ("FDA") approved for use on the generic drug product's brand-name equivalent. The second question is: Whether this Court should summarily reverse the appellate court's holding that plaintiffs' remaining claims can proceed, which conflicts with this Court's decisions in *Mensing* and *Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013), and decisions from the Third, Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits. Pennsylvania Superior Court decision (*sub nom. In re: Reglan/Metoclopramide Litigation (Appeal of: Teva Pharmaceuticals USA, Inc., PLIVA et al.)*, July 29, 2013)
14-721	12/16/2014	Morton Grove Pharmaceuticals Inc. v. Adams (cert. denied 3/23/2015)	Preemption	Oral argument – no date set Merit briefs: None available DISTRIBUTED for Conference of March 20, 2015 (3/4/2015) Supreme Court Docket	Under the doctrine of administrative deference this Court articulated in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and *Auer v. Robbins*, 519 U.S. 452 (1997), federal courts must defer to an administrative agency's interpretation of a statute or regulation it administers unless that interpretation is plainly erroneous or unreasonable. Must a state court, like a federal court, defer to a federal agency's reasonable interpretation of a federal statute or regulation that the agency administers in determining whether federal law conflicts with state law? Pennsylvania Superior Court decision (*sub nom. In re: Reglan/Metoclopramide Litigation (Appeal of: Morton Grove Pharmaceuticals, Inc., and Wockhardt USA, LLC)*, July 29, 2013)
14-755	11/19/2014	Lowery Carnival Co., Inc. v. Moser Rides, S.R.L. (cert. denied 2//23/2015)	Jurisdiction	Oral argument – no date set Brief of respondent Moser Rides, S.r.l. in opposition filed (1/7/2015) DISTRIBUTED for Conference of February 20, 2015 (1/21/2015) Supreme Court Docket	Does the Due Process Clause of the Fourteenth Amendment to the United States Constitution shield an Italian manufacturer, who admittedly sold a carnival ride in the State of Louisiana, from the personal jurisdiction of Louisiana for damage occasioned by another mobile, itinerant carnival ride it manufactured, simply because the subject ride was originally sold in another state and subsequently transported to Louisiana, consistent with the manner it was manufactured by the foreign company? In other words, can a foreign manufacturer do business in the State of Louisiana, taking advantage of the privileges, protections and benefits of the State, yet assert a due process violation when called into Court to answer for damages occasioned by the sale of another ride, simply because it was sold in another state? Respondent is subject to specific personal jurisdiction in Louisiana due to its sale of another carnival ride. The instant matter presents a hybrid jurisdictional question, incorporating elements of both specific and general jurisdiction. As Respondent is subject to the specific jurisdiction of Louisiana, can the fact that the subject accident occurred as a result of its manufacture of a different ride, sold in another state, be said to violate due process under the general personal jurisdiction analysis? The threshold issue for any personal jurisdiction analysis is whether the assertion of same offends the traditional notions of fair play and substantial justice. As Respondent is subject to the personal jurisdiction in the State of Louisiana due to its prior sale of a carnival ride therein, does the constitutional mandate requiring "minimum contacts" prohibit Louisiana from asserting jurisdiction in the instant matter? Louisiana Court of Appeal, Second Circuit decision (April 9, 2014)

14-810	1/8/2015	Jackson v. Louisiville Ladder, Inc. (cert. denied 3/2/2015)	Application of Restatements (Second) and (Third) of Torts	Oral argument – no date set Merit briefs: None available DISTRIBUTED for Conference of February 27, 2015 (2/11/2015) Supreme Court Docket	Whether the Third Circuit erred when it refused to acknowledge that the law of diversity strict liability cases in Pennsylvania is the Restatement (Second) of Torts rather than Restatement (Third) of Torts despite the Pennsylvania Supreme Court's decision of November 19, 2014. Third Circuit decision (September 9, 2014)
Docket No.	**Date Filed**	**Pending Petitions**	**Subject**	**Status**	**Questions**
14-705	12/16/2014	Teva Pharmaceuticals USA, Inc. v. Hassett	Preemption	Oral argument – no date set DISTRIBUTED for Conference of March 20, 2015 (3/4/2015) Brief of respondent Paul E. Hassett in opposition filed (4/9/2015) DISTRIBUTED for Conference of May 14, 2015 (4/28/2015) Reply of petitioners Teva Pharmaceuticals USA, Inc., et al. filed. (Distributed) (4/28/2015) Supreme Court Docket	This petition presents two questions. The first raises the same issue pending in *Teva Pharms. USA, Inc. v. Superior Court*, No. 13-956, where the parties' briefing is complete and the Court sought the Solicitor General's views on June 30, 2014. That question is: Whether the Pennsylvania Superior Court erred when it deepened an acknowledged circuit split among the federal and state appellate courts and held—contrary to this Court's decisions in *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), and *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011); six different decisions from the Fifth, Sixth, Eighth, and Eleventh Circuits; and the plain language of the federal Food, Drug, and Cosmetic Act ("FDCA")—that federal law does not preempt state tort claims predicated on allegations that a generic drug manufacturer violated the FDCA by failing to immediately implement or otherwise disseminate notice of labeling changes that the United States Food and Drug Administration ("FDA") approved for use on the generic drug product's brand-name equivalent. The second question is: Whether this Court should summarily reverse the appellate court's holding that plaintiffs' remaining claims can proceed, which conflicts with this Court's decisions in *Mensing* and *Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013), and decisions from the Third, Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits. Pennsylvania Superior Court decision (*sub nom. Hassett v. DaFoe*, July 29, 2013)
14-849	1/16/2015	American Cyanamid Co. v. Gibson	Constitutionality of risk contribution theory of liability	Oral argument – no date set Amicus Briefs: The National Association of Manufacturers, et al. filed (2/13/2015) Brief of respondent Ernest Gibson in opposition filed (4/6/2015) Reply of petitioners American Cyanamid Co., et al. filed (4/20/2015) DISTRIBUTED for Conference of May 14, 2015 (4/21/2015) Supreme Court Docket	(1) Whether under Supreme Court's decision in *Eastern Enterprises*, the Due Process Clause or the Takings Clause prohibits states from imposing severe, retroactive economic liability that the defendant could not have anticipated at the time it engaged in the conduct being challenged, and that is disproportionate to the defendant's experience and conduct in the market place? (2) Whether, under the Supreme Court's decision in *Philip Morris v. Williams* (549 U.S. 346 (2007)) and *State Farm Mutual Automobile Ins. Co. v. Campbell* (538 U.S. 408 (2003)), the risk contribution theory violates the Due Process Clause by eliminating any meaningful causation requirement? Seventh Circuit decision (*sub nom Gibson v. American Cyanamid Co.*, July 24, 2014)
14-958	2/6/2015	Chapman v. The Procter & Gamble Distributing LLC	Expert testimony	Oral argument – no date set Brief of respondents Procter & Gamble Distributing, LLC, et al. in opposition filed (4/10/2015) DISTRIBUTED for Conference of May 14, 2015 (4/26/2015) Reply of petitioners Marianne Chapman and Daniel Chapman filed. (Distributed) (4/28/2015) Supreme Court Docket	Under Rule 702 of the Federal Rules of Evidence, expert testimony is admissible if it is "based on sufficient facts or data" and "is the product of reliable principles and methods." In toxic tort cases, litigants routinely offer expert testimony on the issue of "general causation"—the ability of an alleged toxic substance to cause a particular disease. In this case, petitioners offered the opinions of preeminent scientists that ingestion of large amounts of zinc contained in Procter & Gamble's Fixodent-brand denture cream can cause a serious disease known as "copper-deficiency myelopathy." Those opinions were consistent with the widespread consensus in the medical community and were supported by extensive scientific evidence. In a ruling that deepens a five-to-two circuit conflict, the Eleventh Circuit excluded those opinions as unreliable on the ground that petitioners' experts could not produce specific types of epidemiological evidence supporting the causal relationship between Fixodent and copper-deficiency myelopathy. Such epidemiological studies had not been conducted on Fixodent because, for more than two decades, Procter & Gamble had failed to disclose to consumers that it was formulated with a high concentration of zinc. In the First, Third, Fourth, Ninth, and D.C. Circuits, courts would have reversed the district court's grant of summary judgment. The question presented is: Whether Rule 702, as interpreted by *Daubert* and its progeny, permits a district court to require epidemiological evidence as a precondition for admissibility of a qualified expert's opinion that a toxic substance is capable of causing a particular disease. Eleventh Circuit decision (September 11, 2014)
14-1136	3/18/2015	Nestle Purina PetCare Co. v. Curts	Jurisdiction	Oral argument – no date set Merit briefs: None available Supreme Court Docket	Whether, under the All Writs Act and the Anti-Injunction Act, a district court's injunction to enjoin parallel state litigation pending final approval of a comprehensive settlement of a complex case can ever be "necessary in aid of its jurisdiction." Seventh Circuit decision (March 2, 2015)
14-1211	4/3/2015	Accord v. Philip Morris USA, Inc.	Due Process; Preemption	Oral argument — no date set Merit briefs: None available Supreme Court Docket	(1) Whether the Due Process Clause of the 14th Amendment prohibits the State of West Virginia from dismissing with prejudice a person's wrongful death claims without first providing that person notice or an opportunity to be heard prior to the dismissals. (2) Whether the Federal Cigarette Labeling and Advertising Act (FCLAA) preempts use defect claims based on a failure to instruct. West Virginia Supreme Court of Appeals decision (November 3, 2014)