

Supreme Court Issues Significant Class Certification Decision in Antitrust Case

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On March 27, 2013, the Supreme Court, in an opinion by Justice Scalia, held that putative antitrust class plaintiffs must affirmatively establish that damages are capable of measurement on a class-wide basis to satisfy Rule 23(b)(3)'s predominance requirement. In the case before it, *Comcast Corp. v. Behrend*, the Court found that the putative antitrust class had failed to satisfy this burden and that the Third Circuit had erred by refusing to scrutinize plaintiffs' proffered damages methodology at the class certification stage. Justices Ginsburg and Breyer issued a joint dissent in which Justices Sotomayor and Kagan joined. This case is consistent with a line of recent Supreme Court decisions setting strict evidentiary standards for class certification.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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