In *Blake v. JP Morgan Chase Bank NA*, the United States Court of Appeals for the Third Circuit addressed whether streams of kickbacks constitute separate and independent violations of the Real Estate Settlement and Procedures Act, such that each kickback has its own limitations period. The court held the Act’s plain language makes each kickback a violation of the Act, and thus, the limitations period accrues separately from the date of each kickback. The court also addressed whether the earlier filing of a related class action suit tolled the statute of limitations period. The court held a timely class action lawsuit should never toll the limitations period for other class actions. (June 19, 2019)

In *Home Depot U.S.A. Inc. v. Jackson*, the United States Supreme Court addressed whether a third-party counterclaim defendant may remove a case filed in state court to federal court. The Court held that neither the general removal provisions nor the removal provisions set forth in the Class Action Fairness Act of 2005 allowed a third-party defendant named only in a counterclaim and not the complaint to remove the civil action to federal court. (May 28, 2019)

In *Lamps Plus v. Valera*, the United States Supreme Court addressed whether a putative class action, instituted by an employee after a hacker tricked his employer into disclosing the tax information of 1,300 employees, was subject to the arbitration clause in the employee’s employment contract. Specifically, the Court considered whether arbitration could be compelled when the agreement was ambiguous on the availability of class arbitration. The Court held that, under the Federal Arbitration Act, an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. (April 24, 2019)

In *Gammella v. P.F. Chang’s China Bistro, Inc.*, the Supreme Judicial Court of Massachusetts held that employees could assert a class action under the Massachusetts Wage Act and the Massachusetts Minimum Fair Wage Law against their restaurant-employer. Since the restaurant failed to make thousands of payments to hundreds of employees, failed to provide record keeping justifying the nonpayments, and refused to provide the names of the employees involved, it was reasonable to infer that the number of class plaintiffs would satisfy the numerosity requirement. (April 12, 2019)

In *Frank v. Gaos*, the United States Supreme Court addressed whether Article III injury exists whenever a federal statute gives an individual a
statutory cause of action for violation of that statute. The court found that even if a federal statute provides for a private cause of action, a plaintiff pursuing a claim under it must nevertheless demonstrate a concrete injury to satisfy the requirements of Article III standing. The court further held that a class action settlement cannot be approved by a court where Article III standing is lacking. (March 20, 2019)

In Kamal v. J. Crew Group, Inc., the United States Court of Appeals for the Third Circuit addressed whether a customer had standing to challenge a procedural violation of the Fair and Accurate Credit Transactions Act of 2003 (FACTA) committed by a retailer when it included too many digits from the customer’s credit card on its receipt. The court found that the customer lacked standing because it could not show that it suffered a concrete injury from the alleged violation nor did the customer allege facts that established a risk of real harm. (March 8, 2019)

In Bedoya v. American Eagle Express Inc., d/b/a AEX Group v. KV Service, LLC, the United States Court of Appeals for the Third Circuit preempted the class of delivery drivers’ claims that they were misclassified as independent contractors when they were actually employees entitled to protection under the New Jersey Wage and Hour Law (NJWHL) and New Jersey Wage Payment Law (NJWPL). The Third Circuit determined, on an interlocutory appeal from the district court’s denial of the employer’s motion for judgment on the pleadings, that the effect New Jersey’s “ABC classification test has on prices, routes, or services with respect to the transportation of property is tenuous and insignificant” and, as a result, is not preempted by the FAAAA. (January 29, 2019)

In Reinig v. RBS Citizens N.A., the United States Court of Appeals for the Third Circuit addressed certification of a class of mortgage loan officers who alleged that they were unlawfully denied overtime pay. The court found that the putative class failed to meet the commonality and preponderance requirements of Federal Rule of Civil Procedure 23(c)(1)(B). (December 31, 2018)

In In Re Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Liability Litigation, the United States Court of Appeals for the Third Circuit addressed whether a putative class action plaintiff stated a viable claim for economic injury on the basis that she purchased an improperly marketed product. Because the plaintiff failed to establish anything but buyer’s remorse, the court held that she failed to state a cognizable injury. (September 6, 2018)

In Taksir v. The Vanguard Group, the United States Court of Appeals for the Third Circuit addressed whether the Securities Litigation Uniform Standards Act of 1998 (SLUSA) barred a class action brought by investors under state law against their broker for allegedly overcharging them for the execution of certain securities transactions. The court held that the SLUSA did not bar the claims because the overcharges were not materially connected to the securities transactions. (September 5, 2018)

In Walsh v. Defenders, Inc., the United States Court of Appeals for the Third Circuit analyzed the local controversy exception to federal jurisdiction under the Class Action Fairness Act. Considering that at least one defendant was a local defendant from whom significant relief was sought and whose alleged conduct formed a significant basis for the claims asserted, the court held that the local controversy exception mandated remand to state court. (July 9, 2018)
In *Dominguez v. Yahoo, Inc.*, the **United States Court of Appeals for the Third Circuit** considered whether Yahoo’s practice of sending automated text messages to a cellular phone number formerly associated with a Yahoo email address violated the **Telephone Consumer Protection Act (TCPA)**. By its terms, the TCPA prohibits sending a non-emergency call or text message to a cellular phone number using an “automatic telephone dialing system.” While the case was pending, the Federal Communications Commission (FCC) issued a declaratory order concluding that if the device used to make calls or send text messages had the potential capacity to store or produce random telephone numbers, such calls or text messages violated the TCPA. However, because the United States District Court of Appeals for the District of Columbia thereafter vacated the FCC’s declaratory order as unreasonable and overbroad, the court held in this case that the class plaintiffs were required to prove that Yahoo actually used autodialers to send the text messages in question and could not rely on evidence that the equipment merely had autodialing capability. (June 26, 2018)

In *China Agritech, Inc. v. Resh*, the **United States Supreme Court** held that, upon denial of class certification, a putative class member may not, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations. The Court reasoned that the efficiency and economy of litigation that support tolling of individual claims do not support maintenance of untimely successive class actions. (June 11, 2018)

In *Epic Systems Corporation v. Lewis*, the **Supreme Court of the United States** considered whether the **Federal Arbitration Act** requires courts to enforce arbitration agreements providing for individualized proceedings in employment contracts. The issue arose when a number of employees sought to litigate **Fair Labor Standards Act** claims through class actions in federal court despite arbitration clauses in their employment agreements that required individualized proceedings. The Court ruled that the Federal Arbitration Act requires courts to enforce the arbitration clauses in employment contracts as written. (May 21, 2018)

In *Z&R Cab, LLC v. Philadelphia Parking Authority*, the **Commonwealth Court of Pennsylvania** addressed whether taxi cab and limousine operators stated viable claims for a refund of fees found to be constitutionally infirm, in a putative class action. The court found that, although the taxi cab and limousine operators were not entitled to a full refund, fact issues remained as to whether a partial refund should be issued. (April 13, 2018)

In *Gonzalez v. Owens Corning*, the **United States Court of Appeals for the Third Circuit** reviewed a denial of class certification involving allegedly defective manufactured roofing shingles. The court determined the plaintiffs’ pre-2006 claims were discharged in the defendants’ 2006 bankruptcy. The court held that the class could not satisfy **Rule 23 (a)**’s commonality requirement because the only question it posed (i.e., which legal standard governs the dischargeability of claims against the defendant) could only be answered by way of an advisory opinion which was not justiciable and forbidden by Article III of the U.S. Constitution. The court also determined that the proposed class could not satisfy the **Rule 23(c)(4)** predominance requirement. (March 19, 2018)

In *Marquinez v. The Dow Chemical Company*, the **Supreme Court of Delaware** considered the application of cross-jurisdictional class action tolling when a federal district court dismissed a matter for *forum non conveniens* and, consequently, it denied as moot “all pending motions,” which included the motion for class certification, but it permitted
the parties to refile without consequence if the highest court of a foreign country dismissed the claims for lack of jurisdiction. The court ruled that cross-jurisdictional class action tolling ends only when a sister trial court has “clearly, unambiguously and finally denied class action status.” Since the district court’s order was a conditional dismissal, it did not end the tolling of the class-action claim. (March 15, 2018)

In Cottrell v. Alcon Laboratories, the United States Court of Appeals for the Third Circuit examined whether putative class action members had standing to bring a class action against a prescription eye medication manufacturer, claiming it was packaged in such a way that forced consumers to waste it, violating the consumer protection statutes of their home states. The court determined that the consumers had standing because they had legally protected interests arising from the state consumer protection statutes and they alleged tangible, economic harm. (October 18, 2017)

In Dugan v. TGI Fridays, Inc., the Supreme Court of New Jersey addressed whether a price inflation theory under the Consumer Fraud Act includes common questions of law and fact that predominate over individual issues so as to support a class action under Rule 4:32-1. The court also addressed whether claims focusing on a specific pricing practice under the Act can serve as the basis for a class action. The court held that, while a price inflation theory is not compatible with the Act and, therefore, cannot constitute a class action, the claim for a specific price fixing practice is a viable claim under the Act and can be certified as a class action if the class includes only customers who assert that specific price fixing claim. (October 4, 2017)

In City Select Auto Sales, Inc. v. BMW Bank of North America, Inc., the United States Court of Appeals for the Third Circuit considered the district court’s denial of class certification on the basis that no reliable and administratively feasible means of determining whether putative class members fell within the class definition. The court reversed and remanded the matter for further class certification discovery, in part, on the grounds that affidavits from potential class members could be considered as evidence with respect to the feasibility of determining putative class members. (August 16, 2017)

In Daryoush Taha v. County of Bucks, the United States Court of Appeals for the Third Circuit considered the propriety of class certification in a suit by a former inmate at the Bucks County Correctional Facility who claimed that he, and similarly situated former inmates, had suffered actionable harm giving rise to punitive damages under the Pennsylvania Criminal History Record Information Act (CHRIA) after Bucks County published information on the internet about inmates who had been held at the facility since 1938. The court held that the trial court did not abuse its discretion by: (1) finding the county liable prior to certifying the class; (2) permitting the plaintiff to seek punitive damages under CHRIA even though he did not claim compensatory damages; and (3) certifying the class for a determination of appropriate punitive damages. (July 6, 2017)

In Atlantic Ambulance Corporation v. Cullum, the Superior Court of New Jersey, Appellate Division, held that approximately 36,000 individuals who were allegedly overbilled for ambulance services could not proceed with their class action because ambulance providers are not subject to consumer fraud claims under the “learned professionals” exception to the Consumer Fraud Act. The court further held that the reasonableness of ambulance services rates should be addressed by the Legislature. Lastly, the court held that consumers are not
required to pay a defendant's bill in order to establish an ascertainable loss under the Consumer Fraud Act. (June 29, 2017)

In Halley v. Honeywell International, Inc., the United States Court of Appeals for the Third Circuit addressed approval of class action settlement where valuation of plaintiffs’ claims is difficult or impossible without expert testimony, and expert reports have not been exchanged. The court held that the trial court need not delay approval of an otherwise fair and adequate settlement if it has sufficient other information to judge the fairness of the settlement. The court further held that with regard to the approval of litigation costs, counsel is not required to provide an itemized expense record to the class to support the award of costs, but if an award of costs is approved after an in camera review, the court should provide sufficient reasoning for their decision so a basis to review for abuse of discretion exists. (June 29, 2017)

In Rodriguez v. United States, the United States Court of Appeals for the First Circuit reviewed whether a putative class of federal employees could successfully challenge the Office of Personnel Management’s (OPM) regulations for excluding cost-of-living allowances as discriminatory. The court concluded that the employees’ disparate impact claim was barred by the “location-based safe harbor provision of 42 U.S.C. § 2000e-2(h),” and that the employees could not bring non-discrimination claims without a final decision from OPM regarding their application for benefits. (March 24, 2017)

In Gordon v. Verizon Communications Inc., the New York Supreme Court, Appellate Division, 1st Department, addressed the viability of a proposed shareholder class action settlement agreement that required the provision of additional information to shareholders and imposed improved corporate governance requirements on the corporate defendant, but did not award monetary compensation to the putative shareholder class members. The court applied the five relevant factors originally laid out in Matter of Colt Industries Shareholder Litigation, 155 Ad2d 154, 160 (1st Dep’t 1990) for assessing non-monetary class action settlements (i.e., “the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact.”). But the court also added to this analysis two new factors: (1) “whether the proposed settlement is in the best interests of the putative settlement class as a whole,” and (2) “whether the settlement is in the best interest of the corporation.” Finding that all seven factors of this new standard were satisfied, the court approved the proposed settlement. (February 2, 2017)

In In re Nexium Antitrust Litigation, the United States Court of Appeals for the First Circuit held that the class members’ petitions for panel rehearing and en banc rehearings were meritless because the class members had failed to address the district court’s denial of injunctive relief in their briefs on appeal and thus waived the issue, and because contrary to the class members’ assertions, the panel opinion did not create a circuit split. Further, the district court’s summary judgment decision did not preclude the class members from putting on evidence at trial. (January 10, 2017)

In Edmond Ganem v. Invivo Therapeutics Holdings Corporation, the United States Court of Appeals for the First Circuit held that a putative class of investors failed to allege false or misleading statements sufficient to state a claim under Section 10 (b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission’s Rule
10b-5 where they claimed that a medical device company and its chief executive officer inflated the stock by issuing press releases announcing the approval of human clinical trials without identifying caveats and conditions imposed by the Food and Drug Administration on those trials. (January 9, 2017)

In Professional Flooring Company, Inc. v. Bushar Corporation, the Superior Court of Pennsylvania considered whether, under Pennsylvania’s “made whole” doctrine (which requires that an insured recover the full amount of her losses before an insurer may pursue recovery under its subrogation rights), an insurer is barred from subrogation when the insured accepts disbursement from a class settlement that is less than the value of her actual loss. The court reasoned that where the insured sues for the entirety of her loss, and then recovers a verdict or a decision in her favor, the amount of the recovery, ipso facto, fully compensates the insured for her losses. The court held that since the insured is “made whole” by the verdict, the indemnifying insurer is entitled to enforce its subrogation rights on the recovery. (December 6, 2016)

In Ensey v. Government Employers Insurance Company, the United States Court of Appeals for the Third Circuit determined whether an insurance company violated New Jersey’s Consumer Fraud Act (CFA) when during a mid-term policy change it did not advise its insured of an option to increase UM/UIM coverage limits, send a buyer’s guide and coverage selection form after increasing bodily injury limits (BIL) coverage limits, and allowed an unlicensed agent to increase the BIL limits. The court found no violation of any affirmative statutory duties under the CFA, which also precluded recovery under New Jersey’s Truth in Consumer Contract, Warranty and Notice Act. Further, the court found no evidence of any mutual mistake required to receive a reformation remedy.

In Williams v. Jani-King of Philadelphia, Inc., the United States Court of Appeals for the Third Circuit addressed whether a misclassification claim of independent contractor versus employee can be made on a class-wide basis through common evidence, primarily a franchise agreement and manuals. The court held that under certain circumstances, such as here, documentary evidence alone is sufficient to resolve the Pennsylvania multifactor test to determine who is an employee and that the court need not engage in an examination of the unique employment relationship of each class member. (September 21, 2016)

In In Re Modafinil Antitrust Litigation, the United States Court of Appeals for the Third Circuit addressed whether a putative class of 22 large and sophisticated corporations could take advantage of the class action device. The court held that the corporations did not meet their burden of showing the numerosity requirement of Federal Rule of Civil Procedure 23(a)(1). The matter was remanded for consideration of whether joinder of all class members was impracticable. (September 13, 2016)

In Harnish v. Widener University School of Law, the United States Court of Appeals for the Third Circuit explored whether sufficient class-wide evidence existed to establish that common questions will predominate, in order to certify a class of law school graduates who claim they were misled by employment statistics. The court held that the students could not establish a class-wide “causal relationship” between reliance on the misrepresentation and an “ascertainable loss” required to establish fraud because reliance is an individualized question requiring a case-by-case analysis of what effect, if any, the misrepresentation had on decision making. (August 16, 2016)
In In re: Nickelodeon Consumer Privacy Litigation, the United States Court of Appeals for the Third Circuit addressed whether various federal and state laws prohibiting certain kinds of disclosures protect the privacy of children who had visited Nickelodeon’s website. In this class action lawsuit, children alleged that Viacom and Google unlawfully used cookies and collected personal information to track the children's web browsing habits. The court determined that the federal Video Privacy Protection Act of 1988 (VPPA) permitted the children to sue a person who disclosed their personally identifiable information, but not a person who merely received such information. Additionally, the court determined that the children had adequately alleged a claim for intrusion upon seclusion against Viacom, and held that the 1998 Children's Online Privacy Protection Act (COPPA) does not preempt the children’s New Jersey state-law privacy claim. The court affirmed dismissal of all claims except the plaintiffs’ claim against Viacom for intrusion upon seclusion, which was remanded. (June 27, 2016)

In Sheriff v. Gillie, the United States Supreme Court considered two issues: (1) whether special counsel, appointed by Ohio’s Attorney General to act on the attorney general’s behalf in collecting debts owed to the state, qualify as “state officers” exempt from the governance of the Fair Debt Collection Practices Act (FDCPA) and (2) whether special counsel’s use of the Attorney General’s letterhead is a false or misleading representation in connection with the collection of debt under the FDCPA. The Court held that even if special counsel are not considered “state officers” exempt from the FDCPA, their use of the attorney general’s letterhead is not false or misleading because the letterhead accurately conveys that the debt collection is being done on behalf of, and as instructed by, the attorney general. (May 16, 2016)

In Spokeo, Inc. v. Robins, the United States Supreme Court addressed whether an individual has standing to maintain an action in federal court against a “people search engine” under the Fair Credit Reporting Act of 1970, which seeks to ensure “fair and accurate credit reporting.” The Court held that in order to invoke federal jurisdiction, the individual must establish standing by demonstrating an injury in fact that is both concrete and particularized.” Because the lead plaintiff alleged a violation of statutory rights and a personal interest in the handling of his credit information, the plaintiff adequately alleged an injury in fact. (May 16, 2016)

In Pazol v. Tough Mudder, Inc., the United States Court of Appeals for the First Circuit addressed the standards for showing a class action has an amount in controversy of more than $5 million, the threshold for enabling a case to be removed to federal court under the Class Action Fairness Act of 2005 (CAFA). Here, the organizer of obstacle course events was sued by several prospective participants because a last minute change of location from Massachusetts to Maine rendered them unable to participate and they received no refund. The prospective participants sought relief not only for themselves but all persons who paid registration fees to participate in Massachusetts and did not participate at the changed location. Although the organizer argued that the $5 million jurisdictional threshold was met because the controversy encompassed all registration fees and all locations around the country, the court concluded that the claims were limited to a narrower group (fees for individuals who could not participate, relating to a single event) and that the CAFA threshold was not met. (April 26, 2016)

In In Re National Football League Players Concussion Injury Litigation, the United States Court of Appeals for the Third Circuit upheld the $1 billion concussion litigation settlement between the National Football League and more than 20,000 former players. The court rejected the objection that the settlement did not include payment for players with
chronic traumatic encephalopathy on the basis that the settlement covers the symptoms associated with the condition. (April 19, 2016)

In Dugan v. TGI Fridays, Inc., the Superior Court of New Jersey, Appellate Division, overturned the trial court’s certification of a class action. Plaintiffs filed a class-action complaint against Defendant, alleging a violation of the Consumer Fraud Act and similar statutes by failing to list prices for beer, mixed drinks, and soft drinks on its menus. The court found that the class definition approved by the trial court improperly assumes that any patron at a TGI company-owned restaurant who purchased those beverages sustained an out-of-pocket loss "as a result of" TGI's failure to list prices for these items on the menu. Since some patrons may have been otherwise aware of the price, the trial court erred by finding that issues of fact common to members of the class predominate over issues that affect individual class members. (March 24, 2016)

In Bezdek v. Vibram USA, Inc, the United States Court of Appeals for the First Circuit addressed whether a class notice, which posited a higher potential recovery than the actual recovery, was misleading, and whether it was unfair to require consumers to provide proofs of purchase in order to file an objection. The court held that that the actual settlement terms were fair, adequate, and reasonable, and therefore, the actual recovery of $8.44 per pair of shoes was fair, and the requirement to provide proofs of purchase was not an abuse of discretion. (December 31, 2015)

In RBC Capital Markets, LLC v. Jervis, the Supreme Court of Delaware affirmed a class action judgment that RBC Capital Markets aided and abetted breaches of fiduciary duty by employees of Rural/Metro Corporation in connection with the sale of Rural/Metro to the private equity firm Warburg Pincus. RBC Capital Markets knowingly participated in manipulation of the valuation of Rural/Metro and withheld information about its own interest in the transaction. As a result, class members received below-market value for their shares, and the class was entitled to damages in the amount of $4.17 per share, or $75,798,550.33 from RBC Capital Markets. (November 30, 2015)

In In re Google Inc. Cookie Placement Consumer Litigation, the United States Court of Appeals for the Third Circuit addressed whether computer users in a putative class action possessed Article III standing to sue internet advertising business owners for placing tracking cookies on the users’ web browsers in contravention of their browsers’ cookie blockers and the business owners’ own public statements. Finding that the users met the requirements for standing, the court reasoned that the users showed injury in fact through highly specific allegations that the business owners implanted tracking cookies on their personal computers, which described concrete, particularized, and actual events as to the users. The court further explained that the business owners’ belief that the alleged conduct implicates interests that are not legally protected was an issue of the merits rather than of standing. (November 10, 2015)

In In Re: Avandia Marketing, the United States Court of Appeals for the Third Circuit addressed whether class action plaintiffs had standing to sue under the Racketeer Influenced and Corrupt Organizations Act (RICO). Plaintiffs brought a class action against GlaxoSmithKline (GSK) based on a failure to disclose the drug Avandia’s significant heart-related risks. The court found that the plaintiffs had standing to sue GSK under RICO because the increased cost to consumers was an injury and the failure to disclose the drug’s risks was a proximate cause of the injury. (October 26, 2015)
In *In re Community Bank of Northern Virginia Mortgage Lending Practices Litigation*, the United States Court of Appeals for the Third Circuit addressed whether to decertify a nationwide class of residential mortgagees in an action against a bank for predatory lending practices. The court rejected the bank’s challenge to the adequacy of class counsel absent a showing of a “fundamental” intra-class conflict and held that all requirements for class certification pursuant to Federal Rule of Civil Procedure 23(b)(3) were met. (July 29, 2015)

In *Neale v. Volvo Cars of North America, LLC*, the United States Court of Appeals for the Third Circuit addressed whether a claim of defective car sunroof drainage systems could be tried as a class action. The court held that the District Court’s opinion granting class certification did not sufficiently articulate which claims were to be subject to class certification and remanded for further findings on that issue. (July 22, 2015)

In *Shelton v. Restaurant.com, Inc.*, the United States Court of Appeals for the Third Circuit addressed the retroactive application of a new rule of law to a putative class. As a matter of first impression on a certified question, the Supreme Court of New Jersey held that gift certificates qualified as “property” covered by New Jersey’s Truth-in-Consumer Contract, Warranty and Notice Act. The court held that, although the application of the new rule could not be fully retroactive due to defendants’ reasonable reliance, it should be applied to the named plaintiffs, whose efforts helped produce it. (April 30, 2015)

In *Aldrich v. Northern Leasing Systems, Inc.*, the New York Supreme Court, Appellate Division, 1st Department, discussed when it was proper to allow a plaintiff to amend the complaint in a class action lawsuit. The court held that because the proposed amendment sought to plead specific sections of an act alleged in the original complaint, it was related to the original complaint. Further, the court found unavailing defendants’ argument that permitting the amended claim to be interposed on behalf of the proposed class will expose them to unlimited liability because the court limited the claim to three individually named plaintiffs and any putative class members whose claim was not time-barred. (April 16, 2015)

In *Byrd v. Aaron’s Inc.*, the United States Court of Appeals for the Third Circuit addressed whether the trial court improperly denied class certification to plaintiffs seeking violations of the Electronic Communications Privacy Act of 1986 because the class was not ascertainable. The court held that the trial court abused its discretion when it “confused ascertainability with other relevant inquiries under Rule 23...” (April 16, 2015)

In *In Re: Blood Reagents Antitrust Litigation*, the United States Court of Appeals for the Third Circuit addressed whether the credibility of expert testimony used to show class predominance must be taken into consideration when ruling on whether to certify a class. The court held that the putative class cannot rely on challenged expert testimony, when critical to class certification, to demonstrate conformity with Rule 23 (prerequisites for class action) unless the putative class also demonstrates, and the trial court finds, that the expert testimony satisfies the standard for reliability set out in *Daubert v. Merrill Dow Pharmaceuticals*. (April 8, 2015)

In *Pena v. Office of the Commissioner of Baseball*, the New York Supreme Court, Appellate Division, 1st Department, addressed the procedural requirements to commence a class action suit subsequent to a prior arbitration decision. The court found that plaintiff failed to challenge the arbitrator’s decision within 90 days after receipt of the decision pursuant to CPLR 7511. Further, plaintiff failed to file a motion to stay the arbitration pursuant to
CPLR 7503[b]. As such, the commencement of the class action suit constituted an improper collateral attack on a prior arbitration decision and dismissal was proper. (February 10, 2015)

In Shelton v. Bledsoe, the United States Court of Appeals for the Third Circuit addressed the ascertainability requirement for class certification in a class action suit. The court held that ascertainability is not a requirement for certification of a Rule 23(b)(2) class that seeks only injunctive and declaratory relief. (January 7, 2015)

In In re: NFL Players Concussion Injury Litigation, the United States Court of Appeals for the Third Circuit addressed whether it had appellate jurisdiction to review a petition based upon a conditional class-certification ruling. The court held that an order that preliminarily or conditionally addresses class certification does not qualify as a reviewable order because it does not grant or deny class certification. (December 24, 2014)

In Braun v. Wal-Mart, the Supreme Court of Pennsylvania addressed whether the class action proceedings impermissibly subjected an employer to trial by formula, which relieved the employees of their burden to produce class-wide “common” evidence on key elements of their claims. The court held there was a single, central common issue of liability among all 187,979 class members: whether the employer failed to compensate its employees in accordance with its own written policies. Assessing damages based on a computation of the average rate of an employee’s pay multiplied by the number of hours for which pay should have been received is not an impermissible trial by formula. (December 17, 2014)

In Judon v. Travelers Prop. & Cas. Co., the United States Court of Appeals for the Third Circuit addressed the applicable burdens of proof for establishing jurisdiction in a removal action under the Class Action Fairness Act of 2005. The court held that where the class representative files an action in state court claiming to have satisfied the numerosity requirement and the defendant seeks removal to federal court, the burden of proof falls upon the class representative to demonstrate lack of jurisdiction. To avoid removal the class representative must prove (1) to a legal certainty that the numerosity requirement has not been met and (2) by a preponderance of the evidence that the amount-in-controversy requirement has not been met. (December 12, 2014)

In Bellerman v. Fitchburg Gas and Electric Light Company, the Supreme Judicial Court of Massachusetts addressed whether utility customers who had suffered from prolonged power outages following a winter storm were sufficiently similar to be certified as a class under the Massachusetts Consumer Protection Statute (Chapter 93A) either on the ground that the utility failed to restore power promptly or that the utility failed to plan sufficiently. Noting that each customer experienced power outages of a different length and each customer’s outage required an individualized determination of causation, the court concluded that neither theory of injury required the judge to certify a class. (October 30, 2014)

In Williams v. BASF Catalysts LLC, the United States Court of Appeals for the Third Circuit addressed whether asbestos-injury victims may bring a class action lawsuit alleging fraud and fraudulent concealment against the manufacturer of talc and their attorneys for undermining asbestos lawsuits by destroying and concealing evidence that asbestos was present in the talc. The court reinstated the claims for fraud and fraudulent concealment, noting that the New Jersey litigation privilege did not “shield systematic fraud directed at the integrity of the judicial process.” (September 3, 2014)
In In re Sheriff’s Excess Proceeds Litigation, the Commonwealth Court of Pennsylvania upheld the trial court’s denial of class certification. Noting a trial court’s broad discretion to determine class certification, the court held that denying plaintiff’s motion seeking class certification was not an abuse of discretion because the trial court properly considered the numerosity, typicality, fair and adequate representation, and fair and efficient method of adjudication requirements. (July 25, 2014)

In Halliburton Co. v. Erica P. John Fund, Inc., the Supreme Court of the United States addressed whether a class action alleging violations of section 10b of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 must show that reliance on the stock price was the cause of injury at the class certification stage. The court held that there was no “special justification” to overrule the presumption of reliance established in Basic Inc. v. Levinson (there is a rebuttable presumption that the price of publicly traded stock reflects all public and material information, and that investors rely on this stock price). The court further held that plaintiffs did not have to prove direct price impact of a material misrepresentation at the class certification stage, but that defendants must be afforded an opportunity to rebut the presumption of reliance with evidence of a lack of price impact before class certification. (June 23, 2014)

In Mississippi ex rel. Hood v. AU Optronics Corp., the United States Supreme Court addressed whether a case was properly removed to federal district court as a mass action under the Call Action Fairness Act, when the State of Mississippi asserted the lawsuit on behalf of the general public. The Court held that, under the Class Action Fairness Act, because Mississippi is the only named plaintiff, the suit does not qualify as a “mass action” – that is, a civil action “in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact.” (January 14, 2014)

In Eastman v. First Data Corporation, the United States Court of Appeals for the Third Circuit addressed whether the court should excuse an untimely filed petition to appeal an order denying class certification when counsel mistakenly believed that a rule providing three additional days to file a legal document applied to the petition. The court held that counsel’s mistake regarding the time to file an appeal of an order denying class certification does not constitute excusable neglect. (December 4, 2013)

In Marek v. Lane, the United States Supreme Court addressed whether to grant certiorari in a case involving the appropriateness of a cy pres remedy in a class action settlement. While the Court denied certiorari in this case, Chief Justice John Roberts stated that the Court, in a suitable case, should address fundamental issues concerning the use and fairness of cy pres remedies in class action settlements. (November 4, 2013)

In Rodríguez v. Nat’l City Bank, the United States Court of Appeals for the Third Circuit addressed whether a putative class of borrowers alleging discriminatory lending practices could be certified as a class under Federal Rule of Civil Procedure 23(a)’s commonality and typicality requirements. The court held that plaintiffs lacked commonality because the broad discretion determinations made by individual loan officers were not shown to constitute a specific practice or discriminatory mode that was common to all of the class members. (August 12, 2013)

In Vodenichar. v. Halcon Energy Properties, Inc., the United States Court of Appeals for the Third Circuit addressed the “local controversy” exception to the Class Action Fairness Act (CAFA). The class action was filed on behalf of
similarly situated landowners who sought to lease the oil and gas rights in their land. CAFA provides federal courts with jurisdiction over civil class actions if the matter in controversy exceeds of $5,000,000, the aggregate number of proposed class members is 100 or more, and any class member is a citizen of a state different from any defendant. CAFA, also, provides an exception to federal subject matter jurisdiction known as the “local controversy” exception. Here, the Third Circuit found the exception applied because: 1) two-thirds of the class members were citizens of Pennsylvania; (2) one defendant was a citizen of Pennsylvania; (3) each local defendant’s conduct forms a basis for the claims asserted by the proposed class; (4) plaintiffs are seeking significant relief; (5) the principal injuries were incurred in Pennsylvania; and (6) no other class action has been filed in the preceding three years. (August 16, 2013)

In Carrera v. Bayer Corporation, the United States Court of Appeals for the Third Circuit addressed, in an interlocutory appeal, whether the class members in a pending class action suit were ascertainable where the class members were defined as “all persons who purchased WeightSmart in Florida.” The court held in accordance with its recent Marcus v. BMW of North America LLC decision, if class members are impossible to ascertain, then class certification is inappropriate. The court therefore vacated the class certification order. (August 21, 2013)

In Hayes v. WalMart Stores Inc., the United States Court of Appeals for the Third Circuit reviewed an appeal involving the certification of a class of consumers who purchased extended warranty plans for products sold as-is. After certification of the class by the trial court, the Court of Appeals for the Third Circuit decided Marcus v. BMW of North America, LLC, which thoroughly explored Rule 23’s class definition, ascertainability, and numerosity requirements. The Court determined that the existing class did not appear to comport with the requirements set forth in Marcus, but remanded the case since plaintiff did not have an opportunity to address the requirements as articulated by Marcus. (August 2, 2013)

In Shelton v. Restaurant.com, Inc., the Supreme Court of New Jersey, addressed a class action against Restaurant.com alleging certificates sold by the entity violated the New Jersey Gift Certificate Statute and the New Jersey Consumer Fraud Act. The court concluded that both statutes were remedial, plaintiffs can properly be considered consumers, and the Restaurant.com certificates are the product of commercial ventures under the statute. (July 9, 2013)

In Dow Chemical Corporation v. Jose Rufino Canales v. Blaco, the Supreme Court of Delaware determined whether Delaware recognizes the concept of cross-jurisdictional tolling. The plaintiff originally brought an action in Texas against the defendants. After class certification was eventually denied in Texas, the plaintiff filed a new complaint in Delaware alleging the same injuries as alleged in the Texas action. The court held that the commencement of a class action against the defendants, whether in Delaware or in another jurisdiction, put the defendants on notice of the substance and nature of the claims against them. The court, thus, extended the class action tolling exception to cross-jurisdictional class actions and held that class action members’ individual claims were tolled while a putative class action on their behalf was pending. (June 10, 2013)

In Oxford Health Plans LLC v. Sutter, the United States Supreme Court examined an arbitrator’s power to compel class arbitration under a contract silent as to class actions. The Court reaffirmed that the Federal Arbitration Act (FAA) permits a court to set aside an arbitrator’s decision only where the arbitrator strays from the task of interpreting
the contract. The Court concluded that, when an arbitrator determines that the parties to a contract intended to authorize class-wide arbitration, that determination survives judicial review under the FAA, even if wrong, as long as the arbitrator was arguably construing the contract. (June 10, 2013)

In Feeney v. Dell Inc., the Supreme Judicial Court of Massachusetts reviewed the enforceability of a class action waiver provision in an arbitration clause in light of the United States Supreme Court’s decision in AT&T Mobility LLC v. Concepcion, which held that the Federal Arbitration Act (FAA) preempted a similar state law. Previously, the Supreme Judicial Court had held that such class action waivers were contrary to the fundamental Massachusetts public policy of favoring consumer class actions under the Consumer Protection Statute, Chapter 93A. The court held that class action waivers are no longer invalid as a matter of policy under the Massachusetts Consumer Protection Statute. Nonetheless, the court clarified that courts may still invalidate a class waiver provision where the plaintiff can demonstrate that he or she lacks the ability to pursue a claim against the defendant in individual arbitration under the savings clause of the FAA. (June 12, 2013)

In Machado v. System4 LLC, the Supreme Judicial Court of Massachusetts elaborated on its ruling in Feeney v. Dell, issued the same day, that class action waiver provisions in arbitration clauses are no longer invalid as a result of Massachusetts public policy but may still be invalid if the plaintiff cannot pursue a claim on an individual basis. The court held that its decision in Feeney, permitting invalidation of class action waiver provisions in arbitration clauses, was not limited to the context of consumer claims, but was applicable to any claims, including those brought under the Massachusetts Wage Act. (June 12, 2013)

In Mississippi v. AU Optronics Corp., the Supreme Court of the United States granted a petition for writ of certiorari to consider whether restitution claims based on alleged price-fixing in the market for liquid crystal display panels (LCD) should be heard in state or federal court. The precise question the Court agreed to consider is the following: “Whether a state’s parens patriae action is removable as a "mass action" under the Class Action Fairness Act when the state is the sole plaintiff, the claims arise under state law, and the state attorney general possesses statutory and common-law authority to assert all claims in the complaint.” (May 28, 2013)

In Comcast Corporation v. Behrend, the United States Supreme Court addressed whether cable television subscribers, who brought an antitrust class action against Comcast alleging anticompetitive activity in violation of the Sherman Act and 15 U.S.C. Sections 1 and 2, presented evidence that they suffered damages on a class-wide basis. The Court held that the cable television subscribers could not sue as a group under Federal Rule of Civil Procedure 23(b)(3) because the expert of the putative class was unable to explain how to calculate damages based on the specific economic theory of the case. (March 27, 2013)

In Rosen v. Continental Airlines, the Superior Court of New Jersey, Appellate Division, addressed whether a plaintiff’s common law and NJ Consumer Fraud Act claims were pre-empted under the federal Aviation Deregulation Act. The court found they were, in that the defendant’s refusal to sell headphones and beverage to a passenger who could only pay in cash relates to “prices, routes, or services” of the defendant. The court also found that the plaintiff’s putative class action was improper because he was not a member of the alleged class and therefore lacked standing. (February 27, 2013)
In In re Baby Products Antitrust Litigation, the United States Court of Appeals for the Third Circuit addressed the propriety of the distribution of excess settlement proceeds to a charitable purpose, known as cy pres distributions. The court held that cy pres distributions to a charitable purpose reasonably approximating the interests pursued by the class are permitted but disfavored over direct distributions to the class. The court, further, held that attorneys’ fees may be reduced based on the level of direct benefit provided to the class. (February 19, 2013)

In Jeffrey Marcus, et al. v. BMW of North America, LLC, et al., the United States Court of Appeals for the Third Circuit addressed whether Appellee’s suit was properly certified as an opt-out class-action lawsuit suit in an action brought on behalf of all purchasers and lessees of certain model-year BMWs equipped with defective Bridgestone tires sold or leased in New Jersey. The court vacated the District Court’s certification order, finding that appellee’s claims did not satisfy the numerosity and predominance requirements for a class action suit. (August 7, 2012)

In Dewey v. Volkswagen Aktiengesellschaft, the United States Court of Appeals for the Third Circuit addressed the adequacy requirement of class certifications under Federal Rule of Civil Procedure 23 in the context of an intra-party dispute to a settlement. The court held that because there is a fundamental intra-class conflict, the representative plaintiffs failed to satisfy the adequacy requirement in Rule 23(a)(4). (May 31, 2012)

In In the Matter of the Appeal of Langan Engineering & Environmental Services, Inc., the Superior Court of New Jersey evaluated the statutory disqualification period under the Campaign Contributions and Expenditure Reporting Act, which provides that the state may not enter into an agreement for services with a business entity that contributed to an election fund within 18 months of the commencement of negotiations. The disqualified business entity argued that the disqualification period looked forward for 18 months from the time of the contribution and lapsed at the end of that period. The Superior Court, however, found that the disqualification period looked back 18 months from the date that bids for a project are due, and that any entity making a contribution within that period was not eligible for the contract. (May 15, 2012)

In Stoney/Vandeusen v. Maple Shade Township, the Superior Court of New Jersey, Appellate Division considered whether a court has discretion to deny injunctive relief after a finding of access discrimination under both the ADA and NJLAD. The court declined to hold that injunctive relief is mandatory following an ADA/NJLAD access violation. Instead, courts are to employ a balancing test which considers the injury to each party which would follow the granting/withholding of injunctive relief, the public interest favoring accessibility, the public entity’s progress in remediyaing violations and the potential for future violations. The court further held that irreparable harm to those seeking access should be presumed in cases involving new construction or “alterations” of public property occurring after 1992. The court further remanded the plaintiff’s claim for attorney’s fees so that the lower court could consider the plaintiff’s likelihood of success under the aforementioned balancing test for awarding injunctive relief. (May 11, 2012)

In In Re Order adopting New Rule 1716, the Supreme Court of Pennsylvania amended Rule 1701 to define residual funds as funds that remain after payment of all class action member claims, attorney’s fees, costs and court disbursements. The court further amended Rule 1714 to permit parties to a class action to suggest, and for the court to approve, a class action settlement which does not allow for residual funds. The court then renumbered Rule 1716 as...
1717 and added a new rule 1716 which states that any class action order must set forth a process for disbursement of residual funds. Not less than 50% of a class action’s residual funds are to be paid to Pennsylvania’s IOLTA to support legal assistance to the indigent. The remaining amounts may be paid either to Pennsylvania’s IOLTA or to any other entity which has a direct relationship to the goal of the class action members or promotes their interests.

In David M. Landay and Patberg, Carmody & Ging v. Rite Aid, the Superior Court of Pennsylvania addressed whether the Medical Records Act (MRA), 42 Pa.C.S.A. Section 6151-61, applies to Pennsylvania pharmacies, restricting the amounts pharmacies can charge patients and patient designees (including attorneys) for copies of pharmacy records. The court held that, under the MRA a pharmacist is a healthcare provider, an individual to whom prescription medication is dispensed is a patient, and the patient pharmacy records maintained by the pharmacist are medical records. Thus, the court found that the MRA applies to the reproduction of pharmacy records. (March 23, 2012)

In McNair v. Synapse Group, Inc., the United States Court of Appeals for the Third Circuit addressed whether a group of former customers had standing to represent a class of plaintiffs and seek injunctive relief as against a marketer of magazine subscriptions that allegedly engaged in deceptive business practices involving automatic renewal notices. The court held they did not have standing because they were not current customers and denied Rule 23(b)(2) class certification. (March 6, 2012)

In Sullivan v. D.B. Investments, Inc., the United States Court of Appeals for the Third Circuit addressed a challenge to class certification of a settlement class where the class included members with antitrust, consumer protection, and unjust enrichment claims from varying states. Defendants argued that, because significant differences existed among the various state laws at issue, the class requirement that common questions of law or fact predominate over individuals issues could not be met. The court rejected the defendants’ argument and upheld the certification of the class, holding that the existence of substantive variations in state law does not override predominantly common factual and legal issues. (December 20, 2011)

In Behrend v. Comcast Corp., the United States Court of Appeals for the Third Circuit addressed the standards that should be applied when a district court determines whether to certify a class under Rule 23(b)(3). The court held that there was evidence common across the class that would allow the plaintiffs to show (1) class-wide antitrust impact (higher cost on non-basic cable programming), and (2) a common methodology to quantify damages on a class-wide basis. (August 23, 2011)

In Litman v Verizon Wireless, the United States Court of Appeals for the Third Circuit addressed whether New Jersey’s requirement for classwide arbitration was consistent with federal law. The court held that New Jersey’s classwide arbitration requirement “create[d] a scheme inconsistent with the [Federal Arbitration Act],” and the parties were compelled to participate in individual arbitration conforming to the requirements of their respective contracts. (August 24, 2011)

In Gates v. Rohm and Haas Company, the United States Court of Appeals for the Third Circuit address whether class certification was properly denied for two proposed classes of people alleging injuries resulting from environmental contamination. The court held that the individual nature of each person’s alleged poisoning and need for future medical care, including medical monitoring, dominated such that class certification was not
appropriate. The court also held that the property damage claims had no common evidence that the contamination was attributable to the defendants. (August 25, 2011)

In *Wal-Mart Stores, Inc. v. Dukes*, the **United States Supreme Court** addressed whether current or former female employees of a retail store could pursue a class action because of alleged gender discrimination in violation of Title VII of the Civil Rights Act of 1964 for favoring male employees in pay and promotions. The Court held that the class action could not proceed because the putative class members lacked the necessary common "questions of law or fact." (June 20, 2011)

In *Petty v. Hospital Service Assoc. of Northeastern Pennsylvania*, the **Supreme Court of Pennsylvania** addressed the issue of whether members of a putative class action lacked standing to challenge the defendant insurer's violations of a Nonprofit Law pursuant to Pa.C.S. § 5793(a). The court held that the plaintiffs lacked standing because they lacked the necessary characteristics as defined by the statute and required by the Legislature. (June 20, 2011)

In *Braun v. Walmart Stores, Inc.*, the **Superior Court of Pennsylvania**, addressed due process relating to class action certification and whether Walmart and Sam's Club breached contracts with employees, were unjustly enriched and violated the Pennsylvania Wage Payment and Collection Act (WPCL) and Pennsylvania Minimum Wage Act (MWA). The court held that: 1) the record substantiates the trial court's certification of the class and discern no denial of due process, 2) the trial court correctly construed 43 P.S. § 260.10 correctly to permit recovery of statutory liquidated damages and the employees are entitled to recover under the WPCL, and 3) there was sufficient evidence in the record for a fact finder to conclude there was a breach of contract, unjust enrichment, and violation of the MWA. (June 10, 2011)

In *Wal-Mart Stores v. Dukes*, the **Supreme Court of the United States** granted certiorari to address questions related to class action certification in a gender discrimination case. Of note, the Court will decide whether claims for monetary relief can be certified under Federal Rule of Civil Procedure 23(b)(2), which by its terms is limited to injunctive or corresponding declaratory relief. (December 6, 2010)

In *Farina v. Cellco Partnership, et al.*, the **United States Court of Appeals for the Third Circuit** considered preemption of state law by federal law or regulation in a class action against numerous cell phone manufacturers. The Third Circuit held that the class plaintiffs' claims—that cell phones produce dangerously high levels of radiation exposing users to harm—was preempted by FCC regulation. Separately, the court addressed its subject matter jurisdiction under the Class Action Fairness Act (CAFA), and found that CAFA applied when a subsequent amended complaint was filed after the effective date of CAFA. (October 22, 2010)

In *Lee v. Carter-Reed Co.*, the **Supreme Court of New Jersey** reversed decisions by the trial court and the Superior Court of New Jersey, Appellate Division, to deny class certification in a class action lawsuit against a drug manufacturer. The plaintiff filed suit against the defendant, the manufacturer of a diet supplement, alleging that the defendant marketed the drug in violation of the New Jersey Consumer Fraud Act. The plaintiff sought to certify as a class all New Jersey consumers who purchased the drug. The trial court denied the certification motion, holding that a class action would be unmanageable. The Appellate Division affirmed, holding that there were predominate individual issues of fact and law. In reversing, the Supreme Court held that the lower courts' review was improper, that common
issues of fact and law predominated over individual ones, and that the case was not unmanageable. (September 30, 2010)

In the companion cases of Drennen v. PNC Bank National Association and In re: Community Bank of Northern Virginia, the United States Court of Appeals for the Third Circuit addressed whether class certification was proper in a case where some members of the class may have had timely claims under the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA), while others undoubtedly did not have timely claims. The court found that the District Court erred in determining that the named plaintiffs and class counsel adequately represented the entire class and remanded the case with the recommendation that subclasses of plaintiffs with timely TILA and HOEPA claims, and those without timely claims, be created. (September 22, 2010)

In Sullivan, et al. v. DB Investments, Inc., et al., the United States Court of Appeals for the Third Circuit addressed the propriety of the District Court's class certification under Fed. R. Civ. Pro. 23(b)(2) and 23(b)(3) in a case where the putative class consisted of nationwide members asserting antitrust, state consumer protection and unjust enrichment claims. The Third Circuit vacated the District Court's judgment and remanded the case, reasoning that the class was improperly certified because of the great variability in state laws related to antitrust standing, consumer protection and unjust enrichment. (July 13, 2010)

The United States Court of Appeals for the Third Circuit, in Ehrheart v. Verizon Wireless, addressed the scope of a district court's role in reviewing class-action settlements. In Ehrheart, the parties entered into a settlement agreement that was preliminarily approved by the District Court. Shortly after the parties agreed to the settlement, a federal law was passed that abolished the plaintiffs' cause of action. In light of the new law, the defendant, Verizon Wireless Company, filed a motion to vacate the order preliminarily approving the settlement. The District Court granted the motion. In reversing the decision of the District Court, the Third Circuit held that "changes in the law after a settlement is reached do not provide ground[s] for rescission of the settlement." The fact that a district court must review and approve a class action settlement does not affect the binding nature of the parties' underlying agreement. Court approval of a class-action settlement is a condition subsequent to the contract, and does not impact the legality of the settlement reached between the parties. (June 15, 2010)

In White v. Conestoga Title Ins. Co., the Supreme Court of Pennsylvania granted a Petition for Allowance of Appeal to consider the doctrine of primary jurisdiction and an insured's ability to bring a class action suit against her title insurance company under the Unfair Trade Practices and Consumer Protection Law. The question that the Supreme Court agreed to address is stated as follows: "In reversing the Common Pleas Court's dismissal of this action for lack of jurisdiction by reason of the administrative remedy provided by the [Title Insurance Companies Act] at 40 P.S. § 910-44(b), did the Superior Court err by holding that the statutory and decisional rule that adequate administrative remedies are exclusive does not apply to consumer class actions? (May 19, 2010)

In Stolt-Nielsen S.A., et. al. v. Animal Feeds International Corp., the Supreme Court of the United States addressed whether imposing class arbitration on parties whose arbitration clauses are "silent" on that issue is consistent with the Federal Arbitration Act (FAA), 9 U. S. C. §1 et seq. In this case, Animal Feeds International Corp. (Animal Feeds) brought a class action antitrust suit against shipping companies, including Stolt-Neilson S.A., for price
fixing. Animal Feed's action was consolidated with other actions against the shipping companies. Based upon subsequent rulings in the consolidated actions, the parties agreed that they must arbitrate their antitrust dispute. The parties further agreed to submit the question of whether their arbitration agreement allowed for class arbitration to a panel of arbitrators, who would be bound by rules developed by the American Arbitration Association. The parties selected an arbitration panel in New York City, and stipulated that their arbitration clause was "silent" on the class arbitration issue. The arbitration panel determined that the arbitration clause allowed for class arbitration. The shipping companies filed a petition to vacate the arbitrators' decision in the District Court for the Southern District of New York. Ultimately, the case was appealed to the Supreme Court. The Supreme Court held that the arbitration panel exceeded its powers because instead of identifying and applying a rule of decision derived from the FAA or either maritime or New York law, the arbitration panel imposed its own policy choice, developing "what it viewed as the best rule for such a situation" as if it had common law authority. In addition, the Court held that imposing class arbitration on parties who have not agreed to authorize class arbitration is inconsistent with the Federal Arbitration Act, 9 U. S. C. §1 et seq. (April 27, 2010)

In Clark v. Pfizer, Inc., the Superior Court of Pennsylvania addressed the appeal of a trial court order decertifying a class action and granting partial summary judgment in favor of the defendants in a case dealing with the off-label use of a drug. The appellants were required to prove reliance and/or causation on a class-wide basis. To meet this burden, the appellants relied upon statistical evidence. The court held that statistical probability does not substitute for actual injury, and a general showing of percentages does not tend to prove that the class members' specific doctors relied upon the defendants' statements, or that the defendants' statements were the proximate cause of an injury. Thus, the court found that individualized questions of law and fact substantially predominated over those that are common to the entire class. Because the appellants could not satisfy the commonality and typicality requirements for class certification, the court affirmed the decertification of the class. With respect to the grant of summary judgment, the court vacated the trial court's grant of partial summary judgment against some of the class members and on one of the class claims because the potential res judicata effect on absent class members could forever bar their causes of actions. (January 19, 2010)