

# Supreme Court Rejects Class Action Against Comcast

By Hope Eastman

In a decision issued March 27, 2013, the Supreme Court, by a 5-4 vote, rejected an antitrust class action suit filed by Comcast subscribers. The case has clear implications for how employers may defend against class actions.

Under Rule 23 of the Federal Rules of Civil Procedure, in order to have a case proceed as a class action on behalf of unnamed plaintiffs, as opposed to multiple individual cases, the parties must prove various factors, including that questions of law and fact common to class members predominate over questions affecting only individual members.

The majority and dissenting opinions differ sharply on the meaning and scope of the ruling which should result in even further litigation over the case's applicability and breadth. In an opinion authored by Justice Scalia (joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito), the Court's majority reversed the Third Circuit's decision certifying the class. The Supreme Court's ruling states that the plaintiffs need to be able to establish damages on a class-wide basis. Failing that, "[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class. This case thus turns on the straightforward application of class-certification principles; it provides no occasion for the dissent's extended discussion of substantive antitrust law."

Justices Ginsburg and Breyer filed a dissent, joined by Justices Sotomayor and Kagan. In the view of the dissenting Justices, the plaintiffs in Comcast conceded the need to prove damages on a class-wide basis. This led the dissent to conclude that "[t]he Court's ruling is good for this day and case only. In the mine run of cases, it remains the 'black letter rule' that a class may obtain certification under Rule 23(b)(3) when liability questions common to the class predominate over damages questions unique to class members."

The dissent notwithstanding, the Court's majority opinion clearly reaffirmed its key 2011 ruling in *Wal-Mart Stores, Inc. v. Duke*, where the Court said that the critical inquiry under Rule 23(a)(2) is whether the answer to plaintiff's common question provides a common answer as to whether each class member was in fact injured by defendant's wrongful conduct. In that case, involving a class of 1.6 million plaintiffs, the Supreme Court refused to allow the case to proceed as a class action.