

The United States Supreme Court heard arguments in two cases in which the defendants seek to expand the class action limits of last year's Wal-Mart v. Dukes case. On November 5, 2012, the Supreme Court heard arguments in Comcast Corp. v. Behrend and Amgen, Inc. v. Conn. Ret. Plans & Trust Funds. Corporate lobbyists hoped that the Comcast case would result in an opinion extending Wal-Mart's stringent limitations on class actions to the certification realm. Based on the questioning from the Justices, observers think it unlikely the Comcast case will result in a wide-ranging opinion that harms plaintiffs. A substantive opinion is more likely in the Amgen case in which the Ninth Circuit Court of Appeals' ruling that plaintiffs are not required to prove materiality at certification is at issue. Amgen's counsel was questioned extensively about why materiality is not automatically a common question that meets the predominance requirement.

The Wal-Mart case heightened the showing required of class action plaintiffs. In the two class action cases currently before the Supreme Court and those that will reach it in the future, litigants will try to persuade the court to either expand or somewhat curtail the limits imposed with the Wal-Mart decision.