Litigation & Arbitration Group

Milbank

Client Alert

Flurry of collective proceedings certified by the Competition Appeal Tribunal: are US-style class actions coming to the UK?

10 November 2021

Contacts

Julian Stait
Partner
+44 20.7615.3005
jstait@milbank.com

Emma Hogwood
Special Counsel
+44 20.7615.3058
ehogwood@milbank.com

Mark Padley
Associate
+44 20.7615.3121
mpadley@milbank.com

Mark Villaverde
Special Counsel
+1 424.386.4343
mvillaverde@milbank.com

Andrew Lichtenberg
Special Counsel
+1 212.530.5542
alichtenberg@milbank.com

Peter Rosania
Associate
+1 212.530.5720
prosania@milbank.com

On 18 August 2021, the Competition Appeal Tribunal ("**CAT**") made the first Collective Proceedings Order ("**CPO**") since the UK collective action regime for competition/antitrust claims was introduced in 2015 by an amendment to the Competition Act 1998 (the "**Act**").[1]

The order, in the case of *Merricks v Mastercard*,[2] was not unexpected since it was common ground that a CPO would be made following the landmark decision of the UK Supreme Court in December 2020 in the same case,[3] which made the regime for competition law class actions in the UK significantly more claimant friendly. The *Merricks* CPO was followed swiftly by a second CPO, made by the CAT on 27 September 2021 in the case of *Patourel v BT Group*[4], and a third on 19 October 2021 in the case of *Gutmann* (otherwise known as the 'Boundary Fares' dispute).[5] With a number of further CPO decisions expected to be handed down in the coming months, are we now likely to see a growth in class actions in the UK to rival those in the US, or are there factors that will limit that growth?

---

1 Collective proceedings may also be commenced by means of a group litigation order, although this requires claimants to opt-in to the claim, or a representative order under CPR 19.6, which has not been widely used due to the restrictive approach adopted by the Courts to such claims (as to which the Supreme Court has just handed down new guidance in the case of *Lloyd v Google LLC* [2021] UKSC 50).

2 *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2021] CAT 28 (the "**Merricks CPO Judgment**").

3 *Walter Merricks CBE v Mastercard Incorporated & Ors* [2020] UKSC 51 (the "**SC Judgment**").

4 *Justin Le Patourel v BT Group PLC* [2021] CAT 30 (the "**BT CPO Judgment**").

5 *(1) Justin Gutmann v First MTR South Western Trains Limited and Stagecoach South Western Trains Limited; and (2) Justin Gutmann v London & South Eastern Railway Limited* [2021] CAT 31 (the "**Gutmann CPO Judgment**"). The two CPO applications were granted on the basis that the precise terms of the CPOs would be finalised following a further hearing.

In this article, we consider (i) the CAT's decision to grant the first CPO, including the legal test for doing so, and the decision of the Supreme Court in *Merricks,* (ii) the CAT's subsequent CPO decisions in *BT Group*, and *Gutmann* (iii) the US class action regime and the key differences to the UK regime, and (iv) the extent to which a growth in class actions in the UK is likely to occur over the coming years.

The first CPO and the Supreme Court's decision in Merricks

Mr Merricks' claims and the decision at first instance

In September 2016, Mr Merricks, a former financial ombudsman, brought an "opt-out" class action against Mastercard Inc. in the CAT on behalf of all UK consumers during the period May 1992 to June 2008 (an estimated 46.2 million people). At the heart of the claim are Mastercard's default multilateral interchange fees ("**MIFs**"), which are fees charged by a cardholder's bank to a merchant's bank when goods and services are paid for by a consumer. Certain of those MIFs were found by the European Commission in 2007 to restrict competition in breach of European competition law, a decision that was upheld by the European Court of Justice in 2014. Mr Merricks alleges that all or a substantial part of the unlawful MIF that was paid by merchants (i.e., the overcharge) was passed on to consumers, resulting in consumers paying higher prices on purchases from businesses that accepted Mastercard credit and debit cards. The claim seeks an aggregate award of damages and interest totalling approximately £14.1 billion.

The claim was brought under Section 47B of the Act, which permits "opt-out" class actions (which do not require members of a class to take any steps to opt into the claim) in relation to competition/antitrust law breaches by both (i) parties that have directly suffered loss from those violations and (ii) parties who suffered indirectly (as in this case, the end consumer who may pay higher prices for the relevant goods or services).

Such a class action can proceed *only* if the CAT grants a CPO at the outset of the case. To make such an order, the CAT must be satisfied that the following four criteria are met:

1. it is just and reasonable for the applicant to act as the class representative;
2. the application is brought on behalf of an identifiable class of persons;
3. the proposed claims raise common issues (that is, they raise the same, similar or related issues of fact and law); and
4. the claims are suitable to be brought in collective proceedings.

In *Merricks*, the first and second criteria were easily established given that Mr Merricks' former role as a financial ombudsman made him very well suited to being a class representative[6] and that it was possible to identify a suitable class of individuals (although it was disputed as to whether deceased persons should be excluded from the class, see below).

Criterion 3 and 4 required more analysis and, in a decision handed down in July 2017, the CAT refused to grant the CPO. In doing so, it made clear that since there is no requirement that *all* of the issues in the case be common, or that the common issues "*predominate*" over individual issues (which is a principle applied in the US),[7] a finding that certain issues were not common does not, in itself, mean that the CPO application must fail. What is required in those circumstances is an assessment of whether the claims are nonetheless suitable to be brought in collective proceedings.

Having concluded that the extent of the alleged overcharge to merchants was a common issue, but the degree to which that overcharge was passed on to consumers was not, the CAT went onto consider

---

6 *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2017] CAT 16 (the "**CAT Judgment**") at [94].

7 See rule 23(b)(3) of the Federal Rules of Civil Procedure.

suitability.[8] It held that Mr Merricks had failed to put forward a plausible means of calculating the loss suffered by individual claimants, making it difficult to formulate a method for distributing any aggregate damages awarded.[9] The CAT was concerned that Mr Merricks' proposed distribution (on a per capita basis) of any award did not satisfy the compensatory principle in common law (whereby damages should not exceed the loss actually suffered by a claimant, thus requiring an individual assessment of each claimant's loss).

The Court of Appeal

In April 2019, the Court of Appeal allowed an appeal brought by Mr Merricks.[10] First, it held that the issue of pass-on of the overcharge to consumers was a common issue capable of satisfying criterion 3. It noted that "*the issue of whether the MIF overcharge was passed-on to consumers generally and in what amounts is an issue common to all such individual claims as a necessary step in establishing loss by the class as a whole*".[11] Secondly, the Court of Appeal held that:

i. It was unnecessary to establish pass-on to consumers at a detailed level for the purposes of class certification and it was not appropriate for the CAT to have effectively carried out a 'mini trial'. At this stage of the proceedings, the CAT need only consider whether the proposed methodology is *capable* of assessing the level of pass-on to the class as a whole and that there was, or was likely to be, data available to carry out that assessment. There is no requirement at this stage for the class representative to demonstrate more than that he has a real prospect of success.

ii. Certification is an ongoing process, such that the appropriateness of the class action can be revisited at appropriate stages throughout the proceedings (i.e., after pleadings, disclosure, and expert evidence).

iii. As for distribution, it was only necessary for the CAT to be satisfied that the claim is suitable for an aggregate award of damages and that the mechanics of how such an award should be distributed to the class is a matter for the trial judge.

The Supreme Court

On appeal by Mastercard, the Supreme Court was asked to consider (i) the legal test for the certification of claims as eligible for inclusion in collective proceedings; and (ii) the correct approach to questions regarding the distribution of an aggregate award of damages. In considering these issues, Lord Briggs emphasised that the collective proceedings regime in the UK is "*a special form of civil procedure for the vindication of private rights, designed to provide access to justice for that purpose where the ordinary forms of individual civil claim have proved inadequate for the purpose*" and that "*it should not lightly be assumed that the collective process imposes restrictions upon claimants as a class which the law and rules of procedure for individual claims would not impose.*"[12]

In a decision handed down on 11 December 2020, the Supreme Court upheld the Court of Appeal's decision, finding that the CAT had made five errors of law, namely:

i. failing to recognise that, in addition to the overcharge, the merchant pass-on issue was also a common issue, which should have been a powerful factor in favour of certification;[13]

---

8 CAT Judgment at [63]-[64].
9 CAT Judgment at [87]-[89].
10 *Walter Merricks CBE v Mastercard Incorporated & Ors* [2019] EWCA Civ 674 (the "**CA Judgment**").
11 CA Judgment at [46].
12 SC Judgment at [45].
13 Rule 79(2)(a) of the CAT Rules.

ii. placing too much weight on its decision that the case was not suitable for an award of aggregate damages; though this is a relevant factor for certification, it is not a condition;

iii. failing to apply a test of *relative* suitability when determining whether the claim was suitable for collective proceedings – only issues that would prevent an individual case proceeding to trial should be considered as decisive at this stage;

iv. considering difficulties with incomplete data and the interpretation of that data as a good reason to refuse certification – the Supreme Court considered this to be the most serious error made; and

v. requiring Mr Merricks' proposed method of distributing aggregate damages to take account of the loss suffered by each class member – the common law compensatory principle of damages, which requires a separate assessment of each claimant's loss, has been expressly disapplied in collective proceedings.

Unlike the Court of Appeal, the Supreme Court did not criticise the CAT for conducting a "mini-trial" and recognised the benefits of the CAT's questioning of the experts. However, it noted that it "*may well be that questioning and cross-examination of experts both should and will be a rare occurrence at certification hearings*".[14]

The first CPO

Following the Supreme Court's decision, the issue of whether to make a CPO was remitted to the CAT and a hearing was held on 25-26 March 2021 to determine the issue. Although, in light of the Supreme Court's findings, Mastercard no longer contested the granting of a CPO, there were two particular points related to certification on which the CAT ruled in Mastercard's favour:[15]

i. It refused Mr Merricks' permission to amend his claim to include deceased persons in the class (which would have brought the size of the class to around 59.8 million individuals, an increase of approximately 13.6 million). The CAT made clear that, under the collective proceedings regime, a claim for damages could not be brought in the name of deceased persons but could be brought on behalf of the estates of deceased persons (i.e., by being brought in the name of their personal representatives). However, that was not the amendment sought by Mr Merricks, who was bringing opt-out proceedings on behalf of "*represented persons*", being class members domiciled in the UK who have not opted out.[16] Further, even if the claim had been put this way, the amendment application had been made too late because the relevant limitation period had expired; and

ii. It ruled that the claims are not suitable for an aggregate award of compound interest in circumstances where Mr Merricks had failed to produce a credible or plausible method for estimating, on an aggregate basis, the extent of the overcharge that would have been saved or used to reduce borrowings rather than spent, which is the essential basis for a claim to compound interest as a distinct head of loss. As a result, the class members are entitled to seek simple interest only, reducing the claim value (as at January 2021) by approximately £2.2 billion. This is likely to make it difficult for compound interest claims to be advanced in future class actions, unless and until a plausible aggregate calculation method can be found on the facts of a particular case.

---

14 SC Judgment at [79].

15 Merricks CPO Judgment.

16 In contrast, in *Patourel v BT Group*, the CAT permitted the inclusion of UK-domiciled personal representatives in the class where such an amendment was sought.

The subsequent CPO decisions

The CAT has now granted two further CPOs, both of which concern collective proceedings brought on a standalone basis (i.e., without the benefit of a regulatory finding of a breach of competition law), namely *Patourel v BT Group*[17] and *Gutmann v First MTR South Western Trains Limited and others*. In addition to considering the applications for a CPO, the CAT was also asked in both sets of proceedings to determine strike out applications that had been brought by the defendants.[18]

Patrourel v BT Group

The claim, which is brought on behalf of 2.3 million BT customers, concerns allegations that BT abused its dominant position in the telecommunications market by imposing unfair prices, contrary to section 18 of the Act. At the hearing on 24-25 June 2021, BT accepted that the claim was, in principle, suitable to be brought as collective proceedings, but contended that it should be brought on an "opt-in" rather than "opt-out" basis.

In determining whether a class action should proceed on an "opt-in" or "opt-out" basis, the CAT may consider all matters it thinks fit, including in particular:

> "*(a) the strength of the claims; and*
>
> *(b) whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.*"[19]

Given the greater complexity and risks associated with opt-out proceedings (including that, unlike in opt-in proceedings, class members have not chosen to be part of the proceedings and may not have conducted their own assessment of the merits of the claim), the CAT will generally expect the strength of opt-out claims to be "*more immediately perceptible*" than with opt-in claims.[20] That does not require the CAT to undertake a full merits assessment, but rather to form a high-level view based on information contained in the claim form. Where practical, the CAT will generally favour opt-in proceedings, particularly where the class is small and losses are high per class member and/or it is straightforward to identify and contact prospective class members.

In the case of *Patourel v BT Group*, the CAT considered opt-out proceedings to be more appropriate for several reasons, most notably:

i. the merits of the claim were sufficiently strong on a high-level assessment, having surmounted the summary judgment/strike-out threshold;[21]

ii. whilst it was possible easily to identify the class members through their BT accounts, there was little prospect that the 2.3m customers who would fall within the prospective class would understand

---

[17] Whilst the case is brought on a standalone basis (i.e., without the benefit of a regulatory finding against BT), it is worth noting that Mr Patourel relies on Ofcom's Review of the Market for Standalone Landline Telephone Services dated 26 October 2017, which found, among other things, that "*BT currently holds a dominant position in the market for voice-only customers and the lack of competition enables it to maintain prices above the competitive level*", see the BT CPO Judgment at [13], sub-paragraph [1.12].

[18] We do not consider the defendants' strike out applications here, as they do not concern the granting of a CPO or the class action regime more generally.

[19] CAT Rule 79(3).

[20] CAT Guide to Proceedings 2015 at [6.39].

[21] BT CPO Judgment at [124].

the complexities of the legal action or be sufficiently proactive to opt-in, *especially* given the elderly demographic, some of whom were voice only customers and therefore lacked internet access;[22]

iii. the large pool of potential claimants were unlikely to be able to conduct their own assessment of the strength of the claim before opting in;[23]

iv. if too few potential claimants opted in, the required litigation funding would not be obtained to make the claim viable;[24] and

v. although BT may have a pass-on defence in relation to certain customers who used their landlines for business purposes (because those customers may have passed on any overcharge to end-consumers), the fact that it may not be clear at the outset of opt-out proceedings which claims could give rise to a pass-defence does not deliver a "*fatal blow*" to such an application.[25]

Gutmann

The claims concern allegations that operators of the South Eastern and South Western rail franchises abused their dominant position, contrary to the Chapter II prohibition under the Act, by failing to make available for sale so-called "boundary zone" fares or "extension tickets", being tickets which are valid for travel to or from the outer boundaries of TfL's fare zones and which were intended to be used in conjunction with a Travelcard for journeys that went beyond the outer zone that was covered by the Travelcard. The claims are estimated to be worth around £93 million and have been brought on an opt-out basis.

In granting the CPOs, the CAT held that (i) it was just and reasonable for Mr Gutmann to act as the class representative in both actions; (ii) the applications were being brought on behalf of an identifiable class of persons; (iii) the claims raised at least five common issues; and (iv) were suitable to be brought as collective proceedings.[26] The CAT also considered whether opt-in proceedings would be more suitable but concluded that they would be impractical in this case given the small amount of estimated individual recovery and the large class size in each action.[27]

Before reaching any decision on the CPO applications, the CAT undertook a cost benefit analysis of the proceedings moving forward, commenting that the cost of collective proceedings can be "*very substantial*".[28] It was noted that members of the class would likely only recover modest sums and that the proposed method of distribution (being the completion of a claim form providing information such as contact details, Travelcard and rail journey details, along with supporting documentation) may deter many individuals from making a claim. The CAT looked to class actions in Canada and the US where the courts have approved distribution methods requiring class members to set out and verify the facts of their claim in a formal declaration, with limited or no supporting documentation.[29] The CAT noted that the proposed distribution method in *Gutmann* was not set in stone and could be revisited when the amount of any award is known. However, it remained concerned at the potential for there to a very low take up of class members seeking a damages award and, although mindful of other benefits that collective proceedings bring (such as the promotion of justice by ensuring that wrongdoers modify their behaviour to take account of the harm caused), the CAT considered that the cost-benefit analysis in this case came out "*slightly against the grant of a CPO*".[30] Despite that analysis, the CAT ultimately concluded that the CPOs should be granted.

---

22 BT CPO Judgment at [112] and [114].
23 BT CPO Judgment at [114].
24 *Ibid* at [115].
25 *Ibid* at [123].
26 See Gutmann CPO Judgment at [50] (class representative); [180(e)] and [186] (identifiable class); [135] (common issues); and [181] (suitability).
27 Gutmann CPO Judgment at [183].
28 *Ibid* at [166].
29 *Ibid* at [173].
30 *Ibid* at [178].

Class certification in the US

Although in both the UK and US, the Court's approval is a necessary prerequisite to a class action moving forward, the regimes in each jurisdiction are quite distinct.

In the US, a claimant may initiate a putative class action in nearly all areas of law – without limitation to competition/antitrust claims – in either state or federal court.[31] The action formally becomes a class action at the certification phase of the case, which typically occurs after the pleading stage but before any motions for summary judgment are filed by the parties. Unlike in the UK, where only very limited evidence is likely to be required at the certification stage, this phase in the US typically includes a round of discovery aimed at helping the court determine whether class certification is appropriate, and it is also common for parties to file both factual and expert evidence. The US Supreme Court has also emphasised that courts should conduct a rigorous analysis of the factual record to determine whether the evidence (including from experts) supports certification, even if this involves inquiring into the merits of a case.[32]

A motion for class certification will be granted by the US courts if the putative class satisfies certain procedural requirements. In federal court, this is governed by Federal Rule of Civil Procedure 23 ("**Rule 23**"), which provides that a putative class must satisfy the four requirements of Rule 23(a) and at least one of the three alternative requirements set forth in Rule 23(b). In particular, under Rule 23(a), a putative class is only certifiable if:

i. it is so numerous that joinder of all class members as named claimants would be impracticable;

ii. there are questions of law or fact common to all class members;

iii. the class representatives' claims are typical of the class; and

iv. the class representatives will fairly and adequately protect the class's interests.

In addition, Rule 23(b) identifies three types of class (one of which must apply):

i. classes for which prosecution of individual actions would create a risk of either (a) imposing incompatible standards of conduct on the defendant or (b) adjudicating the interests of class members not party to those actions or impeding those class members' ability to protect their interests;

ii. classes seeking injunctive or declaratory relief; and

iii. classes for which (a) questions of law or fact common to the class *predominate* over questions affecting only individual members and (b) a class action is the *superior* means of resolving the controversy at issue.

The third type of class, exemplified by the class seeking monetary damages for past harms, is the most common type of class in the US class action regime. In determining whether common questions predominate, US courts: (i) identify the elements of the parties' claims and defenses; and (ii) assess whether the parties can offer generalised evidence to prove those elements on a class-wide basis (or whether, by contrast, individualised proof is necessary to establish each putative class member's entitlement to relief). Factors pertinent to the superiority analysis include:

i. the class members' interests in individually controlling the prosecution of separate actions;

ii. the extent and nature of any actions already brought by class members concerning the controversy;

---

[31] There are a handful of exceptions to this rule. For example, the federally enacted Truth in Lending Act of 1968 prohibits class certification of claims for contract rescission.

[32] *Comcast Corp v Behrend, 133 S Ct 1426 (2013)*.

iii. the desirability of concentrating litigation of the claims at issue in a particular forum; and

iv. the likely difficulties in managing a class action.

In addition, US courts require that claimants in putative class actions satisfy the implied requirement of *ascertainability*—i.e., the requirement that the members of the class be ascertainable. Some courts interpret the ascertainability requirement narrowly, as requiring only that the putative class be defined using objective criteria that establish definite boundaries around class membership. Other courts go further, interpreting the ascertainability requirement to mean a class may not be certified if it would not be administratively feasible to identify the members of the class. Even courts that do not impose a freestanding "*administrative feasibility*" requirement generally take administrative feasibility into account as part of the predominance and superiority inquiries.

Rule 23 and its state law equivalents therefore pose a substantial hurdle to class certification in US courts. This is in contrast to the UK, where, following the UK Supreme Court's recent decision, class certification is likely to be a less involved affair, particularly as regards the nature and extent of evidence that the CAT will be expected to consider at that stage. However, whilst the number of class actions brought in the UK is expected to rise in the coming years, there are a number of reasons why the UK regime is still likely to be invoked less frequently than in the US.

First, US class actions are certifiable in a variety of contexts rather than solely with respect to competition/antitrust claims. For example, whilst a UK class action brought in a products liability case would not fall within the scope of section 47B of the Act, certification of such an action would be available through the US courts.[33]

Second, class claimants seeking monetary damages in US federal courts generally enjoy the right to a trial by jury pursuant to the Seventh Amendment of the US Constitution. Such a right is often held in high regard by claimant lawyers who consider that a jury is more likely to be sympathetic to a class of natural persons – and less sympathetic to the typical corporate defendant – than a sophisticated judge. The UK regime does not afford claimants this advantage.

Third, certain US state and federal statutes mandate treble damages in certain areas of law, including with respect to successful federal competition/antitrust lawsuits. Combined with a large putative class, the mandatory treble damages statutes can create immense exposure for defendants and potentially transform otherwise mundane litigation into a 'bet-the-company' lawsuit. This, in turn, is likely to have an impact on the appetite of defendants for settlement.

Finally, in the UK, the general rule is that an unsuccessful party to litigation bears the other party's costs. This regime *may* discourage potential claimants from commencing marginal or frivolous class actions, even where they have the support of a litigation funder who will have to take into account the risk of adverse costs orders when deciding to fund a claim (albeit that the advent of 'after the event' insurance may help to mitigate this concern for claimants). By contrast, with certain limited exceptions, the parties to a US class action typically bear their own costs, irrespective of the outcome of the claim.

Conclusion and outlook for class actions in the UK

In the UK, the Supreme Court's ruling in *Merricks* has given greater clarity as to the approach that should be taken to the certification of claims and undoubtedly provides a lower threshold for certification than had previously been articulated by the CAT. Further, the recent decisions in *Patourel v BT Group* and *Gutmann* take a notably claimant-friendly approach to determining whether opt-out proceedings are appropriate. These developments are likely to encourage claimant law firms and litigation funders to file collective

[33] As noted in footnote 1, there are potential alternative approaches for UK claimants to bring such claims on a collective basis.

proceedings, facilitating claims being brought which may otherwise not have been possible on an individual basis. However, the regime needs to operate fairly and a lower threshold risks unmeritorious claims being brought opportunistically (as the two dissenting Supreme Court Judges warned, the approach taken by the majority may "*very significantly diminish the role and utility of the certification safeguard*").[34]

The CAT has now heard a number of other applications for class certification since the Supreme Court's decision was handed down, including claims relating to trucks (*Road Haulage* and *UK Trucks*) and FX (*O'Higgins*/*Evans v Barclays*), with judgments in each of those cases expected later this year or early 2022. A number of other applications for CPOs have also been made recently (most notably against tech companies *Qualcomm* and *Apple*), which are due to be heard in the coming months.

The CAT will also need to start grappling with 'carriage disputes' (i.e., where competing CPO applications are brought by different class representatives against the same defendant(s) and in relation to the same (or very similar) subject matter, the CAT will need to determine which class representative should proceed). Although such disputes are novel in the UK, they are a regular feature in the US (and Canada, from where the name is derived) and in light of the willingness of the CAT in *Gutmann* to seek practical guidance from other jurisdictions on the implementation of class actions, it will be interesting to see the extent to which the CAT draws on experience from those jurisdictions in resolving the first of the carriage disputes to come before it.

It seems clear, therefore, that whilst the collective proceedings regime in the UK is beginning to take off in a meaningful way, the law is still in a state of flux. As the CAT seeks to implement the guidance given by the Supreme Court over the coming months and years, it may turn for further assistance to those jurisdictions whose class certification regimes are more well-established. In the short-term, UK class actions are unlikely to become as widespread as in the US, but the regime is here to stay, and it is possible that such claims may extend beyond the competition/antitrust space in the future.

Global Litigation Contacts

London | 100 Liverpool Street, London EC2M 2AT

Tom Canning	tcanning@milbank.com	+44 20.7615.3047
William Charles	wcharles@milbank.com	+44 20.7615.3076
Charles Evans	cevans@milbank.com	+44 20.7615.3090
Julian Stait	jstait@milbank.com	+44 20.7615.3005
Mona Vaswani	mvaswani@milbank.com	+44 20.7615.3002

New York | 55 Hudson Yards, New York, NY 10001-2163

George S. Canellos, *Global Head of Litigation*	gcanellos@milbank.com	+1 212.530.5792
Daniel Perry, *Practice Group Leader*	dperry@milbank.com	+1 212.530.5083
Antonia M. Apps	aapps@milbank.com	+1 212.530.5357
Thomas A. Arena	tarena@milbank.com	+1 212.530.5828
James G. Cavoli	jcavoli@milbank.com	+1 212.530.5172
Scott A. Edelman, *Firm Chairman*	sedelman@milbank.com	+1 212.530.5149
Adam Fee	afee@milbank.com	+1 212.530.5101
Christopher J. Gaspar	cgaspar@milbank.com	+1 212.530.5019

[34] SC Judgment at [118].

David R. Gelfand	dgelfand@milbank.com	+1 212.530.5520
Robert C. Hora	rhora@milbank.com	+1 212.530.5170
Alexander Lees	alees@milbank.com	+1 212.530.5161
Grant Mainland	gmainland@milbank.com	+1 212.530.5251
Atara Miller	amiller@milbank.com	+1 212.530.5421
Sean M. Murphy	smurphy@milbank.com	+1 212.530.5688
Tawfiq S. Rangwala	trangwala@milbank.com	+1 212.530.5587
Stacey J. Rappaport	srappaport@milbank.com	+1 212.530.5347
Fiona A. Schaeffer	fschaeffer@milbank.com	+1 212.530.5651
Jed M. Schwartz	jschwartz@milbank.com	+1 212.530.5283
Alan J. Stone	astone@milbank.com	+1 212.530.5285

Washington, DC | International Square Building, 1850 K Street, NW, Suite 1100, Washington, DC 20006

David S. Cohen	dcohen2@milbank.com	+1 202.835.7517
Andrew M. Leblanc	aleblanc@milbank.com	+1 202.835.7574
Aaron L. Renenger	arenenger@milbank.com	+1 202.835.7505

Los Angeles | 2029 Century Park East, 33rd Floor Los Angeles, CA 90067-3019

Lauren N. Drake	ldrake@milbank.com	+1 424.386.4320
Gary N. Frischling	gfrischling@milbank.com	+1 424.386.4316
David I. Gindler	dgindler@milbank.com	+1 424.386.4313
Y. John Lu	jlu@milbank.com	+1 424.386.4318
Alex G. Romain	aromain@milbank.com	+1 424.386.4374

Munich | Maximilianstraße 15, 80539 Munich

Ulrike Friese-Dormann	ufriese@milbank.com	+49 89.25559.3646
Peter Nussbaum	pnussbaum@milbank.com	+49 89.25559.3636
Alexander Rinne	arinne@milbank.com	+49 89.25559.3686
Christoph Rothenfusser	crothenfusser@milbank.com	+49 89.25559.3656

Litigation & Arbitration Group

Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any member of our Litigation & Arbitration Group.