

**11-864 COMCAST CORP. V. BEHREND**

DECISION BELOW: 655 F.3d 182

LOWER COURT CASE NUMBER: 10-2865

QUESTION PRESENTED:

This Court recently reiterated that district courts must engage in a "rigorous analysis" to ensure that the "party seeking class certification [can] affirmatively demonstrate his compliance" with Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982)). Disavowing an allegedly contrary suggestion in *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), *Dukes* emphasized that district courts are required to resolve any "merits question[s]" bearing on class certification, even if the plaintiffs "will surely have to prove [those issues] *again* at trial in order to make out their case on the merits." 131 S. Ct. at 2552 n.6. In this case, however, the Third Circuit repeatedly invoked the disavowed aspect of *Eisen* in declining to consider several "merits arguments" directly relevant to the certification analysis.

The question presented is whether a district court may certify a class action without resolving "merits arguments" that bear on Rule 23's prerequisites for certification, including whether purportedly common issues predominate over individual ones under Rule 23(b)(3).

Granted limited to the following question: "Whether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis."

CERT. GRANTED 6/25/2012