

Third Circuit En Banc Panel Reinstated \$295 Million Settlement in Diamonds Antitrust Case

December 22, 2011

An *en banc* panel of the Third U.S. Circuit Court of Appeals ruled 7-2 on December 20, 2011 in favor of a \$295 million cash settlement in a class action against De Beers, after an initial panel of the court rejected the district court's certification of two nationwide settlement classes and settlement approval.

Judge Marjorie O. Rendell, who wrote a concurring opinion in the prior three judge panel decision, authored the 116-page majority opinion. The court disagreed with the first panel's finding that predominance was not satisfied because some of the class members' antitrust claims were not recoverable in their jurisdictions, even though De Beers stipulated to liability in all fifty states. The predominance requirement is easily met, the court concluded, based on De Beers' anticompetitive conduct and the injury it caused to each class member. The court also noted the dissent's misreading of the Supreme Court's recent opinion in *Wal-Mart Stores, Inc. v. Dukes*, emphasizing that the focus of commonality and predominance inquiry is on whether the defendant's conduct was common as to all class members.

This decision is important precedent for class action law in general, and class settlements in particular. It doubtless will be widely cited and relied upon in future cases. The net settlement proceeds will be distributed to class members who already have filed claims, and have waited patiently for several years for the appeal to be decided.

Zelle Hofmann Partner Christopher Micheletti and Associate Qianwei Fu worked on this matter.