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Supreme Court Clarifies the Standard on which Future Class Actions will be Evaluated in the Federal Courts

By Kathryn Dugan - July 5, 2011

On June 20, 2011, the United States Supreme Court issued an opinion in Wal-Mart Stores, Inc. v. Dukes, No. 10-277, which clarifies how certain class actions will be defined and litigated in the lower federal courts. In Wal-Mart, the plaintiffs sought to certify a class of up to 1.5 million current and former Wal-Mart employees alleging gender bias in pay and promotions in violation of Title VII of the Civil Rights Act of 1964. Specifically, the plaintiffs sought class certification under Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 23(b)(2), which prescribes the rules for class actions seeking injunctive relief rather than money damages. The Wal-Mart plaintiffs were also seeking billions of dollars in damages in addition to their request for injunctive relief.

Class certification is governed by Federal Rule of Civil Procedure 23. Under Rule 23(a), the party seeking certification must demonstrate, first that: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Second, the proposed class must satisfy at least one of the requirements listed under Rule 23(b). As stated above, in Wal-Mart, the plaintiffs relied on Rule 23(b)(2) which applies when the “party opposing the class has acted or

refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

The Wal-Mart Court made several important findings. First, the Court held that claims for monetary relief may not be certified under Fed. R. Civ. P. 23(b)(2) unless they are merely incidental to injunctive or declaratory relief being requested on behalf of the class as a whole. Specifically, the Court found the plaintiffs’ back pay claims could not be certified as incidental. The Court held that Wal-Mart was entitled to individualized determinations of each employee’s eligibility for back pay.

Secondly, the Court addressed the commonality requirement for class certification. In that regard, the Court rejected the notion that Wal-Mart’s alleged policy of giving local managers discretion regarding pay and promotion decisions presented common issues of law or fact best addressed in a Fed. R. Civ. P. 23(a) (2) class action. The Court explained that although the plaintiffs sought to litigate millions of employment decisions at once, “without some glue holding the alleged reasons for all of those decisions together” it would be impossible to say that examination of all the class members’ claims for relief would produce a common answer to the crucial question of “why I was disfavored.” The Court found that without the answer to that question, class wide treatment was inappropriate.

Additionally, the Court in Wal-Mart held that a party seeking class certification must prove that the Fed. R. Civ. P. 23 requirements are satisfied, even if the issues overlap the merits and must be proven again at trial. Therefore, regardless of whether certain issues may overlap or be identical to one or more issues to be decided in ruling on the merits of the plaintiff’s claims, a court must resolve any issues of fact that are necessary to determine whether one or more elements of Rule 23 are satisfied.

Finally, the Court’s decision in Wal-Mart is important because it held that claims for individual monetary relief cannot be replaced with “Trial by Formula” where

damages are determined by a formula derived from a sample class. Specifically, the “Trial by Formula” approach to class actions results where a sample of claims is tried on the merits, and the results of the sample are then applied proportionally to the claims of the entire class. The Court unanimously disapproved of this method.

Overall, the Court’s decision in Wal-Mart is significant for negating the largest employment class action ever certified in any United States court. The implications of the Court’s decision will continue to be seen in the future.

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