



U.S. Supreme Court permits use of statistical sampling in some class actions

March 24, 2016

Tyson Foods, Inc. v. Bouaphakeo
(No. 14-1146, March 22, 2016)

The United States Supreme Court has upheld the certification of a wage and hour class action where liability and damages were determined using statistical techniques that compare class members to a hypothetical average class member.

Tyson Foods employees claimed they were not compensated for time spent donning and doffing protective equipment and clothing, and for time spent walking to and from the plant floor. They sought class certification based on expert evidence of the average time employees spend on those tasks. The district court certified the classes, the case went to trial, and the jury returned a verdict against Tyson Foods, which the Eighth Circuit affirmed.

The Supreme Court affirmed, holding that the use of statistical evidence and representative testimony to certify a class was proper because the Fair Labor Standards Act (which governed) permitted such techniques to determine liability and damages in an individual case where the employer failed to fulfill its statutory duty to keep adequate time records. The Court explained that “[a] representative or statistical sample[’s] . . . permissibility turns not on the form a proceeding takes—be it a class or individual action—but on the degree to which the evidence is reliable in proving or disproving the elements of the relevant cause of action.” The Court also cautioned that the case “provide[d] no occasion” to adopt “broad and categorical rules governing the use of representative and statistical evidence in class actions.” Finally, the Court signaled that defendants facing wage and hour class actions would be well advised to file *Daubert* motions challenging the admissibility and reliability of expert evidence that utilizes statistical techniques to extrapolate from a representative sample to the class as a whole. (Tyson Foods made no such challenge here.)

The Court left open for a future case the question whether class damages are permissible where the class includes uninjured members. In fact, that issue remains open in *this* case, because the Court did not resolve whether a lawful means exists by which to distribute the lump-sum verdict to the hundreds of class members.

More Information

For further information about this case, please contact Horvitz & Levy partners John Querio or Felix Shafir (818.995.0800).