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WLF Asks High Court to Reaffirm that Rule 23 May Not Deprive Defendants of the Right to Raise All Defenses

(Tyson Foods, Inc. v. Buoaphakeo)

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WASHINGTON, DC—Washington Legal Foundation (WLF) today filed a brief urging the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that authorized plaintiffs’ attorneys to conduct a class-wide “trial by formula”—that is, a class-action trial at which the defendant was not permitted to litigate its statutory defenses to individual claims. In a brief filed in *Tyson Foods, Inc. v. Buoaphakeo*, WLF argues that preventing a class-action defendant from raising otherwise available defenses to the claims of individual class members violates class-action rules and conflicts with the Court’s 2011 *Wal-Mart* decision.

The lawsuit involves claims by 3,300 of the defendant’s employees that they were paid insufficient overtime wages. The plaintiffs’ attorneys introduced evidence purporting to show how many minutes of off-production-line work (i.e., putting on protective gear and later taking it off) the “average” employee undertook in a typical week. A jury awarded the plaintiff class \$2.9 million on the basis of that testimony. The appeals court affirmed, even though the defendant was denied the right to demonstrate that a significant percentage of the individual members of the plaintiff class worked no overtime at all.

WLF’s brief urging review notes that the federal appeals courts have reached sharply conflicting conclusions regarding the meaning of the *Wal-Mart* decision and the extent to which it precludes use of statistical techniques that presume all class members are identical to the average observed in a sample. WLF also notes a sharp conflict among the appeals courts regarding whether it is proper to certify a class when, as here, a significant percentage of class members are uninjured and thus would lack standing to sue on their own behalf.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “Class actions are supposed to allow courts to increase efficiency by deciding identical claims in one fell swoop. They should not be used, as here, to deprive a defendant of its right to defend against individual claims. The Supreme Court’s 2011 *Wal-Mart* decision barred class certification under these circumstances, but some appeals courts have yet to get the message.”

WLF is a public interest law firm and policy center that regularly litigates in support of civil justice reform, to ensure that unwarranted lawsuits do not drive up costs for all consumers.

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