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Supreme Court to Review Decision Certifying the Largest Employment Class Action in History

On December 6, 2010 the US Supreme Court granted *certiorari* to review the Ninth Circuit's decision in *Dukes v. Wal-Mart Stores, Inc.*, which allowed class certification in the largest employment discrimination lawsuit ever. Claimants in the case allege that Wal-Mart paid women lower wages and promoted them less frequently than their male counterparts. In a 6-5 ruling in April, the Ninth Circuit affirmed the district court's certification of a class – estimated by plaintiffs' counsel at well over one million female employees – under Federal Rule of Civil Procedure (FRCP) 23(b)(2) for injunctive and declaratory relief, and back pay.

In granting review of that decision, the Supreme Court has agreed to decide two issues: (1) the circumstances under which claims for monetary relief may be certified for class action treatment, and (2) whether the class certification ordered in *Dukes v. Wal-Mart* complied with FRCP 23(a). FRCP 23(a) requires that a class be numerous, common questions of law or fact exist, claims of the class representative be typical of the class and such representative will adequately represent the class. The latter question was not one raised by Wal-Mart on appeal, but is one on which the Supreme Court requested briefing and argument.

The Supreme Court's decision is of utmost importance to companies, especially those engaged in business within the Ninth Circuit, because of the oppressive costs

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associated with defending a class action of the magnitude contemplated by the *Dukes v. Wal-Mart* decision. Additionally, should the class be certified, it will certainly open the door for broader class actions regarding equal pay and promotions.

For more information on *Dukes v. Wal-Mart* or the Squire Sanders class action practice, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this Alert.

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2010

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