

Court's Flawed Trial Plan Sinks Overtime Class Action against Employer, California Supreme Court Rules

Date: 5.30.2014

Calling “seriously flawed” a lower court’s trial management plan which used sampling evidence to prove class liability and damages under California law, the California Supreme Court has vacated a \$15-million judgment against the employer for overtime pay and remanded the case for a new trial on both liability and damages. *Duran v. U.S. Bank National Ass’n*, No. SC S200923 (May 29, 2014).

The high court’s decision highlights the difficult questions that arise in deciding how individual issues can be successfully managed in a complex class action in California. The Court did not reach any broad conclusion as to whether or when sampling should be available to prove liability in a class action; however, if sampling is used, it advised, the sample must not be too small, and the sample must be randomly selected.

Furthermore, the Court stated that statistical proof cannot be relied on to bar the presentation of valid defenses to either liability or damages, even if the alternative would require adjudication of a defense on an individual level. If the trial proceeds with a statistical model, a defendant accused of misclassification must be given a chance to impeach that model or otherwise show that its liability is reduced because some plaintiffs were properly classified.

Background

In this class action case, approximately 260 employees of U.S. Bank (“USB”) alleged they were misclassified as exempt from the right to overtime. At the trial court level, 21 plaintiffs were selected as representative of the class and the class was certified.

USB challenged the trial court’s certification on two grounds. First, USB argued that taking a statistical sampling to represent all of the people in the class was unfair because USB believed that at least one-third of the people in the class were not misclassified; and even if legitimate, the statistical methodology was unsound. Second, USB argued that on the issue of liability, it had the right to present a defense to each and every claimant on hours worked and whether they were exempt.

Based on testimony from the small sample group, the trial court found the entire class had been misclassified. The court then extrapolated the average amount of unpaid overtime reported by the sample group to the class as a whole, resulting in a verdict of approximately \$15 million and an average recovery of over \$57,000 per person.

The Court of Appeal, while falling short of saying that a court could never use sampling to establish liability in a wage and hour class action case, agreed with USB. It held that in the circumstances presented, the trial court’s reliance on representative sampling to determine liability clearly denied USB due process. The Court of Appeal concluded the trial court had abused its discretion in denying USB’s motion to de-certify the class. Even if certification had once appeared appropriate, it should have become apparent that individual issues predominated so as to render class treatment impossible. In addition to reversing the trial court’s judgment, the Court of Appeal ordered the class decertified.

Supreme Court Decision

The high court unanimously agreed with the Court of Appeal. The Supreme Court emphasized, “We have encouraged trial courts to be ‘procedurally innovative’ in managing class actions....We have remained open to the appropriate use of representative testimony, sampling, or other procedures employing statistical methodology. However, the trial plan here was seriously flawed. First, without following a valid statistical model developed by experts, the court improperly extrapolated liability findings from a small, skewed sample group to the entire class. Second, in pursuing this extrapolation, the court adamantly refused to admit relevant evidence relating to [class members] outside the sample group. These rulings significantly impaired USB’s ability to present a defense.”

While the Supreme Court did not provide any bright-line rules on the use of statistical sampling, it strongly criticized the trial court’s trial management plan, giving employers an idea of the types of trial procedures that should raise red flags.

Jackson Lewis attorneys are available to answer questions about this decision and class action cases. Please contact David G. Hoiles, Jr., at HoilesD@jacksonlewis.com, Kelly D. Gemelli, at Kelly.Gemelli@jacksonlewis.com, Fraser A. McAlpine, at Fraser.McAlpine@jacksonlewis.com, Sherry L. Swieca, at SwiecaS@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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