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High Court to Hear Oral Argument in Case that Will Determine Right to Raise Defenses in Class Actions

(Tyson Foods, Inc. v. Bouaphakeo)

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— Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Supreme Court will hear oral argument tomorrow, Tuesday, November 10 at 10 a.m., to consider whether plaintiffs’ attorneys are permitted to conduct a “trial by formula”—that is, a class-action trial at which the defendant is not permitted to litigate its statutory defenses to individual claims. The Court’s decision in *Tyson Foods, Inc. v. Bouaphakeo* is likely to have a significant impact on the frequency with which future lawsuits are certified as class actions. [WLF Chief Counsel Richard Samp will attend the oral argument and be available Tuesday afternoon to discuss the case and its likely outcome.](#)

WLF’s *amicus* brief in support of the appellant argued 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 a class consisting of 3,300 Tyson Foods employees who claim they were paid insufficient overtime wages. The plaintiffs’ attorneys introduced evidence purporting to show how many minutes of off-production-line work (*e.g.*, putting on protective gear and later taking it off) the “average” employee undertook in a typical week. A judge certified the class on that basis, and a jury awarded the plaintiff class \$2.9 million at trial. The appeals court affirmed the grant of class certification, even though the trial-by-formula prevented the defendant from demonstrating that many individual members of the plaintiff class worked no overtime at all.

In advance of oral argument, 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 may not be used, as was done here, to deprive a defendant of its right to defend against individual claims. The Supreme Court barred class certification under these circumstances in its 2011 *Wal-Mart* decision, but apparently some appeals courts have not yet gotten the message.”

WLF is a public-interest law firm and policy center that regularly litigates to rein in excessive litigation and to ensure that unwarranted lawsuits do not drive up costs for all consumers.

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