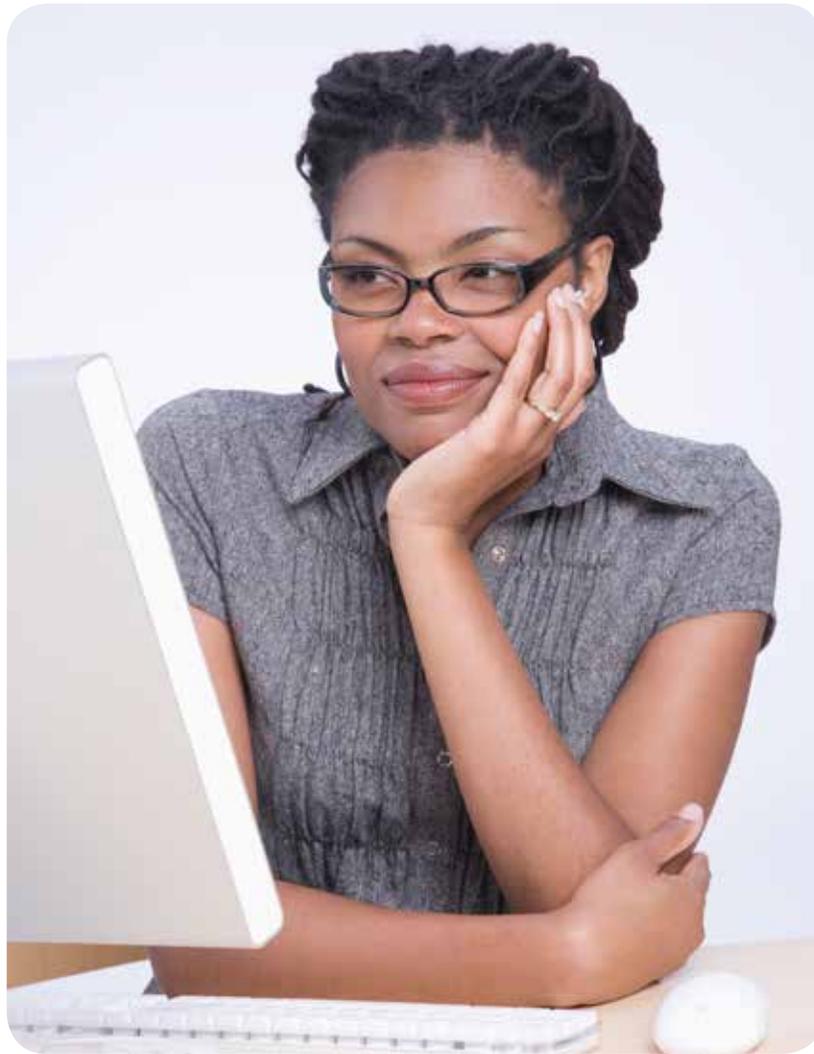


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EMPLOYMENT PRACTICES LIABILITY CONSULTANT

Seyfarth Shaw's *Annual Workplace Class Action Litigation Report: The State-of-the-Art Word on Employment-Related Class Actions*

By Bob Bregman, CPCU, MLIS, RPLU

For the fifth consecutive year, we are pleased to offer a short summary of (what is now in its 11th edition) Seyfarth Shaw's *Annual Workplace Class Action Litigation Report*. (Read the [2014](#), [2013](#), [2012](#), and [2011](#) overviews.)

The *Report* is the definitive resource for research and in-depth analysis on employment-related class action litigation. Anyone who practices in this area, whether as an attorney, risk manager, underwriter, or broker, should not be without it. This is because the *Report* is the only publication of its kind in the United States. Adding to its utility is the fact that the 2015 edition of the *Report* is available as an e-book. (Previously, it was available only as a hardbound volume or as a CD-ROM.) In sum, it is "the bible" for class action practitioners, corporate counsel, and employment practices liability insurers.

Gerald L. Maatman Jr., a partner with Seyfarth Shaw LLP, compiles and edits the *Report*. Mr. Maatman's practice focuses on defending employers involved in employment-related class actions and in Equal Employment Opportunity

Commission pattern or practice cases. He is co-chair of the firm's class action defense group and also authors the firm's [class action blog](#). Mr. Maatman pioneered the process of conducting employment practices audits to assist employers in structuring effective and practical personnel policies and protocols. His work in this area has been profiled in the *Wall Street Journal*, the *Economist*, and *Time* magazine.

A Brief Thumbnail Outline of What's Inside

The exhaustive, 832-page 2015 *Annual Workplace Class Action Litigation Report* insightfully examines and analyzes a total of 1,219 class action case decisions. And, because it is also available on CD-ROM, the *Report* is fully searchable, making its comprehensive, authoritative content readily accessible. The CD-ROM format allows the reader to quickly and easily tab through to the desired section(s) of interest. In addition, all of the federal cases examined in the *Report* are indexed by federal

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circuit—yet another invaluable feature that further enhances its utility.

The following is a synopsis of the 11th *Annual Workplace Class Action Litigation Report*.

- ◆ **Overview of the Year in Workplace Class Action Litigation.** This section summarizes the key legal and procedural trends that emerged in 2014, addresses key developments in workplace class action litigation in 2014, and assesses the implications these developments will have on litigation in 2015.
- ◆ **Significant Class Action Settlements in 2014.** This section lists the top 10 settlements in (a) private plaintiff employment discrimination lawsuits, (b) private plaintiff wage-and-hour class actions, (c) private plaintiff Employee Retirement Income Security Act (ERISA) of 1974 actions, (d) government-initiated enforcement actions and pattern or practice suits, and (e) the top 10 injunctive relief rulings issued by various courts that were a part of certain class action settlements. Items (a), (b), (c), and (d) are reproduced later in this article.
- ◆ **Significant Federal Employment Discrimination Class Action and Equal Employment Opportunity Commission (EEOC) Pattern and/or Practice Rulings.** This section of the *Report* analyzes discrimination class action cases brought under (a) Title VII of the Civil Rights Act of 1964 and (b) “pattern or practice” enforcement actions brought by the EEOC.
- ◆ **Significant Collective Action Rulings under the Age Discrimination in Employment Act (ADEA), the Fair Labor Standards Act (FLSA), and under the Employee Retirement Income Security Act (ERISA) of 1974.** Cases brought under these federal statutes constitute a substantial portion of all employment-related class action litigation. Therefore, court interpretations of these statutes are important for future cases and understanding corporate risks on the workplace front.
- ◆ **Significant State Law Class Action Rulings.** These rulings are significant because, during the past several years, plaintiffs’ attorneys have been increasingly resorting to state courts as a forum for pursuing employment-related class action litigation.
- ◆ **Rulings on the Class Action Fairness Act (CAFA).** This law facilitates removal of class actions from state court to federal court. In addition, CAFA regulates the selection of class counsel, tightens control of attorneys’ fees awarded to class counsel, toughens pleading standards, reduces the ability of class counsel to dictate the choice of forum, facilitates interlocutory appeals of class certification rulings, and regulates settlements of class actions. Given these profound effects on underlying case strategy and the structuring of class actions, the *Annual Workplace Class Action Litigation Report* analyzes CAFA-related cases.
- ◆ **Other Federal Rulings Affecting the Defense of Workplace Class Action Litigation.** Throughout 2014, federal courts issued key rulings in class action lawsuits on Rule 23 issues, which significantly impact the defense of workplace actions. As the plaintiffs’ class action bar has pressed new theories and the nature of claim allegations continues to morph, these rulings are important in formulating effective defense strategies for workplace class actions.

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The following sections offer a synopsis of the *Report's* contents.

Six Key Trends in Workplace Class Actions during 2014

The *Report* notes six important developments in class actions during 2014. They are as follows.

- 1. The U.S. Supreme Court's opinions in *Wal-Mart* and *Comcast Corp.* had a profound impact on shaping settlement strategies, a trend that continued during 2014.** Employers are settling fewer employment discrimination class actions than at any time over the past decade, and at a fraction of the levels as in 2006 to 2013. On the wage-and-hour front, settlements in the aggregate were relatively flat, and in terms of governmental enforcement litigation, settlement numbers and aggregate totals were significantly lower than in any year since 2006. In contrast, ERISA class actions experienced a renaissance of sorts, and settlement numbers were nearly 10 times greater than the aggregate amount in 2013.
- 2. The U.S. Supreme Court's opinions in *Wal-Mart* and *Comcast Corp.* also had a deep impact on shaping the course of class action litigation rulings, yet**

another trend that continued during 2014. The U.S. Supreme Court's decisions in *Wal-Mart* and *Comcast Corp.* prompted defendants to mount challenges to class certification based on all sorts of theories (and not just those modeled after the nationwide class claims rejected in *Wal-Mart* and the antitrust damages issues discussed in *Comcast Corp.*). This resulted in new types of caselaw rulings on a myriad of Rule 23-related issues. The result was a year of decisions on class action issues the likes of which have never been seen before. This wave of new caselaw is still in its infancy. As many class action issues are in a state of flux post-*Wal-Mart* and post-*Comcast Corp.*, these evolving precedents are expected to continue to develop in the coming year.

- 3. More than any other litigation risk, wage-and-hour class actions dwarfed other types of filings (as compared to employment discrimination and ERISA class actions, as well as governmental enforcement litigation).** Wage-and-hour litigation now represents the prime litigation risk in the workplace. The "crest" of the wage-and-hour litigation wave is not yet in sight. Employers can expect more of the same in terms of filings in 2015.
- 4. Fair Labor Standards Act (FLSA) collective actions and state law wage-and-hour class actions produced more decisions from federal and state courts than any other area of complex litigation.** The magnet federal jurisdictions were the Second and Ninth Circuits, and state law claims were congregated in plaintiff-friendly venues such as California, Florida, Massachusetts, New Jersey, New York, and Pennsylvania. Statistically, plaintiffs won 70 percent of first-stage conditional certification motions and won (by defeating) 52 percent of second-stage decertification motions in 2014 in federal courts.

5. The U.S. Department of Labor (DOL) and the U.S. Equal Employment Opportunity Commission (EEOC) continued their aggressive litigation approaches, albeit with mixed success.

The agencies suffered losses on a myriad of litigation issues in the federal courts in 2014, and their aggregate settlement recoveries were significantly lower in 2014 than at any time since 2006. At the same time, the EEOC’s systemic investigation program—in which the EEOC emphasizes the identification, investigation, and litigation of discrimination claims affecting large groups of “alleged victims”—expanded yet again over prior years. The EEOC’s docket of systemic suits comprises nearly 20 percent of all merits filings of 2014, and, by the end of the year, represented nearly 25 percent of the EEOC’s active litigation docket. This development is of critical importance to employers, because it evidences an agency with a laser-focus on high-impact, big-stakes litigation.

6. The year 2014 was a transformative year in caselaw developments under the Class Action Fairness Act (CAFA) of 2005. Jurisprudence under CAFA continued to mature after the U.S. Supreme Court decided its first case on the law in 2013 in *Standard Fire Co. v. Knowles*. In 2014, the Supreme Court held in *Dart Cherokee Basin Operating Co., LLC v. Owens* that defendants are not required to submit evidence in support of a removal petition under CAFA and that a short and plain statement of fact is enough. The Supreme Court also reaffirmed that there is no presumption against removals under CAFA. Caselaw under CAFA has certainly turned the corner in this regard for employers, thereby solidifying defense strategies to secure removal of class actions to federal court.

A much more thorough discussion of these trends appears within the *Report*.

Top 10 Settlements in Private Plaintiff Employment Discrimination Class Action Lawsuits

The monetary value of the top 10 private plaintiff lawsuits entered into or paid in 2014 totaled \$227.93 million, which represented a slight decrease from the prior year. By comparison, the top 10 settlements in 2013 totaled \$234.1 million.

#	Amount	Defendant
1.	\$98 million	City of New York
2.	\$53 million	Airline Pilots Association
3.	\$38 million	City of New York
4.	\$9.98 million	Social Security Administration
5.	\$8 million	Costco Wholesale Corp.
6.	\$6.5 million	Bashas’ Inc.
7.	\$6.15 million	United Airlines, Inc.
8.	\$4.3 million	City of Chicago
9.	\$2 million	Peters Township School District
10.	\$2 million	McLennan County

Top 10 Settlements in Private Plaintiff Wage-and-Hour Class Action Lawsuits

The monetary value of the top 10 private plaintiff wage-and-hour class action settlements entered into or paid in 2014 was \$215.3 million, a significant decrease from

the top 10 settlements in 2013, which totaled \$248.45 million.

#	Amount	Defendant
1.	\$56.5 million	Brinker Restaurant Corp.
2.	\$26 million	City of Los Angeles
3.	\$23 million	Walgreen Co.
4.	\$21 million	Wal-Mart Stores, Inc.
5.	\$16.5 million	Kindred Healthcare Operating, Inc.
6.	\$16 million	J.P. Morgan Chase & Co.
7.	\$15 million	Verizon California, Inc.
8.	\$15 million	Wells Fargo
9.	\$14.3 million	Roto-Rooter Services Co.
10.	\$12 million	JP Morgan Chase Bank, N.A.

Top 10 Settlements in Private Plaintiff ERISA Class Actions

For Employee Retirement Income Security Act (ERISA) class actions, the monetary value of the top 10 private settlements entered into or paid in 2013 totaled \$1.31 billion. This amount is significantly higher—a nearly ten-fold increase—than in 2013, when the total monetary value of the top 10 private settlements was \$155.6 million.

The largest ERISA class action settlements involved disputes over the breach of fiduciary duty, reducing retiree benefits, and/or investing pension or 401(k) assets into company stock.

#	Amount	Defendant
1.	\$480 million	Daimier Trucks North America, LLC
2.	\$415 million	ING Life Insurance and Annuity Co.
3.	\$140 million	Nationwide Life Insurance Co.
4.	\$82 million	Meriter Health Services
5.	\$60 million	State Street Corp.
6.	\$44 million	S.C. Johnson & Sons, Inc.
7.	\$39 million	Prudential Insurance Co. of America
8.	\$22 million	Edison Mission Energy
9.	\$19.5 million	TIAA-CREF
10.	\$17 million	Alliance Holdings, Inc.

Top 10 Settlements of Government-Initiated Enforcement Actions and Pattern or Practice Lawsuits

Based on preliminary figures for the U.S. government's 2014 fiscal year, the EEOC filed 133 new lawsuits, including 105 nonsystemic class suits (i.e., those involving fewer than 20 employee-plaintiffs) and 28 systemic pattern or practice suits (i.e., those involving 20 or more employee-plaintiffs). In 2014, the EEOC resolved 136 pending lawsuits and secured \$296.1 million in settlements for allegedly injured victims of job bias, a decrease of \$75.9 million as compared with 2013. The EEOC also received a total of 88,778 private-sector charges of discrimination, which is approximately 5,000 fewer than in 2013 (but still one

#	Amount	Defendant
1.	\$6.8 million	Chickie's & Pete's
2.	\$5.8 million	LinkedIn
3.	\$5.25 million	GreatBanc Trust
4.	\$4.9 million	MDG Design
5.	\$3.9 million	NYC Car Wash Barons
6.	\$3.3 million	Common Destiny Care Homes
7.	\$2.9 million	Larino Masonry, Inc.
8.	\$2.4 million	MacFarms, Inc.
9.	\$2.2 million	Cargill
10.	\$2 million	Pitre, Inc., d/b/a Pitre Buick/Pontiac

of the highest totals in any year since 1964). In addition, the EEOC's docket of systemic pattern or practice cases grew to more than 25 percent of the EEOC's caseload.

For all types of government-initiated enforcement actions, the monetary value of the top 10 settlements entered into or paid in 2014 totaled \$39.45 million. This was a significant decrease from 2013, as the top settlements in that year totaled \$171.6 million.

And this Is Just the Tip of the Iceberg

This article has provided only a brief sample of the depth and breadth of the information this authoritative document contains. No practitioner who deals with employment claims, whether as an underwriter, broker, risk manager, or attorney, should be without it. Even better, the Seyfarth Shaw *Annual Workplace Class Action Litigation Report*, 2015 edition, is free! For information on how to obtain a complete copy of the *Report*, see the accompanying text box or send an e-mail to gmaatman@seyfarth.com. EPLiC