

## EMPLOYMENT PRACTICES LIABILITY CONSULTANT

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

**By Bob Bregman, CPCU, MLIS, RPLU**

For the sixth consecutive year, we are pleased to offer a short summary of (what is now in its 12th edition) Seyfarth Shaw's *Annual Workplace Class Action Litigation Report*. (Read the [2015](#), [2014](#), [2013](#), [2012](#), and [2011](#) overviews.)

The *Report* is a "must-have" resource for legal research and in-depth analysis of employment-related class action litigation. Anyone who practices in this area, whether as an attorney, risk manager, underwriter, or broker, cannot afford to be without it. Importantly, the *Report* is the only publication of its kind in the United States. Adding to its utility is the fact that the 2016 edition of the *Report* is also available as an e-book. (Previously, it was published solely as a hard-bound volume or as a CD-ROM.) In short, it is "the bible" for class action legal practitioners, corporate counsel, employment practices liability insurers, and anyone who works in related areas.

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 (EEOC) pattern or practice cases. He is cochair 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. He was selected for 2 years running by Law 360 as one of the top 4 employment lawyers in the United States.

#### **A Brief Overview of What's Inside**

The exhaustive, 872-page 2016 *Annual Workplace Class Action Litigation Report* insightfully examines and analyzes a total of 1,314 class action case decisions. And, because it is also available on CD-ROM and as

This article appeared in the Spring 2016 issue of *EPLiC*. Copyright 2016 by [International Risk Management Institute, Inc.](#), 12222 Merit Dr., Suite 1600, Dallas, Texas 75251-2266, 972-960-7693, <http://www.IRMI.com>. All rights reserved. ISSN: 1529-840X. This material may be quoted or reproduced only with written permission from the publisher. The opinions expressed in *EPLiC* are those of the individual authors. Nothing published in *EPLiC* is to be construed as legal, accounting, or professional advice. If such advice is required, the services of a competent professional should be sought.

an e-book, the *Report* is fully searchable, making its comprehensive, authoritative content readily accessible. The CD-ROM and e-book formats allow 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 circuit—yet another invaluable feature that further enhances its utility.

The following is a synopsis of the 12th *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 2015, addresses key developments in workplace class action litigation in 2015, and assesses the implications these developments will have on litigation in 2016.
- ◆ **Significant Class Action Settlements in 2015.** 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 EEOC Pattern 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 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, the 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 2015, 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.

To obtain a free copy of  
**THE SEYFARTH SHAW  
ANNUAL WORKPLACE CLASS ACTION  
LITIGATION REPORT  
2016 Edition**

Send an e-mail to:  
[gmaatman@seyfarth.com](mailto:gmaatman@seyfarth.com)  
Check out Seyfarth Shaw's  
[Class Action Blog](#)

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

### **Five Key Trends in Workplace Class Actions during 2015**

The *Report* notes five important developments in class actions during 2015. They are as follows.

**1. Class action dynamics increasingly have been shaped and influenced by recent U.S. Supreme Court rulings.** During the past few years, the Supreme Court has accepted more cases for review and issued more rulings than ever before, involving cases impacting the prosecution and defense of class actions and government enforcement litigation. More such cases are poised for rulings in 2016. Despite the Supreme Court's reputation for being probusiness, its array of rulings concerning workplace class action issues is anything but one-dimensional. While some rulings may be considered hostile to the expansive use of Rule 23, others are hospitable and in fact strengthen the availability of class actions. Moreover, the Supreme Court has declined several cases in which it would have had the opportunity to impose additional restraints on class actions. Thus, given its range of rulings during the last several years, it cannot be said that

the Supreme Court is either probusiness or proworker regarding class actions.

- 2. The monetary value of employment-related class action settlements reached an all-time high in 2015.** The class actions brought by both the plaintiffs' employment class action bar and governmental enforcement litigators produced settlements that reached unprecedented levels during 2015. The top 10 settlements in various employment-related categories totaled \$2.48 billion in 2015, versus \$1.87 billion in 2014. And because successful class action litigation often serves to encourage the filing of additional class actions by "copycat" litigants, it is expected that 2016 will witness the filing of even more class actions than in previous years.
- 3. Federal and state courts issued more favorable class certification rulings for the plaintiffs' bar in 2015 than in past years.** In addition to converting their class certification rulings into class action settlements with higher values and payouts, plaintiffs' lawyers continued to craft refined and more successful class certification theories to counter the more stringent Rule 23 certification requirements established in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), and *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013). In the areas of employment discrimination, wage and hour, and ERISA class actions, the plaintiffs' bar scored exceedingly well in securing class certification rulings in 2015. In sum, class actions continue to be certified in significant numbers and certain "magnet" jurisdictions continue to issue decisions that encourage—or, in effect, force—the resolution of large numbers of claims through class action mechanisms.
- 4. Complex employment-related litigation filings are up from past years,**

but by far and away, wage and hour class actions and collective actions are the leading type of “high stakes” lawsuits being pursued by the plaintiffs’ bar. Case filing statistics for 2015 indicated that wage and hour litigation outpaced all other categories of lawsuits, increased yet again over the past year, and with no apparent end to these increases in sight. Additional factors set to converge during 2016 include new Fair Labor Standards Act (FLSA) regulations, the impact of digital technology, and increased scrutiny of independent contractor and joint employer relationships. In combination, these trends are expected to drive corporate America’s exposures to wage and hour claims even higher.

**5. Government enforcement lawsuits brought by the Department of Labor (DOL) and EEOC continued the aggressive litigation programs of both agencies.** Settlement numbers for government enforcement litigation in 2015 increased substantially over 2014, as did the litigation dockets of the DOL and the EEOC. This trend is critical to employers, as both agencies focus on “big impact” lawsuits against companies and “lead by example” in terms of areas that the private plaintiffs’ bar aims to pursue.

A thorough, in-depth analysis 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 2015 totaled \$295.57 million, which represented a significant increase from the prior year. By comparison, the top 10 settlements in 2014 totaled \$227.93 million, while in 2013 they totaled \$234.1 million.

#	Amount	Defendant
1.	\$128 million	City of New York
2.	\$76.3 million	City of New York
3.	\$37 million	Lawrence Livermore National Security, LLC
4.	\$22 million	Signal International LLC
5.	\$8.2 million	Daichi Sankyo, Inc.
6.	\$8 million	Novartis AG
7.	\$7.8 million	City of Chicago
8.	\$3 million	BAE Systems Norfolk Ship Repair, Inc.
9.	\$2.87 million	Publicas Group
10.	\$2.4 million	Daimler Trucks North America LLC

### **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 2015 was \$463.6 million, a significant increase from the top 10 settlements in 2014, which totaled \$215 million, and in 2013, which totaled \$248.45 million.

#	Amount	Defendant
1.	\$225 million	Fed Ex Ground Package System, Inc.
2.	\$80 million	U.S. Indian Health Services
3.	\$36 million	Bank of America Corp.
4.	\$30 million	Publix Super Markets, Inc.
5.	\$28 million	Schneider National Carriers, Inc.
6.	\$16.5 million	Bob Evans Farms, Inc.
7.	\$15 million	RCI Hospitality Holdings, Inc.
8.	\$13.1 million	Southeastern Pennsylvania Transportation Authority
9.	\$10 million	Source Refrigeration & HVAC, Inc.
10.	\$10 million	Dick’s Sporting Goods, Inc.

## 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 2015 totaled \$926.5 million. This amount was down slightly from 2014, when the total monetary value of the top 10 private settlements reached \$1.31 billion. In 2013, the top 10 settlements totaled \$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.	\$345.5 million	United Automobile Aerospace and Agricultural Implement Workers of America
2.	\$140 million	Nationwide Life Insurance Co.
3.	\$90 million	The Boeing Co.
4.	\$82 million	Meriter Health Services Employee Retirement Plan
5.	\$62 million	Lockheed Martin Corp.
6.	\$57 million	The Boeing Co.
7.	\$40 million	American International Group, Inc.
8.	\$36 million	Northern Trust Investments N.A.
9.	\$33 million	FreightCar America, Inc.
10.	\$32 million	Novant Health, Inc.

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

Based on preliminary figures for the U.S. government's 2015 fiscal year, the EEOC filed 142 new lawsuits, including 26 nonsystemic class suits (i.e., those involving fewer than 20 employee-plaintiffs) and 16 systemic pattern or practice suits (i.e., those involving 20 or more

employee-plaintiffs). In 2015, the EEOC resolved 155 pending lawsuits and secured \$65.3 million in settlements for allegedly injured victims of job bias, an increase of \$42.8 million as compared with 2014. The EEOC also received a total of 89,385 private sector charges of discrimination, which was approximately 600 more charges than in 2014 (and one 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 20 percent of the EEOC's caseload.

The Department of Labor (DOL) was equally aggressive in 2015. It recovered \$246.8 million in back wages for 240,340 workers, an increase of \$6.8 million in recoveries over 2014. The back wages collected in 2015 stemmed primarily from FLSA enforcement, as \$137.7 million was for overtime violations and \$37.8 million was for minimum wage violations. For enforcement of ERISA, recoveries were \$837.5 million.

For all types of government-initiated enforcement actions, the monetary value of the top 10 settlements entered into or paid in 2015 totaled \$82.8 million. This was a significant increase over 2014, when the top 10 settlements in that year totaled \$39.45 million, but was lower than the top 10 settlements in 2013, which totaled \$171.6 million.

#	Amount	Defendant
1.	\$18.3 million	Halliburton, Inc.
2.	\$14.5 million	Patterson-UTI Drilling Company, LLC
3.	\$13 million	General Information Services, Inc.
4.	\$12.7 million	Local 28, Sheet Metal Workers' International Association
5.	\$5 million	National Consolidated Couriers, Inc.
6.	\$5 million	Signal International LLC
7.	\$4 million	Hillshire Brands Co.
8.	\$3.8 million	Consolidated Edison of New York
9.	\$3.5 million	Masse Contracting
10.	\$3 million	Stanford Yellow Taxi Cab

## 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, comprehensive report 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*, 2016 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](mailto:gmaatman@seyfarth.com). EPLiC