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Justices Rule for Wal-Mart in Class-Action Bias Case

By ADAM LIPTAK

WASHINGTON — The Supreme Court on Monday threw out an enormous employment discrimination class-action suit against Wal-Mart that had sought billions of dollars on behalf of as many as 1.5 million female workers.

The suit claimed that Wal-Mart's policies and practices had led to countless discriminatory decisions over pay and promotions.

The court divided 5 to 4 along ideological lines on the basic question in the case — whether the suit satisfied a requirement of the class-action rules that "there are questions of law or fact common to the class" of female employees. The court's five more conservative justices said no, shutting down the suit and limiting the ability of other plaintiffs to band together in large class actions.

The court was unanimous, however, in saying that the plaintiffs' lawyers had improperly sued under a part of the class-action rules that was not primarily concerned with monetary claims.

Business groups welcomed the decision, and labor and consumer groups strongly criticized it. But all agreed it was momentous.

"This is without a doubt the most important class-action case in more than a decade," said Robin S. Conrad, a lawyer with the litigation unit of the United States Chamber of Commerce, the business advocacy group.

The court did not decide whether Wal-Mart had, in fact, discriminated against the women, only that they could not proceed as a class. The court's decision on that issue will almost certainly affect all sorts of other class-action suits, including ones brought by investors and consumers, because it tightened the definition of what constituted a common issue for a class action and said that judges must often consider the merits of plaintiffs' claims in deciding whether they may proceed as a class.

"You will have people invoking the decision in lots of different cases," said Brian T.

Fitzpatrick, a law professor at Vanderbilt University specializing in class-action law. "The Supreme Court has said that it's O.K. to look at the merits of the lawsuit to decide whether to allow it to go forward at the earliest possible moment."

Justice Antonin Scalia, writing for the majority, said the women suing Wal-Mart could not show that they would receive "a common answer to the crucial question, *why was I disfavored?*" He noted that the company, the nation's largest private employer, operated some 3,400 stores, had an expressed policy forbidding discrimination and granted local managers substantial discretion.

"On its face, of course, that is just the opposite of a uniform employment practice that would provide the commonality needed for a class action," Justice Scalia wrote. "It is a policy *against having* uniform employment practices."

The case involved "literally millions of employment decisions," Justice Scalia wrote, and the plaintiffs were required to point to "some glue holding the alleged reasons for all those decisions together."

The plaintiffs sought to make that case with testimony from William T. Bielby, a sociologist specializing in social framework analysis.

Professor Bielby told a lower court that he had collected general "scientific evidence about gender bias, stereotypes and the structure and dynamics of gender inequality in organizations." He said he also had reviewed extensive litigation materials gathered by the lawyers in the case.

He concluded that Wal-Mart's culture might foster pay and other disparities through a centralized personnel policy that allowed for subjective decisions by local managers. Such practices, he argued, allowed stereotypes to sway personnel choices, making "decisions about compensation and promotion vulnerable to gender bias."

Justice Scalia rejected the testimony, which he called crucial to the plaintiffs' case.

"It is worlds away," he wrote, "from 'significant proof' that Wal-Mart 'operated under a general policy of discrimination.' "

Nor was Justice Scalia impressed with the anecdotal and statistical evidence offered.

One of the plaintiffs named in the suit, Christine Kwapnoski, had testified, for instance, that a male manager yelled at female employees but not male ones, and had instructed her to "doll up." Justice Scalia said that scattered anecdotes — "about 1 for every 12,500 class members," he wrote — were insignificant.

He added that statistics showing pay and promotion gaps between male and female workers were insufficient to show common issues among the plaintiffs, because

discrimination was not the only possible explanation. “Some managers will claim that the availability of women, or qualified women, or interested women, in their stores’ area does not mirror the national or regional statistics,” Justice Scalia wrote. “And almost all of them will claim to have been applying some sex-neutral, performance-based criteria — whose nature and effects will differ from store to store.” Joseph M. Sellers, a lawyer for the plaintiffs, said the majority had “reversed about 40 years of jurisprudence that has in the past allowed for companywide cases to be brought challenging common practices that have a disparate effect, that have adversely affected women and other workers.”

A lawyer for Wal-Mart, Theodore J. Boutrous Jr., said the decision was “an extremely important victory not just for Wal-Mart but for all companies who do business in the United States, large and small, and their employees, too.”

Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Clarence Thomas and Samuel A. Alito Jr. joined Justice Scalia’s majority opinion on the broader point. But the court unanimously rejected the plaintiffs’ effort to proceed under a part of the class-action rules concerned mainly with court declarations and orders as opposed to money, one that did not require notice to the class or provide the ability to opt out of it.

Justice Ruth Bader Ginsburg, joined by Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan, dissented in part. Justice Ginsburg said the court had gone too far in its broader ruling in the case, Wal-Mart Stores v. Dukes, No. 10-277.

She would have allowed the plaintiffs to try to make their case under another part of the class-action rules. “The court, however, disqualifies the class at the starting gate” by ruling that there are no common issues, she wrote.

She added that both the statistics presented by the plaintiffs and their individual accounts were evidence that “gender bias suffused Wal-Mart’s corporate culture.” She said, for instance, that women filled 70 percent of the hourly jobs but only 33 percent of management positions and that “senior management often refer to female associates as ‘little Janie Qs.’ ”

“The practice of delegating to supervisors large discretion to make personnel decisions, uncontrolled by formal standards, has long been known to have the potential to produce disparate effects,” she wrote. “Managers, like all humankind, may be prey to biases of which they are unaware.”

Stephanie Clifford contributed reporting.