

Wal-Mart will Seek further appellate review in gender class action lawsuit

by Bend Weekly News Sources

Wal-Mart Stores, Inc. announced this week that it will seek rehearing of Tuesday's decision by a divided three-judge panel of the United States Court of Appeals for the Ninth Circuit in the case of Betty Dukes, et al. v. Wal-Mart Stores, Inc. Wal-Mart is entitled to ask a larger panel of judges on the Court of Appeals to rehear arguments in the case and issue a new decision.

"The Court of Appeals' decision today is about a technical legal issue," said Theodore J. Boutros, Jr., partner at Gibson, Dunn & Crutcher LLP and lead counsel for Wal-Mart's appeal. "The Court's ruling does not address the merits of the plaintiffs' claims, or whether their allegations are true, but rather addresses whether the case meets the technical legal requirements to move forward as a class action. This is just another step in what will be a very long process, and we are still in the early stages of the case. We are optimistic about our chances for obtaining relief from this ruling as the case progresses.

"The panel's decision contradicts numerous decisions from the Supreme Court and the Ninth Circuit itself. Moreover, it clashes with a wave of recent decisions from federal courts around the country that have flatly rejected the district court's approach. The plaintiffs' lawyers persuaded the panel to accept a theory that would force employers to make decisions based on statistics, not merit, and would deny employers their basic due process rights. Wal-Mart will therefore seek rehearing of the panel's decision and, if necessary, review by the Supreme Court," Boutros said.

As Judge Andrew Kleinfeld stated in his dissent, this class certification "deprives Wal-Mart of due process of law," and is "unprecedented." He added, "This class lacks commonality because there are no questions of fact or law common to the class."

"We have analyzed today's decision by the Court of Appeals and our view of the merits of the case has not changed," said Tom Schoewe, executive vice president and chief financial officer. "This decision will have no impact on our fiscal year 2007 financial performance and does not require the company to take any action that will increase its cost of operations."

Susan Chambers, executive vice president of Wal-Mart's Human Resources Division, said, "Wal-Mart has strong equal employment opportunity policies, and fosters female leadership both among its associates and in the larger business world. The claims of the six named plaintiffs simply are not representative of the experiences of women working at Wal-Mart, including my own, and today's decision has nothing to do with whether the plaintiffs' allegations are true."