

US SUPREME COURT OPENS DOOR TO GROUP EVIDENCE BUT RAMIFICATIONS UNCLEAR

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Legal Briefings

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A recent US Supreme Court decision opens the door, albeit narrowly, for class-action plaintiffs to rely on group evidence, rather than their individual circumstances.

Handed down in March 2016, the decision means it is likely to be easier for plaintiffs to use representative sampling and statistical modeling to establish a defendant's liability.

The Court's ruling affirmed a jury verdict in favor of a class of plaintiffs who used representative sampling – rather than individualised evidence – to establish the defendants' liability. It is notable, however, that the Court took care to emphasise the narrow scope and fact-specific nature of its opinion, and explicitly declined to establish a general rule regarding the use of representative or statistical evidence in class action litigation. As a result, the key question of whether the decision extends much beyond the specific facts at issue remains unanswered.

CASE STUDY - *TYSON FOODS, INC. V. BOUAPHAKEO*

Bouaphakeo is a wage and hour class action brought by employees of a meat-processing plant who claimed that Tyson Foods was violating the Fair Labor Standards Act (**FLSA**). The claim related to overtime not being paid for the time employees spent 'donning and doffing' protective gear at the beginning and end of their work shifts.

Because Tyson Foods did not maintain time records for this, the employees presented a statistical report that used representative sampling to determine the average time they took donning and doffing protective gear. Based on this report, the jury delivered a verdict in favour of the employees.

SUPREME COURT'S RULING

The Supreme Court upheld the plaintiffs' use of the statistical analysis as a valid way to prove how many uncompensated hours the employees had worked, given that the employer failed to maintain donning and doffing time records. The Court held that because the statistical analysis used by the class action plaintiffs could have been used by an employee in an individual FLSA lawsuit (to prove how many uncompensated hours the employee worked), it was equally permissible for the class-action plaintiffs to use the statistical analysis.

While the Court's decision was helpful for the Tyson Food employees, it may not prove helpful to future class action plaintiffs.

This is because the Court declined to establish a general rule governing the use of statistical analyses in class action lawsuits. Instead, the Court held that the proper use of statistical analysis in a class action litigation will depend on the underlying law and the specific facts of the case. For example, the purpose of the analysis, how it helps prove the plaintiffs' legal claim, and whether using the analysis would prevent the defendant from arguing that certain class members are not entitled to a legal remedy.

The Court also did not answer a question stemming from the use of representative sampling: *how do you allocate the jury's verdict so that only those employees who actually worked uncompensated hours receive part of the award?*

The Court instructed the trial court to address that question. If the trial court determines that there is no way to allocate the award without potentially compensating some employees who did not work uncompensated hours, the Supreme Court may have to address whether such an award is constitutional.

While the Supreme Court's decision has resulted in much uncertainty, it is clear that whatever the ramifications, they will be closely scrutinised.

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