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**Seyfarth Shaw's Fifth Annual Workplace Class Action Litigation Report Shows Financial Stakes in Workplace Class Action Litigation Continue to Surge**

*Economic meltdown and continued fallout from the financial crisis expected to drive further ERISA and other workplace class action litigation in 2009.*

Chicago, IL (January 13, 2009)—The fifth Annual Workplace Class Action Litigation Report by Seyfarth Shaw LLP, one of America's leading full-service law firms, analyzes the foremost class action and collective action decisions of 2008 involving claims against employers in federal and state courts. The key class action and collective action settlements over the past year are also analyzed, both in terms of gross settlement dollars in private plaintiff and government-initiated lawsuits, as well as injunctive relief provisions in consent decrees. Seyfarth Shaw's fifth Annual Workplace Class Action Litigation Report analyzes 650 decisions in its comprehensive examination of class action litigation.

"The findings in this year's report illustrate that the trend we've analyzed for the past few years continues unabated: there is an explosion in class action and collective action litigation involving workplace issues," said J. Stephen Poor, Chair and Managing Partner of Seyfarth Shaw. "The present downturn in the economic climate is likely to fuel even more lawsuits, and the financial risks in this type of employment litigation can be enormous."

The report represents the collective contributions of a significant number of attorneys at Seyfarth Shaw, overseen by its General Editor Gerald L. Maatman, Jr., Co-Chair, Complex Discrimination Litigation Practice Group of Seyfarth Shaw. Their work highlights five key trends manifesting themselves in the federal and state courts in 2008:

- **First**, the financial meltdown of the economy during 2008 fueled more class action litigation.
  - The plaintiffs' bar increased the pace of ERISA class action filings seeking recovery for 401(k) losses.
  - As lay-offs increased at a precipitous rate, displaced workers filed more age discrimination and Worker Adjustment and Retraining Notification lawsuits.
- **Second**, job displacements caused by the troubled economy brought further exposure to workplace litigation for employers.
- **Third**, the volume of wage and hour litigation continues to increase exponentially.
  - Collective actions pursued in federal court under the Fair Labor Standards Act ("FLSA") outnumbered all other types of private class actions in employment-related cases.
  - The most significant growth in wage and hour litigation centered at the state court level, and especially in California, Florida, Illinois, New Jersey, New York, Massachusetts, Pennsylvania, and Texas.
- **Fourth**, the Class Action Fairness Act of 2005 ("CAFA") continued to have significant effects on workplace litigation, primarily wage and hour class actions filed in state court.
- **Fifth**, the financial stakes in workplace class action litigation increased yet again in 2008.
  - Plaintiffs' lawyers have continued to push the envelope in crafting damages theories to expand the size of classes and the scope of recoveries.
  - These strategies resulted in a series of massive settlements in nationwide class actions, especially in ERISA class action resolutions.

Lawsuits examined in the report were filed in federal courts under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, and a host of other federal statutes applicable to workplace issues. The Report also analyzes class action and collective action rulings involving claims brought against employers in all fifty state court systems, including decisions pertaining to employment laws, wage and hour laws, and breach of employment contract actions. The report also discusses important federal and state court rulings in non-workplace cases which are significant in their impact on the defense of workplace class action litigation.

“Business executives, EPLI and fiduciary liability insurance carriers, and corporate counsel have come to rely on Seyfarth Shaw’s Workplace Class Action Litigation Report as their ‘go-to’ reference guide to explain the latest trends in complex employment litigation,” stated Maatman. “Employers can expect that class action and collective action lawsuits will increasingly become ever more sophisticated and combine claims under multiple statutes, thereby requiring the defense bar to have a cross-disciplinary understanding of substantive employment law.” Further, Maatman indicated that “given the enormous financial stakes, pro-active planning and legal compliance programs—to get ahead of class action risks—are of paramount importance to companies in 2009.”

Seyfarth Shaw’s annual compendium is the only report analyzing workplace class action rulings on a national basis. The report encompasses all key 2008 rulings, including those issued through the last week of December 2008. The report is designed to be user-friendly to readers confronting this complex area, and is divided into the following chapters: Overview of the Year in Workplace Class Action Litigation; Significant Class Action Settlements; Significant Federal Employment Discrimination Class Action and EEOC Pattern or Practice Rulings; Significant Collective Action Rulings Under the Age Discrimination in Employment Act; Significant Collective Action Rulings Under the Fair Labor Standards Act; Significant Class Action Rulings Under the Employee Retirement Income Security Act of 1974; Significant State Law Class Action Rulings; and Significant Rulings on the Class Action Fairness Act.

The report also includes an analysis of the “top ten” class action and collective action settlements during 2008. Plaintiffs’ lawyers secured hefty settlements in 2008 for employment discrimination, wage and hour, and ERISA class actions. The top ten settlements totaled over \$18.184 billion. As compared to 2007, settlement totals decreased for the top ten employment discrimination and wage and hour class action settlements, but increased for the top ten ERISA class action settlements.

- For employment discrimination class actions, the monetary value of the top ten private plaintiff settlements entered into or paid in 2008 totaled \$118.36 million. By comparison, the top ten settlements in 2007 totaled \$202.1 million.
- For wage and hour class actions, the monetary value of the top ten private settlements entered into or paid in 2008 totaled \$252.7 million. By comparison, the top ten settlements in 2007 totaled \$319.3 million.
- For ERISA class actions, the monetary value of top ten private plaintiff settlements entered into or paid in 2008 totaled \$17.7 billion. By comparison, the top ten settlements in 2007 totaled \$1.818 billion.

Additional trends to note from 2008

- While shareholder and securities class action filings experienced an up-tick in 2008, employment-related class action filings increased significantly. Anecdotally, surveys of corporate counsel confirmed that workplace litigation—and especially class action and multi-plaintiff lawsuits—continues as the chief exposure driving corporate legal budget expenditures.
- The plaintiffs’ bar increasingly used theories to seek certification of “punitive damages”-only classes under Rule 23(b)(2), as well as pressing for certification of mega-classes involving pay and promotion claims of employees in multiple company facilities on a nationwide basis. Outside of the Ninth Circuit, employers fought these theories with good success, as 2008 witnessed many pro-employer victories in class certification battles.

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- FLSA collective action litigation increased again in 2008 and far outpaced employment discrimination class action filings. The increase in filings suggests that workers and their attorneys are bypassing the violations-reporting system at the U.S. Department of Labor and bringing private lawsuits in the pursuit of more lucrative resolutions. Given the trickle-down phenomenon of class action settlements (and the increased awareness of wage & hour issues by workers), it is expected that the pursuit of nationwide FLSA collective actions by the plaintiffs' bar will continue in 2009.
- More than any other area of workplace litigation, ERISA class actions took center stage in 2008 as case filings surged and settlements led all other types of class actions. While the top ten ERISA class action settlements totaled \$1.818 billion in 2007, they increased exponentially in 2008 to \$17.7 billion. Plaintiffs' lawyers bringing ERISA class claims increasingly are pursuing two broad categories of cases, including "stock drop" suits in which the ERISA plan participants complain of the availability of employer stock as an investment option, and "plan administration" suits in which participants challenge excessive advisory fees and other mechanics of how the plan is run.

To request a copy of the 665-page report on CD-ROM, please visit [www.seyfarth.com/ClassActionReport](http://www.seyfarth.com/ClassActionReport) or e-mail [ClassActionReport@seyfarth.com](mailto:ClassActionReport@seyfarth.com).

Seyfarth Shaw has over 750 attorneys located in nine offices throughout the United States including Chicago; New York; Boston; Washington, D.C.; Atlanta; Houston; Los Angeles; San Francisco and Sacramento; as well as Brussels, Belgium. The firm provides a broad range of legal services in the areas of labor and employment, business services, employee benefits and litigation. Seyfarth Shaw's practice reflects virtually every industry and segment of the country's business and social fabric. Clients include over 300 of the *Fortune* 500 companies, financial institutions, newspapers and other media, hotels, health care organizations, airlines and railroads. The firm also represents a number of federal, state, and local governmental and educational entities. For more information, please visit [www.seyfarth.com](http://www.seyfarth.com).

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