

August 31, 2004

## California Supreme Court Reverses Pro-Employer Decision on Class Certification

On August 26, 2004, the California Supreme Court issued the long-awaited decision in *Sav-On Drug Stores, Inc. v. Superior Court* addressing class certification in a case alleging that a group of employees has been misclassified as exempt from the overtime requirements.

The decision certainly was less favorable to employers than we had hoped it would be, although the decision may not be as damaging as some of the press reports have suggested. In a pro-employer decision, the California Court of Appeal had struck down an order of a trial court certifying a class of store managers.

The California Supreme Court reversed, holding that the Court of Appeal lacked sufficient grounds to overturn the trial court's original order certifying the class.

The *Sav-On* plaintiffs had alleged that the store manager positions at issue were uniformly misclassified as exempt. The trial court granted certification, finding that issues subject to common proof predominated over individualized issues.

In reversing the trial court, the Court of Appeal had held that no substantial evidence supported the trial court's conclusion that common issues predominated, because the predominant issue was how individual store managers divided their time between exempt and nonexempt duties.

Because only store managers who spent *less than half their time* on exempt duties were misclassified as exempt, the Court of Appeal held that to resolve the case would require the court to conduct individual trials to determine how each manager spent the workday.

In reversing, the California Supreme Court ("the *Sav-On* court") emphasized that the Court of Appeal had given insufficient deference to the trial court's determination that common issues predominated. The *Sav-On* court clarified that if a reasonable person *might* conclude from the record that common issues predominated over individualized ones, then a certification order should not be disturbed on appeal.

The *Sav-On* court also suggested that the reverse would be true, in that a trial court's order denying certification was entitled to similar deference: "We need not conclude that plaintiff's evidence is compelling, or even that the trial court would have abused its discretion if it had credited defendant's evidence instead."

The *Sav-On* court identified several issues that were subject to "common proof," meaning that they would apply across the board to all the store managers:

- ◆ Whether the defendant had a deliberate policy to misclassify nonexempt employees as exempt.
- ◆ Whether the defendant implicitly conceded all the employees were nonexempt when it reclassified all the employees at issue as nonexempt in 1999.
- ◆ Whether any given task within the limited universe of tasks that managers performed qualifies as exempt or nonexempt.
- ◆ Whether a manager following the defendant's reasonable expectation for performing the job would spend the majority of his or her time on exempt duties.

The *Sav-On* court held that a trial court was empowered, but not required, to conclude that those common issues predominated over the individualized issues concerning how individual managers actually spent their time.

Dismissing concerns that these cases could prove unmanageable, the court further noted that the trial court had broad discretion as to how to handle individualized issues once the class issues were resolved. The court gave minimal guidance as to how those proceedings would be carried out, but it encouraged trial courts to be "procedurally innovative" in fashioning procedures to resolve remaining individualized issues efficiently.

The opinion has a procertification tone, stating that class actions are "encouraged" in the wage-hour context. However, the *Sav-On* court did not actually set forth a

standard for certifying wage-and-hour class actions materially different from the standard governing other class actions.

Most notably, the *Sav-On* court did not retreat from its recent opinion in *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096 (2003), which held generally that class certification is inappropriate where individual class members would be required to “individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment.”

Instead, the *Sav-On* opinion clarified that these decisions regarding predominance are for the trial court to determine, and the trial court’s decisions should not be lightly overturned. Accordingly, a defendant still may have the potential to defeat certification by persuading a trial court that numerous and substantial issues exist that cannot be resolved on a class basis.

That being said, we expect that many judges who would have been more on the fence on the issue of certifying a class in a manager exemption case will be more likely to certify a class post *Sav-On*. Although *Sav-On* does not instruct trial courts to certify classes, it certainly does nothing to indicate that such classes are typically inappropriate for certification. As a result, we expect that *Sav-On* will lead to more classes being certified in class actions of this kind.

As for class actions involving misclassification of store managers in particular, the *Sav-On* court made some statements that California employers must keep in mind when faced with a lawsuit alleging misclassification of a group of employees in the same position. Most notably, the *Sav-On* court suggested that if an employer categorically reclassified all the subject employees as nonexempt without changing their duties, that could be taken as an admission that the position had been misclassified all along.

The court also suggested that class treatment could be supported by the fact the employer failed ever to audit the performance of its exempt employees to see if particular employees truly *were* functioning in an exempt capacity.

Because of the above statements in the *Sav-On* decision, we would recommend that companies with large populations of exempt working managers consider conducting an audit to ensure that those managers have not been misclassified.

Moreover, we suggest that employers who are already in class litigation — who are considering whether to reclassify the putative class members as nonexempt — take into account that, even though doing so might cut off liability going forward, it could also *increase the chance* of the class being certified.

#### ATLANTA

One Peachtree Pointe  
1545 Peachtree Street, N.E., Suite 700  
Atlanta, Georgia 30309-2401  
404-885-1500  
404-892-7056 fax

#### BOSTON

Two Seaport Lane, Suite 300  
Boston, Massachusetts 02210-2028  
617-946-4800  
617-946-4801 fax

#### CHICAGO

55 East Monroe Street, Suite 4200  
Chicago, Illinois 60603-5803  
312-346-8000  
312-269-8869 fax

#### HOUSTON

700 Louisiana Street, Suite 3700  
Houston, Texas 77002-2797  
713-225-2300  
713-225-2340 fax

#### LOS ANGELES

One Century Plaza  
2029 Century Park East, Suite 3300  
Los Angeles, California 90067-3063  
310-277-7200  
310-201-5219 fax

#### NEW YORK

1270 Avenue of the Americas, Suite 2500  
New York, New York 10020-1801  
212-218-5500  
212-218-5526 fax

#### SACRAMENTO

400 Capitol Mall, Suite 2350  
Sacramento, California 95814-4428  
916-448-0159  
916-558-4839 fax

#### SAN FRANCISCO

560 Mission Street, Suite 3100  
San Francisco, California 94105  
415-397-2823  
415-397-8549 fax

#### WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500  
Washington, D.C. 20006-4004  
202-463-2400  
202-828-5393 fax

#### BRUSSELS

Boulevard du Souverain 280  
1160 Brussels, Belgium  
(32)(2)647.60.25  
(32)(2)640.70.71 fax

---

This newsletter is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact the firm’s Labor and Employment Practice Group.