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Seyfarth Shaw's Sixth Annual Workplace Class Action Litigation Report Shows Unabated Climb In Financial Stakes In Workplace Class Action Litigation

Increasingly sophisticated class action and collective action litigation, combined with aggressive government enforcement, means that employers are apt to face more claims and bigger exposures in 2010.

Chicago, IL (January 12, 2010)—The sixth annual *Workplace Class Action Litigation Report* by Seyfarth Shaw LLP, one of America's leading full-service law firms, analyzes class action and collective action court rulings of 2009 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. The report analyzes 715 decisions in its comprehensive analysis of class action litigation rulings.

"Since we began publishing this annual report six years ago, both the number of cases filed and the financial exposure that they pose to companies has increased exponentially," said J. Stephen Poor, Chair and Managing Partner of Seyfarth Shaw. "As plaintiffs' attorneys bring increasingly sophisticated litigation against employers that combine claims under multiple statutes, the financial exposure is only going to become greater for businesses."

The report is the sole compendium in the U.S. dedicated exclusively to workplace class action litigation. It represents the collective contributions of a significant number of attorneys at Seyfarth Shaw, overseen by the report's General Editor, Gerald L. Maatman, Jr., Co-Chair, Complex Discrimination Litigation Practice Group.

"Seyfarth Shaw's *Workplace Class Action Litigation Report* has become the trusted 'go-to' reference guide to explain the latest trends in complex employment litigation," stated Maatman. "One certain conclusion drawn from this year's report is that employment law class action and collective action litigation is becoming ever more sophisticated and will continue to be a source of significant financial exposure to employers well into the future. The plaintiffs' class action bar is a tight-knit group, and successful strategies utilized by plaintiffs morph and migrate quickly through other areas of workplace litigation." Further, Maatman indicated that "given the enormous financial stakes, pro-active planning and legal compliance programs—to get ahead of class action risks—are critically important for businesses in 2010."

This year's report highlights six key trends in federal and state courts in 2009:

- **First**, the plaintiffs' bar increased the pace of the Fair Labor Standards Act ("FLSA") collective action and the Employee Retirement Income Security Act ("ERISA") class action filings seeking recovery for unpaid wages and 401(k) losses. As lay-offs increased, displaced workers also filed more age discrimination and Worker Adjustment and Retraining Notification lawsuits. ***Even more litigation is expected in 2010, as businesses re-tool their operations.***
- **Second**, wage & hour litigation continued to out-pace all other types of workplace class actions. Collective actions pursued in federal court under FLSA outnumbered all other types of private class actions in employment-related cases. Significant growth in wage & hour litigation also was centered at the state court level, and especially in California, Florida, Illinois, New Jersey, New York, Massachusetts, Minnesota, Pennsylvania, and Washington. ***This trend is likely to continue in 2010.***
- **Third**, the change in Presidential Administrations created heightened workplace litigation exposures for employers. The Obama Administration's emphasis on regulation and enforcement also spawned more government-initiated litigation over workplace issues. ***It is expected that employers will encounter more investigations - and more governmental enforcement lawsuits - in 2010 as the newly augmented staffs of the DOL and EEOC carry out their law enforcement functions.***

- **Fourth**, the Class Action Fairness Act of 2005 (“CAFA”) continued to have significant effects on workplace litigation, and most significantly on wage & hour class actions filed in state court. As the plaintiffs’ bar continues to devise techniques to adapt to the CAFA, rulings on the scope, meaning, and application of the law are already numerous for a statute of such recent vintage.
- **Fifth**, class action plaintiffs’ lawyers are a tight-knit community, which fosters quick evolution in case theories, and, in turn, impacts defense litigation strategies. As a result, cutting-edge developments are spreading rapidly throughout the substantive areas encompassed by workplace class action law.
- **Sixth** and finally, the financial stakes in workplace class action litigation increased in 2009. 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, particularly in the context of wage & hour litigation. *This trend is also unlikely to abate in 2010.*

The 2010 Report analyzes the leading class action and collective action decisions of 2009 involving claims against employers brought in federal courts under Title VII of the Civil Rights Act of 1964 (“Title VII”), the Age Discrimination in Employment Act (“ADEA”), the Fair Labor Standards Act (“FLSA”), the Employee Retirement Income Security Act (“ERISA”), 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 & hour laws, and breach of employment contract actions. 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. Finally, 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. In total, there are 715 decisions analyzed in the Report.

The report encompasses all key 2009 rulings. 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; Significant Rulings on the Class Action Fairness Act; and Other Significant Federal Class Action Rulings Affecting the Defense of Workplace Class Actions.

Similar to the trend over the last several years, the plaintiffs’ bar and government enforcement attorneys obtained many significant settlements in 2009. Particularly in the areas of wage & hour and governmental enforcement actions, the settlements were for very significant amounts and represent increases over settlements obtained in 2008. An entire chapter of the Report evaluates the top 10 private plaintiff-initiated monetary settlements, government initiated monetary settlements, and noteworthy injunctive relief provisions in class action settlements.

Top ten private plaintiff-initiated monetary settlements, government-initiated monetary settlements, and noteworthy injunctive relief provisions in class action settlements:

- **Employment Discrimination:** The monetary value of the top ten private plaintiff settlements entered into or paid in 2009 totaled \$86.2 million. This represented a slight drop from the last 2 years. By comparison, the top ten settlements in 2008 totaled \$118.36 million.
- **Wage & Hour:** The monetary value of the top ten private settlements entered into or paid in 2009 totaled \$363.6 million, up significantly from the top ten settlements in 2008, which totaled \$252.7 million.
- **ERISA:** The monetary value of the top ten private settlements entered into or paid in 2009 totaled \$499.5 million. This overall amount is down from 2008, when the total monetary value of the top ten private settlements reached \$17.7 billion (though this figure included three massive one-time VEBA settlements in 2008 of over \$17.4 billion, so that comparatively, ERISA class settlements are actually greater in 2009 overall).

- **Government-Enforcement Actions:** Based on preliminary figures for the U.S. Government's 2009 fiscal year, the EEOC filed 281 new lawsuits, resolved 319 pending lawsuits, and secured \$294.1 million in settlements for allegedly injured victims of job bias. As of September 30, 2009 (the end of the U.S. Government's fiscal year), 39 Commissioner's charges were being investigated, compared with 15 Commissioner's charges in April 2006, the month before the EEOC established its systemic discrimination program. In addition, the EEOC's docket of systemic, pattern or practice cases more than doubled over fiscal year 2008. For all types of government-initiated enforcement actions, the monetary value of the top ten settlements entered into or paid in 2009 totaled \$107.1 million. This entailed a significant increase over 2008, as the top ten settlements in 2008 totaled \$85.03 million.
- **Injunctive relief:** Generally, the types of relief obtained in settlements of employment discrimination class actions can be grouped into five categories, including: modification of internal personnel practices and procedures; oversight and monitoring of corporate practices; mandatory training of supervisory personnel and employees; compensation for named plaintiffs and class members; and an award of attorneys' fees and costs for class counsel. Attorneys representing the U.S. Government also secured several class action settlements in 2009 which had noteworthy injunctive relief provisions. This reflects in some measure the significant "public interest" component of government-initiated class action litigation.

Additional trends to note from 2009:

- While shareholder and securities class action filings experienced a downtick in 2009, employment-related class action filings increased significantly. Anecdotally, surveys of corporate counsel confirm that workplace litigation—and especially class action and multi-plaintiff lawsuits—continues as the chief exposure driving corporate legal budget expenditures, as well as the type of legal dispute that causes the most concern for their companies.
- The lesson to draw from 2009 is that plaintiffs' attorneys and government enforcement lawyers are apt to be equally, if not more, aggressive in 2010 in bringing class action and collective action litigation against employers. As class actions are a pervasive aspect of litigation in corporate America, defending and defeating this type of litigation is a top priority for management. Identifying, addressing, and remediating class action vulnerabilities, therefore, will have a place at the top of management's priorities list for 2010.

To request a copy of the 575-page report on CD-ROM, please visit www.seyfarth.com/ClassActionReport or e-mail ClassActionReport@seyfarth.com.

Seyfarth Shaw has over 750 attorneys located in ten 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.

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