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## **Fourth Annual Workplace Class Action Litigation Report From Seyfarth Shaw Notes Significant Growth in High Stakes Litigation at State Court Levels**

*Volume of Wage and Hour Litigation Continues to Increase Exponentially; Employment Discrimination Class Actions Theories and Remedies Continue to Evolve and Expand; and the Size of ERISA Class Action Settlements Outpace all Other Types of Class Action Resolutions*

Chicago, IL (January 14, 2008) - - The fourth Annual Workplace Class Action Litigation Report by national law firm Seyfarth Shaw LLP analyzes the leading class action and collective action decisions of 2007 involving claims against employers. The class action rulings stem from high-stakes lawsuits filed in federal courts under Title VII of the Civil Rights of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, and in state courts under a host of other laws applicable to workplace issues. 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 508 decisions analyzed in the 468-page Report. The Report represents the collective contributions of a significant number of attorneys at Seyfarth Shaw, which has one of the largest complex employment law defense practices in the U.S.

Seyfarth Shaw's compendium is the only report analyzing workplace class action rulings on a national basis. The report encompasses all key 2007 rulings, including those just issued through the last week of December 2007. 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 "top ten" 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. In 2007, these aggregate settlements totaled \$2.65 billion, with \$282.1 million for employment discrimination class actions, \$319.3 million for wage and hour class actions, \$1.818 billion for ERISA class action settlements, and \$197.25 million for government-initiated enforcement actions. While settlements of class actions in 2007 reflected a continuing trend from past years, in which significant monetary payments were made in mega-class actions, settlements in wage and hour class actions and ERISA class actions outpaced employment discrimination class action settlements in terms of overall settlement values for the first time in the last five years.

“The Seyfarth Shaw Workplace Class Action Report has become the ‘go to’ report and research tool for business executives and corporate counsel seeking to understand the latest trends in complex employment litigation,” stated Gerald L. Maatman, Jr., General Editor of the report and Co-Chair of the Complex Discrimination Litigation Practice Group at Seyfarth Shaw. “The report organizes this body of case law on a federal circuit-by-circuit and state-by-state basis, and analyzes the decisions and their meaning for employers and their personnel practices. One certain conclusion 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.” He added that employers can also expect that class action and collective action lawsuits increasingly will combine claims under multiple statutes, thereby requiring the defense bar to have a cross-disciplinary understanding of substantive employment law as well as the procedural peculiarities of opt-out classes under Rule 23 of the Federal Rules of Civil Procedure and the opt-in procedures in FLSA and ADEA collective actions.

The report highlights four key trends that developed in 2007:

One: The volume of wage and hour litigation continues to increase exponentially. Collective actions pursued in federal court under the Fair Labor Standards Act produced more rulings in 2007 than did class actions for employment discrimination or under ERISA. The U.S. District Courts for the Southern and Middle Districts of Florida experienced more wage and hour filings than any other federal jurisdiction. The most significant growth in wage and hour litigation, however, centered at the state court level, and especially in California, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas. This trend is likely to continue in 2008.

Two: 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. The past twelve months saw evolving case law developments on jurisdictional issues under CAFA. As the plaintiffs’ bar continues to devise techniques to adapt to CAFA, rulings on the scope, meaning, and application of the law are already numerous for a statute of such recent vintage. It also targets fights over venue - requiring an employer to defend itself in state court or in federal court - as the new battleground in workplace class actions.

Three: The financial stakes in workplace class action litigation increased yet again in 2007. 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. This trend is also unlikely to abate in 2008.

Four: Plaintiffs’ lawyers have resorted to state court forums on a more frequent basis to pursue employment-related class action litigation. The civil justice system in each state is obvious different, and the resulting impact on businesses often varies from county to county within certain jurisdictions. Some states and certain counties within those states are viewed by litigants as safe havens for opportunistic class action lawsuits, which position those jurisdictions as launching platforms for dubious claims or novel theories of recovery. Through a variety of factors - including forum shopping, liberal discovery, consolidation and joinder practices, evidentiary standards for experts, the absence of limitations on damages, and class certification precedents - those jurisdictions tend to spawn more class action litigation. As reflected by the volume of rulings on class action issues, those jurisdictions in 2007 were clustered in California, Florida, Illinois, New Jersey, New York, and Texas.

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The report notes that the other significant trend from 2007 is that while shareholder and securities class action filings experienced a slight up tick in in the last 12 months, 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.

In terms of key decisions, there was no class action ruling in 2007 quite like *Dukes, et al. v. Wal-Mart Stores, Inc.*, a Title VII gender discrimination case challenging pay and promotions involving 1.5 million class members. The U.S. Court of Appeals for the Ninth Circuit agreed to hear a discretionary appeal from the class certification decision and heard oral argument on the *Dukes* appeal on August 8, 2005. Many expected a ruling in 2006, but none came until nearly 18 months later on February 6, 2007, when a three-judge panel affirmed the certification order by a 2-to-1 vote. Wal-Mart subsequently filed a petition for rehearing *en banc* by the entire Ninth Circuit. On December 11, 2007, the panel mooted that petition by vacating its earlier ruling and issuing a new ruling that refined its Rule 23 analysis, while reaching the same result. A future ruling by the Ninth Circuit in *Dukes* on a subsequent rehearing *en banc* – and further appellate proceedings thereafter, including a possible appeal to the U.S. Supreme Court – likely will be one of the top class action developments in 2008 and beyond.

As a result, the key event and driver of risk and exposure in class actions continues to be the court's decision on whether to certify a class. Maatman noted: "The class action cases decided in 2007 foreshadow the direction of complex litigation against employers in the coming year. The lesson to draw from workplace class action litigation in the modern American workplace is that the private plaintiffs' bar and government enforcement attorneys are apt to be equally if not more aggressive in 2008 in bringing class action and collective action litigation against employers. Therefore, identifying, addressing, and remediating class action vulnerabilities, therefore, deserve a place at the top of corporate counsel's priorities list for 2008."

To request a free copy of the 468-page report on CD-ROM, please send your contact information to [seyfarthshaw@seyfarth.com](mailto:seyfarthshaw@seyfarth.com).

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