

Under Federal Rule of Civil Procedure 23(b)(3), a court may certify a suit for damages as a class action when “there are questions of law or fact common to the class” that “predominate over any questions affecting only individual members.” Similar certification standards apply when a plaintiff seeks to certify a collective action under the Fair Labor Standards Act (FLSA). Yesterday, in a highly anticipated decision, the Supreme Court affirmed the certification of an FLSA collective action where the evidence tying class members together was a study of a representative sample of similarly situated workers.

In this case, a group of hourly workers filed suit against Tyson alleging that Tyson failed to compensate them fully for time spent donning and doffing protective equipment and walking to and from their work stations. The district court certified the case as a class and collective action before trial. At trial, plaintiffs presented a study by Dr. Kenneth Mericle that estimated how long the average employee took for donning and doffing activities. Plaintiffs also introduced a study by another expert that estimated the amount of the class’s uncompensated work, which revealed that hundreds of class members did not work overtime and therefore were not injured. The jury awarded the class \$2.9 million, significantly less than plaintiffs’ expert recommended. Moving to decertify the class after trial, Tyson argued that Mericle’s averaging approach improperly assumed away large differences in the amount of time it took class members to don and doff equipment. The district court denied Tyson’s motion, and the Eighth Circuit affirmed.

In an opinion by Justice Kennedy, the Supreme Court affirmed the class-certification ruling. The Court held that the “the central dispute” is whether “it can be assumed that each employee donned and doffed for the same average time observed in Mericle’s sample.” The Court explained that this assumption was proper because, under the Court’s FLSA decision in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), each class member could have relied on Mericle’s study “to establish liability if he or she had brought an individual action.” In reaching this conclusion, the Court declined to adopt a “broad and categorical” rule on the use of representative evidence in all class actions. The Court held instead that “[w]hether a representative sample may be used to establish classwide liability will depend on the purpose for which the sample is being introduced and on the underlying cause of action.” The Court also distinguished *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), which had rejected a “Trial By Formula” approach for a Title VII discrimination class action, because the representative evidence proffered in *Dukes* would not have been relevant in individual suits.

The Court remanded the case for distribution of the damages award to injured class members. The Court indicated that Tyson would be allowed on remand to challenge “the proposed method of allocation,” suggesting that uninjured class members should not recover damages.

Chief Justice Roberts issued a concurring opinion. In a portion of the opinion for himself alone, the Chief Justice offered his view that the majority’s analysis should not be cabined to FLSA cases. Writing for both himself and Justice Alito, the Chief Justice suggested that the verdict might be overturned on remand because there seemingly was no way to separate injured from uninjured class members when distributing the damages award.

In a dissenting opinion joined by Justice Alito, Justice Thomas argued that the majority had “redefin[ed] class-action requirements and devis[ed] an unsound special evidentiary rule for cases under the [FLSA].”

Yesterday’s decision will be of keen interest to businesses that are facing, or that may face, a putative class or collective action. The effect of today’s decision is nevertheless uncertain and will be actively debated. Plaintiffs are likely to argue that the decision relaxes the class-certification standards in all cases. However, the majority’s analysis relied heavily on FLSA law, stressed the unique facts of the case, and cautioned against generalizing today’s ruling to other contexts and causes of action. Defendants therefore have strong arguments to limit the effect of today’s decision.

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