

High Court Bars Mass Sex Bias Case Vs. Wal-Mart

BY MARK SHERMAN
Associated Press

WASHINGTON — The Supreme Court blocked the largest sex-discrimination lawsuit in U.S. history on Monday, siding with Wal-Mart and against up to 1.6 million female workers in a decision that makes it harder to mount large-scale bias claims against the nation's other huge companies, too.

The justices all agreed that the lawsuit against Wal-Mart Stores Inc. could not proceed as a class action in its current form, reversing a decision by the 9th U.S. Circuit Court of Appeals in San Francisco. By a 5-4 vote along ideological lines, the court also said there were too many women in too many jobs at Wal-Mart to wrap into one lawsuit.

"Because respondents provide no convincing proof of a companywide discriminatory pay and promotion policy, we have concluded that they have not established the existence of any common question," Justice Antonin Scalia said in his majority opinion.

Theodore Broutrous Jr., Wal-Mart's lawyer, said the decision also would affect pending class-action claims against Costco and others. Companies as varied

as the big Wall Street firm Goldman-Sachs & Co., electronics giant Toshiba America Inc., and Cigna Healthcare Inc. also face class-action claims from women they employ.

"This is an extremely important victory not just for Wal-Mart, but for all companies that do business in the United States," Broutrous said.

The assessment was similar on the other side of the issue. Marcia D. Greenberger, co-president of the National Women's Law Center, said, "The court has told employers that they can rest easy, knowing that the bigger and more powerful they are, the less likely their employees will be able to join together to secure their rights."

With 2.1 million workers in more than 8,000 stores worldwide, Wal-Mart could have faced billions of dollars in damages if it had had to answer claims by the huge group of women.

Now, the handful of employees who brought the case may pursue their claims on their own, with much less money at stake and less pressure on Wal-Mart to settle. Two of the named plaintiffs, Christine Kwapnoski and Betty Dukes, vowed to continue their fight, even as they expressed disappointment about the ruling.

"We still are determined to go forward to present our case in court. We believe we will prevail there," said Dukes, a greeter at the Walmart in Pittsburg, Calif.

"All I have to say is when I go back to work tomorrow, I'm going to let them know we are still fighting," said Kwapnoski, an assistant manager at a Sam's Club in Concord, Calif. Both women spoke on a conference call with reporters.

The women's lawyers said they were considering filing thousands of discrimination claims against Wal-Mart, but they acknowledged the court had dealt a fatal blow to their initial plan.

In a statement, Wal-Mart said, "The court today unanimously rejected class certification and, as the majority made clear, the plaintiffs' claims were worlds away from showing a companywide discriminatory pay and promotion policy."

The high court's majority agreed with Wal-Mart's argument that being forced to defend the treatment of female employees regardless of the jobs they hold or where they work is unfair.

Scalia said there needed to be common elements tying together "literally millions of employment decisions at once." He said that in the lawsuit against

the nation's largest private employer, "That is entirely absent here."

Justice Ruth Bader Ginsburg, writing for the court's four liberal justices, said there was more than enough to unite the claims.

"Wal-Mart's delegation of discretion over pay and promotions is a policy uniform throughout all stores," Ginsburg said. The other women on the court, Justices Elena Kagan and Sonia Sotomayor, and Justice Stephen Breyer joined Ginsburg's opinion.

House Democratic leader Nancy Pelosi and other congressional Democrats criticized the ruling and called on Congress to pass the Paycheck Fairness Act to reduce wage disparities between men and women.

"Today's ruling underscores the need to act boldly and strongly on behalf of women's rights," Pelosi said.

Business interests, including nearly two dozen large companies, lined up with Wal-Mart, while civil rights, women's and consumer groups sided with the women plaintiffs.

Both sides painted the case as extremely consequential. The business community said that a ruling for the women would lead to a flood of class-ac-

tion lawsuits based on vague evidence. Supporters of the women suggested a decision in favor of Wal-Mart could remove a valuable weapon for fighting all sorts of discrimination.

Said Greenberger: "The women of Wal-Mart, together with women everywhere, will now face a far steeper road to challenge and correct pay and other forms of discrimination in the workplace."

The U.S. Chamber of Commerce said the court had set a high bar in ruling that "mega-class actions such as this one are completely inconsistent with federal law."

The Wal-Mart lawsuit, citing what are now dated figures from 2001, said that women are grossly underrepresented among managers, holding just 14 percent of store manager positions compared with more than 80 percent of lower-ranking supervisory jobs that are paid by the hour. Wal-Mart responded that women in its retail stores made up two-thirds of all employees and two-thirds of all managers in 2001.

The company also has said its policies prohibit discrimination and that it has taken steps since the suit was filed to address problems, including posting job openings electronically.

Stocks Post Third Straight Day Of Gains

BY STAN CHOE
AND DAVID K. RANDALL
AP Business Writers

NEW YORK — Investors largely put aside their concerns about the Greek financial crisis Monday and focused instead on value. Stocks rose broadly after the market shook off its longest weekly losing streak in nearly a decade.

The downturn brought the S&P 500 close to its average level over the prior 200 days. So long as the index doesn't sink far below that level, many technical traders see it as a sign to start buying stocks again. The S&P is now 6 percent below the 2011 high it reached on April 29.

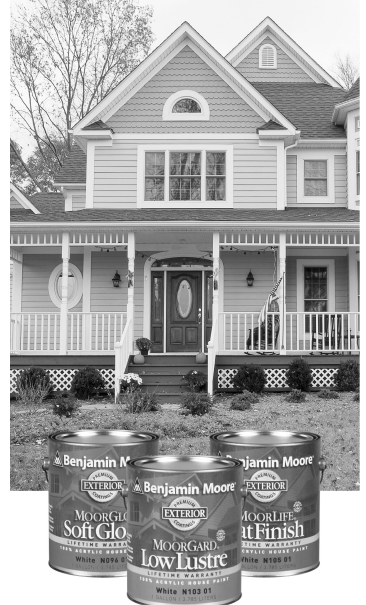
"In the short term, stocks have been oversold, and you're going to get some sort of bounce, whether justified or not, just for technical reasons," said Paul Simon, chief investment officer for Tactical Allocation Group, which has \$1.5 billion in assets under advisement.

The S&P 500 index rose 6.86 points, 0.5 percent, to close at 1,278.36. The Dow Jones industrial average added 76.02 points, or 0.6 percent, to 12,080.38. The Nasdaq composite gained 13.18, or 0.5 percent, to 2,629.66.

Health care companies like Aetna Inc. and Humana Inc. rose 1 percent, the largest gain among the 10 industry groups that make up the S&P 500 index. Financial companies like Morgan Stanley, which lost 1.9 percent, were the only group to lose ground.

The S&P 500 notched its third straight day of gains, the longest stretch of increases in the stock market for nearly a month. The index eked out a tiny gain last week, breaking a six-week losing streak driven by concerns that U.S. economic growth would falter in the second half of the year and that Greece's debt crisis would spread. It was the S&P's longest slide since 2002.

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