

Hinshaw Secures Class Certification Reversal in Seventh Circuit

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A Hinshaw team of Joel Bertocchi, [Matthew Walsh](#), [Tom Luetkemeyer](#) and [Aimee Delaney](#), all Chicago-based partners at Hinshaw & Culbertson LLP, secured a reversal by the U.S. Court of Appeals for the Seventh Circuit of an order certifying two classes in an employment discrimination lawsuit filed against Walsh Construction Company (Walsh). [Bolden et al v. Walsh Construction Co., No. 12-2205 \(Aug. 8 2012\)](#). Hinshaw's team previously was successful in defeating at the district court level five of the seven classes proposed by plaintiffs. Plaintiffs had alleged that superintendents employed by Walsh — which is one of the largest builders in the United States — practiced, or tolerated, two kinds of racial discrimination: in assigning overtime work, and in working conditions. Plaintiffs asked the U.S. District Court for the Northern District of Illinois to certify the suit as a class action covering all of Walsh's 262 projects in the Chicago area since mid-2001. The district court's certification of the two remaining proposed classes: (1) a hostile-work-environment class, and (2) an overtime class, was the focus of the appeal.

On Walsh's behalf, Hinshaw argued that the claims of the proposed classes of plaintiffs — which proposed classes consisted of individuals who worked at more than 262 different construction sites over more than 10 years — did not present common issues of law or fact, in part because the company-wide policy challenged by plaintiffs only delegated authority over these issues to local managers. The Seventh Circuit, in an opinion authored by Chief Judge Frank Easterbrook, and joined by Judges Richard Posner and Joel Flaum, cited to the U.S. Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), and agreed with Walsh's arguments and reversed the district court's ruling certifying both classes.

Mr. Bertocchi is the chair of the Appellate Practice of Hinshaw & Culbertson LLP. He briefs and argues civil and criminal appeals, as well as complex motions in trial courts. He also represents clients in connection with criminal and regulatory investigations, counsels them on compliance policies and related issues and conducts internal investigations in all areas, including corporate governance and employee misconduct. Mr. Bertocchi also provides strategic advice to clients, in and outside the litigation context, on the application of complex statutes and regulatory issues, including RICO and fraud. He is a former Solicitor General of the State of Illinois, Assistant U.S. Attorney for the Northern District of Illinois and Staff Attorney for the United States Court of Appeals for the Seventh Circuit.

Mr. Walsh is a co-leader of Hinshaw's Business Litigation Department. He concentrates his practice in complex litigation, with particular emphasis in the areas of construction, commercial, employment, municipal, medical malpractice and religious institutions liability. He is an accomplished and experienced trial lawyer, having tried more than 25 jury trials to verdict. Mr. Walsh is also general counsel for several multimillion-dollar companies, for which he manages, coordinates and directs all legal activities, including the drafting of contracts and the handling of commercial litigation, trademark and copyright issues and employment disputes.

Mr. Luetkemeyer and Ms. Delaney represent management employers around the country in the full range of labor and employment matters. Their practices include work before federal administrative agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Department of Labor, the Office of Federal Contract Compliance Programs (OFCCP) and the Occupational Safety and Health Administration (OSHA). They also represent employers in various union-related concerns, including collective bargaining, decertification, organization drives, secondary boycotts, strikes, and administrative hearings before the National Labor Relations Board.

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