Newsletter of the

WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION

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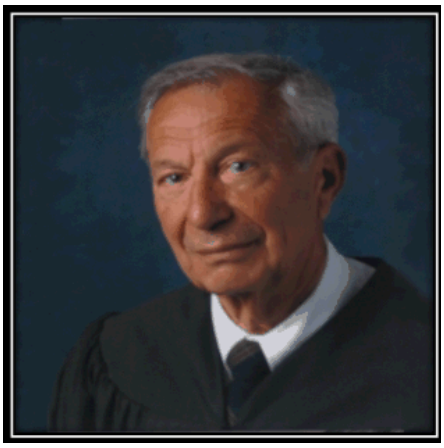
No More Mr. Nice Guy

Hon. John C. Shabaz
1931-2012



He was gruff in the courtroom, where he refused to let a minute waste. Once, after he had been on the bench for nearly twenty years, a criminal defendant collapsed during a proceeding. The marshals came to the man's aid and called an ambulance. But with counsel for both sides before him, Judge Shabaz decided to work on the trial schedule until the paramedics arrived. His diligence under these conditions caused a flap, and he would later apologize to the defendant. But the incident added to what was already a legend.

The Western District of Wisconsin is a small federal district. It had only one Article III judgeship from its creation in 1870 until Congress allocated a second, to which Judge Barbara Crabb was appointed by President Carter in 1979. Two years later Judge James Doyle retired, and President Reagan nominated a charismatic conservative state representative to succeed him. It was, by the standards of that day, a controversial choice.

John Shabaz was born in Milwaukee in 1931 and graduated from the University of Wisconsin. After service in the Army, he earned a law degree from Marquette in 1957. Although he had maintained a West Allis law practice with his father since he had become a lawyer, representative Shabaz was a politician without the credentials and experience of a typical new judge. Indeed, his political success led some to question whether he could leave partisanship behind. From 1964 he represented Waukesha and New Berlin in the state assembly, serving as the Republican minority leader from 1973-79. He was one of the few members of the assembly who could command attention and respect from both sides of the aisle. But in that era, staunch political opponents could be good friends, and his nomination was confirmed by the U.S. Senate on December 9, 1981, little more than a month after he was nominated.

He was not a typical new judge, and the Western District of Wisconsin would never be the same. In a matter of months, Judge Shabaz and Judge Crabb worked through a heavy backlog of cases, and the district became one of the most efficient in the nation. When Congress passed the Civil Justice Reform Act of 1990, intended to reduce cost and delay in federal courts, the district was already ahead of its basic case-management principles. The reports of federal district courts required by the CJRA showed that the Western District of Wisconsin had become a rocket docket.

Judge Shabaz' twenty-eight years on the bench cannot be reduced to numbers, impressive as they are. He presided over more than 9,000 civil and 1,000 criminal cases. Like any district judge, he was sometimes reversed, but he was too busy to be bothered much by the errors of appellate courts. Some sense of his accomplishment can be found in the CJRA reports. In 2008, the last year of Judge Shabaz' tenure for which full data is available, the median time to trial for a civil case in the federal system was more than two years. In the Western District of Wisconsin, the median time to trial was just eleven months. It was a measure that was bettered, barely, only by the Eastern District of Virginia, a larger district with a lighter caseload per judgeship.

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Western District of Wisconsin Bar Association 2012-2013

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Judge Shabaz

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His system was simple, but it took a lot of work: early and firm trial dates, prompt decisions on discovery disputes and motions, and short trials. Judge Shabaz cultivated his curmudgeonly image, because that was part of the system, too. Attorneys knew that a lack of preparation would irritate the Court. No one wanted to hear what he told one attorney: "Here is a copy of the Federal Rules of Civil Procedure. Learn them tonight, and we'll start early tomorrow." The curmudgeon was not merely a façade, but there was more to the man.

John Shabaz was a devoted husband and father, and he kept many good friends. He was, outside the courtroom, charming and funny, although of course his humor had an edge. In 2010, the Western District Bar Association honored Judge Shabaz with its distinguished service award. He had been too ill to take cases, but in accepting the award, he said that he expected to resume his duties. He warned us though: "When I get back on the bench, no more Mr. Nice Guy."

He was not be able to return, and Judge Shabaz passed away on August 31, 2012. He is survived by Patty, his wife of 26 years, and his children, Scott, Jeff, Emily, and John. The Western District Bar Association commemorated Judge Shabaz' contributions to the Court with a memorial service on November 15, 2102. A transcript and a recording of the service are available on the Court's website, preserving the moving stories and reminiscences from the members of the Association who knew him best. As a further memorial to Judge Shabaz, the Western District Bar Association has made a contribution to the 2014 National Mock Trial Tournament, which will be hosted in Madison.

Rule 1 of the Federal Rules of Civil Procedure gets little attention from many lawyers or many courts. But those who practiced before and with Judge Shabaz know it by heart, because he never let anyone forget that it was our shared duty "to secure the just, speedy and inexpensive determination of every action and proceeding." No one has dedicated himself so completely and effectively to this principle as Judge John C. Shabaz.

President's Corner

Richard Briles Moriarty

A year ago, past President Lynn Stathas, reporting on the status of the Western District of Wisconsin, articulated compelling reasons why it was an understatement for the Administrative Office of the U.S. Courts to designate our district court vacancy as a "judicial emergency." With the election year, few expected the situation to improve, and that expectation was met. The number of district court vacancies designated as "judicial emergencies" has increased from 23 to 28. But only two of those 28 district court seats have been vacant for longer than the seat formerly held by Judge Shabaz. On December 11, 2012, that seat was vacant for 1421 days – just under four years.

The harm caused by this vacancy is bipartisan. Persons at all social levels and from all walks of life are adversely affected. Entities, whether as plaintiffs or defendants, are seriously disserved by the delays caused by this vacancy and its ripple effects. With the election behind us, Washington has the opportunity to rapidly end this emergency. While the district that defined the term "rocket docket" is not on a cliff, it has been on a downward slope despite the extraordinary efforts of the Clerk's office and the current judiciary, particularly Judge Crabb. Promptly filling the seat proudly held by Judge Shabaz would be a superb memorial to that jurist who was a model for expeditious justice.

This past year was marked by the passing of Judge Shabaz, and a moving memorial at the federal courthouse on November 15, followed by a reception sponsored by the Western District Bar Association. Those attending were treated to a rich assembly of memories by many who interacted with Judge Shabaz over the years and, for those unable to attend, a video is on the court's website.

Judge Utschig, who graced many of the WDBA Annual Meetings and contributed to its valued Judges' Panels, is retiring this year to a well-deserved docket-free life. The WDBA was pleased to donate towards his retirement party on December 14.

The Annual Meeting, well attended by the judiciary and practitioners, and with a keynote address by Seventh Circuit Judge Diane Wood, is described elsewhere in this newsletter.

The WDBA's mission is to promote the just, speedy, respectful and efficient determination of every action filed in the District. We do this by striving to act as an effective liaison among the Court, federal practitioners, litigants and the public; by encouraging, fostering and supporting educational opportunities that improve the practice of law in this District; and by serving the needs of the District Court, federal practitioners, litigants, and the public.

We are pleased to see our pro bono fund bearing fruit, supporting the efforts of practitioners who generously dedicate time to pro bono representation, and will continue to search for others ways to improve access to justice within the District. The WDBA provides many valuable services to the District and its members and we continually seek ways to improve and expend on those services. The attorneys' room is, we hope, of assistance to counsel during trials. Our twentieth century website will soon be completely replaced by a newly designed format that will be far more useful. Our continuing education programs and newsletter facilitate and enhance communications.

In closing, however, I quote from the remarks of past President Stathas last year, since they identify the overarching problem that has faced this District for far too long: "despite such efforts, and despite the good will and hard work of the members of our bar and of our Court and its staff, the unfilled seat here challenges our collective ability to promote and achieve prompt, fair and efficient justice for our constituents." When the next newsletter is published, we hope to report that the problem is resolved, the vacancy is filled, and that the District is back on the path towards its proud history as the "rocket docket" of the nation.

Save The Date!

The Western District of Wisconsin Bar Association's annual luncheon and CLE event will be June 13, 2013. This year's speaker will be Pat Fitzgerald, former US attorney for the Northern District of Illinois who has played a prominent role in numerous high-profile prosecutions, including that of Lewis "Scooter" Libby, Conrad Black, and Rod Blagojevich.

Rule 23 "Commonality" And Class Certification As Viewed By the Seventh Circuit After Wal-Mart Stores V. Dukes

By Timothy D. Edwards And Sarah Siskind

INTRODUCTION

Rule 23 of the Federal Rules of Civil Procedure creates an exception to the general rule that litigation is conducted by the named parties on their own behalf by allowing named plaintiffs to sue on behalf of numerous others, particularly when they could not likely otherwise bring their claims. Class actions are appropriate where the class members' claims turn on issues in common, such that "the class action device saves the resources of both the courts and the parties."[1]

With this purpose and due process in mind, Rule 23 sets out a series of requirements designed to "limit the class claims to those fairly encompassed by the named plaintiffs' claims."[2] Among them, the plaintiffs must show that: the requested class is "numerous," such that traditional joinder is impracticable; there is at least one "common" question whose answer will advance the litigation for all; the named plaintiffs' claims are "typical" of the class claims; and their representation is "adequate," *i.e.*, there is no conflict between their interests and those of the class.[3]

Until *Wal-Mart v. Dukes*,[4] the Supreme Court's 1982 decision in *General Telephone Company v. Falcon* set the baseline for determining when a requested class had spanned too far.[5] *Falcon* had reversed certification of a hiring discrimination class led by an incumbent Mexican-American employee who believed he was denied promotion because of his national origin. The lower court had initially certified an "across-the-board" class encompassing both employees denied promotion and applicants denied hire, deeming it permissible "for a plaintiff complaining of one employment practice to represent another complaining of another employment practice if … all the claims are based on discrimination because of national origin."[6] By the time the case reached the Supreme Court, the individual promotion and classwide hiring claims had been sustained on the merits, and the classwide promotion claim rejected.[7] The Supreme Court reversed, holding that without any specific presentation identifying questions of law or fact that were common to the claims of the named plaintiff and the applicants he sought to represent, it was error to for the lower court to certify the hiring class.

In doing so, the Court dramatically restricted the use of "across-the-board" classes (theretofore relatively common), but did not eliminate them. It held that to establish either "commonality" or "typicality," it was not enough to assert that the same unlawful bias had caused discrimination in both promotion and hire. But it also made clear that such classes might still be bridged, and gave two examples to show how: either by (1) evidence that the same test was used to evaluate both applicants and employees; or (2) "significant proof of … discrimination manifested … in hiring and promotion practices in the same general fashion." Specifically, the Court suggested, proof that defendant used an "entirely subjective decisionmaking processes" for hiring and promotion could justify a class including both applicants and employees.[8]

The stage for *Dukes* – arguably the "mother" of subjective decision-making cases – was thus set. Over the years between *Falcon* and *Dukes*, class action litigation – particularly in the area of civil rights – muddled along. Some courts certified diverse classes, others refused to certify almost any class.

Then, the Ninth Circuit's *en banc Dukes* decision[9] affirmed certification of what the Supreme Court ultimately described as "one of the most expansive class actions ever" brought.[10]

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It included pay and promotion claims on behalf of all female employees at all of Wal-Mart's 3,400 discount stores, supercenters, neighborhood markets, and Sam's Clubs nationwide, spanning thousands of different jobs, hourly and salaried, at all levels at of the operation. While no one decision-making process was identified to unite the pay class or the promotion class, let alone both together, the plaintiffs persuaded the majority of the Ninth Circuit that – in contrast with the class claims the Supreme Court rejected in *Falcon* –their diverse claims warranted class treatment based on the following unifying evidence: (1) the Company's policy to give at least some discretion to the local Wal-Mart managers who made the pay and promotion decisions; (2) expert opinion that Wal-Mart's corporate "culture" made the subjective decision-making vulnerable to subliminal sex stereotyping; and (3) statistical evidence showing women, in the aggregate, doing worse in promotion and pay than men.[11]

In the end, the Supreme Court found plaintiffs' evidence insufficient to bridge the claims. First, it found that the element of discretion in the diverse decision-making systems at play throughout the national organization was not enough to link them into a single class under Rule 23.

> The only corporate policy that the plaintiffs' evidence convincingly establishes is Wal-Mart's 'policy' of *allowing discretion* by local supervisors over employment matters. On its face, of course, that is just the opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy *against having* uniform employment practices."[12]

Second, it rejected, as also insufficient to link the claims, the expert's opinion that a strong "corporate culture" made the local managers' decision-making vulnerable to bias, because the expert was unable to say "whether 0.5 percent or 95 percent of the employment decisions at Wal-Mart might be determined by stereotyped thinking."[13] Finally, the Court rejected plaintiffs' statistical evidence because it analyzed the data by region without showing or attempting to show the necessary pattern of store-level results.[14] The plaintiffs' evidence thus failed, the Supreme Court held, to bridge the diverse elements of an exceptionally expansive class.[15]

WHAT WAS NEW IN *DUKES*, WHAT WAS NOT?

On two points conceptually related but separate from the "commonality" issues discussed in this article, *Dukes* charted new ground. First, by requiring substantial evidence (not mere allegations) to unite the class, and examining the experts' opinions for more than face-value,[16] the *Dukes* decision resolved a brewing controversy against the traditional view that "merits" issues were off-limits at class certification. Even if disputes overlapped the merits, it held, the court deciding whether to certify needed to resolve them if they were necessary to determining whether the requirements of Rule 23 had been met.[17] This included disputes between experts whose opinions the Court suggested in *dicta* might well need to satisfy *Daubert* standards.[18] This issue was argued in the Supreme Court last month in *Comcast v. Behrend*, an anti-trust class action, and thus should be definitely resolved this term.[19] Second, some practitioners have read *Dukes* as barring the certification of claims for monetary relief under Rule 23(b)(2) --*i.e.,* without the "predominance" analysis required by Rule 23(b)(3). *See Dukes*, 131 S. Ct. at 2557. However, the Seventh Circuit held last month that it did not, as long as the monetary relief arises from a classwide injunction or declaration and can be calculated without individualized proofs, *see Johnson v. Meriter Health Serv. Employee Retirement Plan*, --- F.3d ---, 2012 WL 6013457, *5 (7th Cir. Dec. 4, 2012), and further held that the need for some individualized adjustments did not defeat Rule 23(b)(2) certification even though "the number of claims that will require a hearing or the average length of such a hearing" could not be known or estimated at the class certifiaction stage. *Id.* at *7.

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With respect to commonality and typicality principles, however, and contrary to public comment at the time the decision was made, *Dukes*' tough treatment of the Wal-Mart class was not a radical departure from *Falcon* and its forebears. In fact, the Court reaffirmed earlier definitions of what commonality required, quoting from previous decisions that "[w]hat matters to class certification … is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation."[20] It did *not* hold that *all* issues must be common, or that the common issues must entirely *determine* the outcome of each individual claim.

What the Court *did* require, as it had done before, was that the claims present an issue "capable of classwide resolution" such that "determination of its truth or falsity will resolve *an* issue [not every issue] that is central to the validity of each one of the claims in one stroke."[21] And – to some plaintiffs' disappointment and likely all defendants' satisfaction – the Court rejected evidence that showing the system's *vulnerability* to bias as not enough, to bridge the expansive class plaintiffs had sought, without also showing actual bias at the store level at which the decisions at issue were made.

DUKES PROVIDES A NEW ROADMAP

In the final analysis, *Dukes* points the way as much for plaintiffs seeking class certification as for defendants' resisting. Since the path depends on the required elements of proof for a given claim, plaintiffs' theory of the case and respective burdens of proof are the Court's starting point.

In *Dukes*, the Court considered separately each two theories the plaintiffs had asserted. The first was that Wal-Mart had engaged in a pattern and practice of disparate treatment or intentional discrimination. Since this theory required proof of Wal-Mart's intent to discriminate across the class, the Court held that class certification required "some glue holding the alleged *reasons* for all of these decisions together."[22] Thus, certification of the disparate treatment claims required "significant proof" that Wal-Mart operated under a general policy of discrimination."[23] In *Dukes*, the Court held, no such proof had been presented.

In contrast, the plaintiffs' disparate impact challenge turned on plaintiff's ability to single out a specific employment practice and prove its adverse impact on the class without regard to Wal-Mart's reasons or intent. Given the "discretionary decision-making" at issue in Wal-Mart, the Court specifically considered the subjective-decisionmaking example it had previously offered in *Falcon*, and explicitly recognized that such decision-making *might* support class certification on the right record. The Court observed that:

> [G]iving discretion to lower-level supervisors can be the basis of Title VII liability under a disparate-impact theory – since "an employer's undisciplined system of subject decision making [can have] precisely the same effect as a system pervaded by impermissible intentional discrimination.[24]
> However, the Court held that in order to mount a multi-location class challenge to subjective decision-making, the plaintiff would have to (1) identify the specific system of decision-making at issue, and then (2) show that that system generated a consistent pattern of adverse results across location with evidence sufficient to rule out the possibility that an aggregate disparity within an entire region, for example, resulted from biased decisions by a few rogue managers at a few locations.[25] Plaintiffs in *Dukes* had failed on both counts, the Court held.

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THE SEVENTH CIRCUIT HAS FOLLOWED THE ROADMAP

In a series of five post-Dukes Rule 23 commonality decisions, the Seventh Circuit has followed the *Dukes* roadmap to reach different, but consistent outcomes. The first was *Jamie S. v. Milwaukee Public Schools*, a challenge to alleged failures by the schools to identify disabled children and refer them for evaluation.[26] The Seventh Circuit reversed certification of a settlement class as too broad. (It had combined all disabled students who were not identified as potentially eligible for services, not timely referred for evaluation after identification, not timely evaluated after referral, not evaluated in a properly constituted IEP meeting, or whose parents did not, for whatever reason, attend an otherwise proper IEP meeting.[27])

The Court held that "there is no such thing as a 'systemic' failure [under the IDEA] to find and refer individual disabled children for IEP evaluation – except perhaps if there was 'significant proof' that MPS operated under child-find policies that violated the IDEA."[28] Merely claiming that each class member had "suffered a violation of the same provision of law" was not enough to satisfy commonality.[29]

In the next case, *McReynolds v. Merrill Lynch*,[30] the Court reversed the lower court again, this time for *refusing* to certify. *McReynolds* was a pay discrimination class action seeking certification of a class of African American brokers at 600 branch offices. The *McReynolds* plaintiffs complained of the disparate impact of two company policies, one permitting brokers to form teams, and the second permitting the brokers' managers to distribute customer accounts based on the relative success of the teams and individual brokers not invited onto teams. As explained by the Court, the teams functioned as "little fraternities" with brokers admitting members "who are like themselves" to the disadvantage of people *unlike* themselves.

Because brokers in teams were more successful than brokers operating on their own, and African Americans were excluded from the teams, the African American brokers were given less lucrative accounts and in turn received less compensation.[31] The district court had denied certification, but the Court of Appeals reversed, consistent with *Dukes.* Whereas, in *Dukes,* the Court noted, the plaintiffs had challenged only "discrimination … practiced by local managers exercising discretion," the plaintiffs in *McReynolds* challenged specific corporate teaming and distribution policies that framed the managers' exercise of discretion. These, the Court held, were "practices of the company"; and the core claim – that the company policies caused a disparate impact on the plaintiffs' compensation – even if only incrementally – presented an "issue[] common to the entire class."[32] Despite the potential need for hundreds of individual trials on damages, the Court reversed the district court because "the alleged disparate impact of the two practices present[ed] a pair of issues that c[ould] most efficiently be determined on a class-wide basis."[33]

Next, in *Ross v. RBS Citizens*,[34] the Seventh Circuit affirmed Rule 23 certification of two state law overtime classes in an action challenging an alleged unofficial (intentional) policy to deny earned overtime. The two classes at issues consisted of "hourly" and "exempt" employees, respectively, employed at more than 100 bank branches. The Court rejected the Bank's argument that the trial would focus on the employees' diverse job duties and the different ways the different branches effected the alleged policy. It held that the existence of an "unofficial policy … denying employees earned-overtime compensation" was the common issue that would lead to "the common answer that potentially drives the resolution of this litigation" as required by *Dukes.*[35]

Fourth, in *Bolden v. Walsh Construction Company*,[36] the Court reaffirmed *McReynolds'* holding that under Dukes, "a class could be certified to contest [a nation-wide] policy adopted by top management" and therefore that [a] single policy spanning all sites could be contested in a company-wide class consistent within Rule 23(a)(2)." However, observing that the single national policy that was present in *McReynolds* had been "the missing ingredient" in *Wal-Mart*," and was also missing in *Bolden*, the Court held that class certification in *Bolden* was properly denied.

Most recently, in another overtime case, *Vang v. Kohler*, the Seventh Circuit vacated a grant of class certification and remanded because the presence of a company policy was sufficiently clear from the district court's analysis. It instructed that "[u]nless plaintiffs can establish a firm-wide policy, Rule 23(a)(2) prevents class certification."[37]

WHAT WAL-MART MEANS FOR FUTURE LITIGATION

Some commentators suggested immediately after *Dukes* was decided that the decision would revolutionize federal class action practice. Unquestionably, *Dukes* makes it more difficult to certify intentional discrimination cases where decision-making is decentralized among multiple managers and there is no evidence of high-level bias, intent, knowledge or control to connect decision-makers and unite the class. However, where plaintiffs direct challenge to the effects of a company-wide practice, courts have resisted interpreting *Dukes* as a radical departure, much less a death knell for class actions.

Dukes is obviously an important decision for class action lawyers on both sides. First, it reaffirms the importance of commonality requiring the plaintiff to *show* (not merely claim) that the answer to a common question will resolve a central issue in the case. Second, it explains that certification decisions will often require a "quick peak" or more into the merits of the underlying claims. The fact that an inquiry overlaps the merits is plainly no ground to forego it if it promises answers to questions posed by Rule 23. For example, the validity of an expert's methodology would be fair game even at class certification, if that expert's analysis was necessary for plaintiffs to demonstrate a consistent pattern of results across the class.

On the hand, the law would not authorize the court to decide between two valid, but competing expert analysis. Finally, *Dukes* suggests that certification may require the presentation of substantial evidence, and hints that opinions from experts *may* have to satisfy the *Daubert* standard. Viewed in isolation or in the aggregate, these principles place new burdens for the plaintiffs at the certification stage and ensure that the kitchen-sink/"across-the-board" class actions of yester-year become rare, not the rule.

However, in a view of case that the Seventh Circuit plainly recognizes, *Dukes* also provides a clear guide for plaintiffs' certification success in appropriate cases – where the plaintiffs' claims target specific practices of the company and their effects across classes. *Dukes* requires an issue of classwide impact that advances *an* aspect of all class members' claims in one fell swoop (not the claims in their entirety). The presence of some individualized issues will not bar certification. "If there are genuinely common issues … then it makes good sense, especially when the class is large, to resolve those issues in one fell swoop while leaving the remaining, claimant specific issues to individual follow-on proceedings."[38]

In future class action, the plaintiff will highlight policies, practices and procedures that give rise to the challenged conduct and demonstrate *consistent patterns* in their impact across the class. The defense will illuminate individualized variances within the class and highlight those variances to argue that class treatment is not supported under Rule 23. *Dukes* provides some clarity to this debate, though there is sometimes no "bright line" defining the gray area between a case that should be adjudicated collectively and a case that is better suited for individual resolution. Courts are certain to struggle with this boundary; but as the Seventh Circuit has already shown, they will not likely rush to reject class certification where the plaintiffs have the necessary "glue" and can demonstrate that the class action vehicle will enhance efficiencies for all of the parties (including the class) and the Court. Where plaintiffs succeed, the class action remains the most effective vehicle for addressing widespread wrongs.

(Endnotes appear on page 9)

(Endnotes)

1 *Califano v. Yarmasaki,* 442 U.S. 682, 770-71 (1979).
2 *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147 (1982) (citations omitted). *See also*, *e.g*., *Ruppert v. Alliant Energy Cash Balance Pension Plan*, 2012 WL 2930205 (W.D. Wis. July 2, 2012) (plaintiffs seeking lump sum pension distributions cannot recover damages for annuity recipients without an annuitant named plaintiff to represent them).
3 Federal Rules of Civil Procedure, Rule 23(a).
4 *Wal-Mart Stores*, *Inc. v. Dukes*,131 S. Ct. 2541 (2011).
5 *Falcon* , 457 U.S. at 147.
6 *Id*. at 153-54.
7 *Id*. at 154-55.
8 *Falcon*, 457 U.S. at 147. Six years later, the Court affirmed the viability disparate impact challenges to discretionary or subjective decision-making in *Watson v. Fort Worth Bank & Trust,* 487 U.S. 977, 990-91 (1988)
9 *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010) (*en banc*).
10 *Dukes*, 131 S. Ct. at 2541.
11 *Id.* at 2548.
12 *Id*. at 2544. *See also Ruiz v. Serco, Inc.*, 2011 WL 7138732, *9 (W.D Wis. Aug. 5, 2011).
13 *Id*. at 2553-54.
14 *Id.* at 2555-56.
15 *Id.* at 2556-57.
16 *Id.* at 2553-54.
17 *Id.* at 2551.
18 *Id.* at 2553-54.
19 133 S. Ct. 24 (June 25, 2012).
20 *Id.* at 2551.
21 *Id.* (emphasis added).
22 *Id.* at 2552.
23 *Id.* at 2554.
24 *Id.*
25 *d.*
26 *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481 (7th Cir. 2012).
27 668 F.3d at 495.
28 *Id.* at 498.
29 *Id.*
30 *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith,* 672 F.3d 482 (7th Cir.), cert. denied 131S. Ct. 338 (2012)
31 672 F.3d at 490.
32 *Id.* at 490-91.
33 *Id.* at 491.
34 *Ross v. RBS Citizens, N.A.,* 677 F.3d 900 (7th Cir.), cert denied (April 3, 2012), cert. pending.
35 677 F.3d at 908-09.
36 *Bolden v. Walsh Construction Company*, 688 F.3d 893 (7th Cir. 2012).
37 *Vang v. Kohler Co*., 2012 WL 3689501 (7th Cir. August 28, 2012).
38 *McReynolds*, 672 F.3d at 491.

Judge Diane Woods Presents Keynote Address on Civil Procedure Rules at WDBA Annual Meeting

Seventh Circuit Judge Diane Wood, the keynote speaker at the WDBA's 20th Annual Meeting this past June, answered in the affirmative her rhetorical question "Are the Civil Procedure Rules Ready for More Change?" Enlisting her expertise and experience, on the bench, on the federal Judicial Conference Committee on Rules of Practice and Procedure, and in a wide variety of legal positions that preceded her judicial career, she surveyed recent civil procedure rule changes already implemented and proposed changes.

Judge Wood's address was personable and informative, and those in attendance appreciated both her remarks as well as the fact that she sought input from bar members. Of particular note was her analysis of improvements and clarifications to the often confusing provisions of Rule 45 that governs subpoenas. Those who have struggled with those provisions, which have accumulated since the Rules of Civil Procedure were first adopted in 1937, will likely appreciate the need for the amendments that are in the works – and potentially for further amendments. As a follow-up to the remarks by Judge Woods during her Keynote Address, the Federal Judicial Conference, in September 2012, approved the Rule 45 amendments that she discussed and recommended their adoption by the Supreme Court, the next step in the amendment process.

Important Note!

The WDBA will increasingly use Email as a way to rapidly and more cost-effectively communicate with our membership.

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