JUBELIRER, PASS & INTRIERI, P.C.
Attorneys-at-Law

Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass
Steven E. Winslow

of counsel
Neal R. Cramer

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

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REPORT OF LEGAL COUNSEL
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Wal-Mart Loses Appeal of $187 Million Verdict in Worker Lawsuit

In *Braun v. Wal-Mart Stores, Inc.*, 2014 Pa. LEXIS 3324, 1, 165 Lab. Cas. (CCH) P61,546 (Pa. Dec. 15, 2014), Plaintiffs commenced a class action lawsuit on behalf of themselves and all others similarly situated to seek redress for missed rest and meal breaks and off-the-clock work from their employer, Wal-Mart and Sam's Club. Plaintiffs alleged causes of action for breach of contract, violation of the Pennsylvania Minimum Wage Law, violation of the Pennsylvania Wage Payment and Collection Act, and unjust enrichment.

On October 13, 2006 a Philadelphia jury returned a $78.5 million verdict in favor of a class of current or former employees of Wal-Mart Stores, Inc. including Wal-Mart Discount Stores, Supercenters and SAM's Clubs. After a five-week trial, the jury found that Wal-Mart violated state laws and breached their agreement to provide paid rest breaks and to pay for all time that employees worked off-the-clock. Furthermore, the Court ordered Wal-Mart Stores Inc. to pay $62.3 million in statutory damages to 124,506 current and former Pennsylvania employees of the company from 2002 through May 2006 who were not paid when they worked during rest breaks. Finally, a Philadelphia judge ruled that Wal-Mart Stores Inc. must pay an additional $49.2 million in attorney's fees and expenses bringing the total to $187.6 million.

On appeal to the Pennsylvania Supreme Court, Walmart claimed the jury's verdict should have been overturned because it employed the "trial by formula" proscribed by the U.S. Supreme Court in the two landmark cases of *Wal-Mart Stores, Inc. v. Dukes* and *Comcast Corp. v. Behrend.* In those two cases, the U.S. Supreme Court held that the plaintiffs failed to justify class treatment in the employment discrimination context and antitrust context, respectively. However, in the current case, the Pennsylvania Supreme Court held that the "trial by formula" disapproved of in *Dukes* was limited to "a plan to try a sample set of class members' claims of sex discrimination" and, if the claims were found to have merit, to extrapolate what damages the entire class should receive without any further individualized hearings. That is not what happened in the current case. Rather, Walmart's own company policies, business records and internal audits showed there was a systemic pattern of wage-and-hour violations throughout Pennsylvania stores.

219 Fort Pitt Boulevard, Pittsburgh, PA 15222-1576 Ph: 412.281.3850 • 412.261.0147 F: 412.281.1985
facebook.com/jpilaw www.jpilaw.com

The court also said that the *Braun* plaintiffs had successfully connected their theory of why Walmart should be held liable on the wage violations to their damages calculations—based on Walmart's own business records. The court opined that "where a theory of liability is capable of class-wide proof, calculations of damages need not be exact." In conclusion, the Court held:

> There was a single, central, common issue of liability here: whether Wal-Mart failed to compensate its employees in accordance with its own written policies. On that question, both parties presented evidence. Wal-Mart's liability was proven on a classwide basis. Damages were assessed based on a computation of the average rate of an employee's pay (about eight dollars per hour) multiplied by the number of hours for which pay should have been received but was not. In our view, this was not a case of "trial by formula" or of a class action "run amok." Accordingly, the judgment of the Superior Court is affirmed.

It is a welcome victory for workers in Pennsylvania. That said, Walmart has indicated it is considering an appeal to the U.S. Supreme Court. We will keep you posted on any developments as they occur.

Respectfully submitted,

JOSEPH S. PASS, ESQUIRE