

Citing Dukes, La. High Court Nixes Wood Treatment Class

By **Greg Ryan**

Law360, New York (December 07, 2011, 7:18 PM ET) -- Leaning on the U.S. Supreme Court's Wal-Mart v. Dukes decision, Louisiana's highest court on Tuesday reversed the certification of a class action brought by property owners and others over the release of contaminants from a wood-treating site.

The Louisiana Supreme Court ruled that a lower court erred in certifying a class action that accuses Roy O. Martin Lumber Co. LP and Beazer East Inc. of exposing the plaintiffs to toxic chemicals such as creosote and pentachlorophenol. The plaintiffs say the exposure increased their risk of disease, damaged their property and hurt their property's value.

The high court held that the plaintiffs did not satisfy the commonality requirement as it pertained to Beazer and Martin's alleged breach of its duty to avoid the release of unreasonable levels of contaminants, nor did it prove, using common evidence, that the alleged emissions caused damage to each class member's property.

"The issue of breach turned on different conduct, by different defendants, at different times, under different legal standards," the opinion said.

The class included "property owners who owned property within the class area at the time the property was damaged, during the years of 1944 through present." The plaintiffs' motion for class certification claimed more than 3,000 people had been injured by the contamination.

An attorney for Beazer, Brent R. Austin of Edwards Wildman Palmer LLP, said the ruling represented the most significant use of the Wal-Mart decision to date in a toxic tort case. The high court ruled in June that a proposed class of 1.5 million Wal-Mart employees had not proven their sex discrimination claims shared common questions of law or fact, overturning certification.

"I think Wal-Mart will be cited more and more by courts for toxic tort issues," Austin said.

In July, a Michigan judge cited Wal-Mart v. Dukes in refusing to recertify a class of property owners accusing Dow Chemical Co. of negligently releasing dioxin into a river floodplain.

Charles S. Weems III of Gold Weems Bruser Sues & Rundell APLC, an attorney for Martin, said the decision was an important one for businesses in Louisiana.

“The principles of Wal-Mart relevant in this case were already firmly embedded in Louisiana law, but were hammered home by the Supreme Court here,” Weems said. “It lets both sides of the aisle know exactly what's required when you approach certification.”

The Louisiana high court's decision reversed an appellate court's affirmation of the lower court's certification award, as well as the lower court's decision itself, and remanded the case for further proceedings.

An attorney for the plaintiffs could not immediately be reached for comment Wednesday.

The plaintiffs are represented by Steve Irving LLC, among others.

Beazer is represented by Brent R. Austin, Leonard S. Kurfirst and Jeff Stevenson of Edwards Wildman Palmer LLP. Martin is represented by Charles S. Weems III and Raymond L. Brown Jr. of Gold Weems Bruser Sues & Rundell APLC.

The case is Price et al. v. Martin et al., case number 2011-C-0853, in the Supreme Court of Louisiana.

--Additional reporting by Martin Bricketto. Editing by Chris Giganti.

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