

# Closings Heard in Wal-Mart Break-Time Class Action

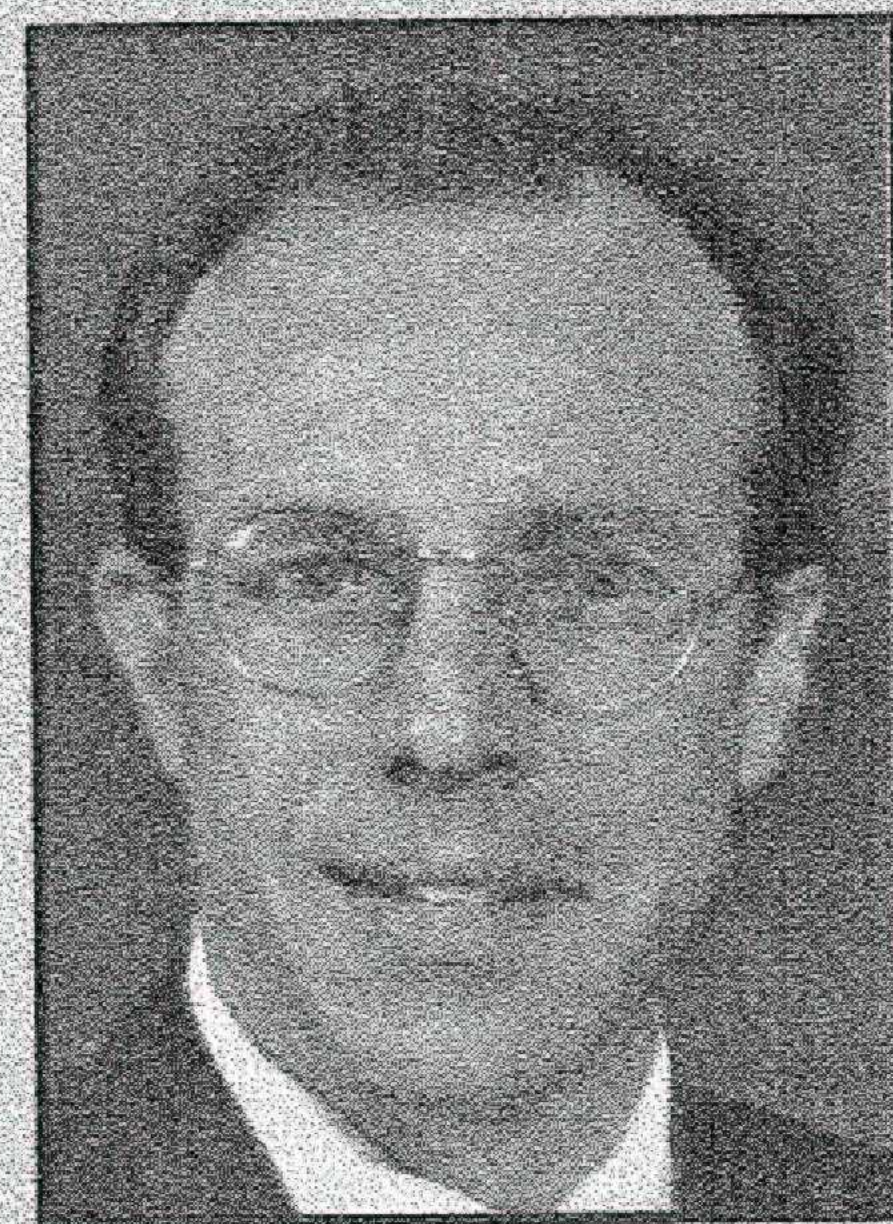
BY ASHER HAWKINS

Of the Legal Staff

A Philadelphia jury heard closing arguments yesterday in the Pennsylvania incarnation of a series of class actions across the country that claim Wal-Mart failed to compensate workers for missed meal and rest breaks.

So far, sister litigations in other states have resulted in millions of dollars' being paid to current and former Wal-Mart employees.

This January — just days before Philadelphia Common Pleas Judge Mark I. Bernstein certified the class in *Hummel v. Wal-Mart Stores Inc.* — a California jury awarded a 115,000-strong class with similar com-



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plaints \$172 million following four months of testimony. Of that award, \$115 million was for punitive damages.

Previously, a break-time class action brought by Wal-Mart employees in Colorado had settled for \$50 million.

But the *Hummel* class, consisting of current and former employees of the retail giant's Pennsylvania stores since March 1998, has eventually come to include roughly 186,000 people, a figure constantly

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referred to by lawyers on both sides of the aisle during yesterday's proceedings before Bernstein in Philadelphia City Hall.

Earlier this year, local class counsel Michael Donovan of Donovan Searles in Philadelphia told *The Legal* that the *Hummel* action, if successful, could lead to recovery for individual class members ranging from \$100 to thousands of dollars.

Each side was ceded two hours yesterday for its closing argument-in-chief; the trial has been under way for about a month. The *Hummel* jury is now set to consider the case against Wal-Mart as to liability only. If the company is found to be liable, the jury will then consider damages.

During his time before the jury — comprised of nine women and three men —

Donovan repeatedly alluded to the case as a fight between haves and have-nots.

"This case is the same case that we read about in literature, that we see on TV," Donovan said. "It's a case about the employees — the less powerful — [fighting] against the more powerful. ... This is a conflict that has been repeated over and over again in our history."

A quick glance into the gallery seemed to underscore Donovan's rhetoric.

On the plaintiffs' side of the aisle was a group of class members, most of them casually dressed. Donovan identified several of them during his closing.

On the defense side of the audience sat a cadre of well-manicured attorneys, in what appeared to be color-coordinated outfits, endlessly fingering wireless handheld devices.

But by the time Wal-Mart's lead counsel rose to address the jury, a number of current Wal-Mart employees who testified for the defense at trial had taken seats in the front rows

of the defense's side of the gallery.

Calling the jury's attention to the happy Wal-Mart workers, lead *Hummel* defense attorney Neal Manne of Susman Godfrey in Houston implied that the class's representatives are disgruntled former Wal-Mart employees whose testimonies are less than credible.

"The plaintiffs' lawyers ask you to believe a story, a fairy tale," Manne said.

He also argued that the class representatives and the former Wal-Mart employees who testified on the class's behalf at trial are not necessarily speaking for the tens of thousands of Pennsylvanians believed to be included in the class.

"It's been claimed on behalf of them," Manne said. "But they haven't claimed it, and they won't."

As far as potentially damning evidence, the plaintiffs appear to have the advantage in *Hummel*.

During his closing, Donovan played several video clips that showed former Wal-Mart vice

chairman Tom Coughlin claiming in depositions not to know about employee-friendly internal policies he had been filmed discussing years beforehand.

"He's the top guy, and he's lying," Donovan said.

In one of the clips, Coughlin buries his increasingly reddening face in his hands as he is peppered with questions by a class counsel. In another, the audio is distorted as Coughlin fumbles with the clip attaching a microphone to his tie.

Donovan told the jury during his closing that it's plain to see that Coughlin was intentionally covering the microphone.

During his closing, Manne characterized that assertion as baseless.

"All the plaintiffs can do by the end of this is insult him," Manne said of Coughlin, who in August was sentenced by a federal judge in Arkansas to 27 months' home detention after pleading guilty to stealing money, merchandise and gift cards from the company. •