

Will Wal-Mart Legal Decision Impact Managed Service Providers?

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Could the Supreme Court's recent decision to toss out a huge class-action lawsuit against Wal-Mart have the consequence of spawning more rather than fewer suits? The answer could eventually filter down to MSPs and software vendors active in the e-discovery space.

One line of thought holds that the court's ruling will put the breaks on large-scale class actions. The Wal-Mart sex-discrimination case involved more than 1 million women. The 5-4 decision essentially said that experiences of employees in thousands of stores across the country lacked sufficient commonality to let the claim proceed as a group suit. The Wall Street Journal wrote that the ruling is "likely to reverberate in other class actions, making lower courts scrutinize whether large groups of employees are similar enough to sue together."

But there's another view of the situation: large class actions may yield to numerous smaller-scale class actions or suits brought by individuals. A plaintiff's lawyer in the Wal-Mart case recently pointed to the possibility of pursuing class-action suits with "smaller groups of women or proceeding individually," according to a Reuters article.

An editorial in the St. Louis Post Dispatch noted that while the Supreme Court's decision "might chill the use" of some class-action suits, it could also provide a "road map for smaller-scale, but still high-impact, class-action suits." The paper suggested that claims could proceed on a local, rather than national, level.

Service providers aren't certain whether the Wal-Mart case will boost the e-discovery workload, but believe legal departments should be prepared to wield technology just the same.

"Regardless of whether this decision will lead to increased or decreased case volumes, companies facing serial class-action litigations with thousands of data custodians, need to leverage technology to reduce the discovery burden," said Michele C.S. Lange, director of Discovery & Document Review at Kroll Ontrack, which provides e-discovery services.

An online document repository, for example, can help organizations meet the demands of multiple cases.

"In these types of situations, often the same sets of documents are involved and productions to the opposing parties are largely identical — no matter the plaintiff, jurisdiction or court," Lange explained. "Online preservation repositories and document review platforms have the ability to manage document sets that are being utilized across multiple cases, keeping the time commitments and expenses involved to a minimum."

Questions Impact

Elle J. Byram, corporate counsel for ZL Technologies, questions whether Wal-Mart class-action would increase the number of individual suits. Many people "in some suits won't sue on their own and may be totally unaware that they even have an actionable legal claim," she noted.

ZL Technologies recently partnered with managed hosting provider SunGard Availability Services to offer e-discovery and other applications on a software-as-a-service basis.

Byram also questioned the Wal-Mart case's impact on e-discovery.

"I doubt this will impact e-discovery or increase the workload for e-discovery products and services any more than it was already increasing," she said. "Workloads have increased merely because of the explosion of data, regardless of the type of suit."

That explosion has made e-discovery an expensive process. And increasing cost provides ample incentive for shirking the workload.

"If anything, this is forcing companies to reconsider litigation and look for alternatives to reduce the workload," she said.