

representative claims, and adequacy of representation. Consideration of fairness and judicial economy are well-served by resolving the baristas' claims in a class action. We conclude, therefore, that a class action is superior to other alternative ways of adjudicating this controversy.

Decision

The U.S. court of appeals upheld the U.S. district court's decision certifying the class action and the

award of \$14 million to the class of baristas. Because the shift supervisors who shared in the tips were not made defendants in the case, they were not required to reimburse any funds that they had received from the tip pools.

Ethics Questions

Did Starbucks act ethically in paying money to its shift supervisors from customers' tips? Why did Massachusetts pass the Tips Act?

statute of limitations

A statute that establishes the period during which a plaintiff must bring a lawsuit against a defendant.

Statute of Limitations

A **statute of limitations** establishes the period during which a plaintiff must bring a lawsuit against a defendant. If a lawsuit is not filed within this time period, the plaintiff loses his or her right to sue. A statute of limitations begins to "run" at the time the plaintiff first has the right to sue the defendant (e.g., when the accident happens or when the breach of contract occurs).

Federal and state governments have established statutes of limitations for each type of lawsuit. Most are from one to four years, depending on the type of lawsuit.

Example The state of Idaho has a two-year statute of limitations for personal injury actions. On July 1, 2016, Otis negligently causes an automobile accident in Sun Valley, Idaho, in which Cha-Yen is injured. Cha-Yen has until July 1, 2018, to bring a negligence lawsuit against Otis. If she waits longer than that, she loses her right to sue him.

discovery

A legal process during which each party engages in various activities to discover facts of the case from the other party and witnesses prior to trial.

Discovery

The legal process provides for a detailed pretrial procedure called **discovery**. During discovery, each party engages in various activities to discover facts of the case from the other party and witnesses prior to trial. Discovery serves several functions, including preventing surprises, allowing parties to prepare thoroughly for trial, preserving evidence, saving court time, and promoting the settlement of cases. The major forms of discovery are discussed in the following paragraphs.

deposition

Oral testimony given by a party or witness prior to trial. The testimony is given under oath and is transcribed.

deponent

A party who gives his or her deposition.

Deposition

A **deposition** is oral testimony given by a party or witness prior to trial. The person giving a deposition is called the **deponent**. A *party* to the lawsuit must give a deposition if called on by the other party to do so. The deposition of a *witness* can be given voluntarily or pursuant to a subpoena (court order). The deponent can be required to bring documents to the deposition. Most depositions are taken at the office of one of the attorneys. The deponent is placed under oath and then asked questions orally by one or both of the attorneys. The questions and answers are recorded in written form by a court reporter. Depositions can also be video-recorded. The deponent is given an opportunity to correct his or her answers prior to signing the deposition. Depositions are used to preserve evidence (e.g., if the deponent is deceased, ill, or not otherwise available at trial) and impeach testimony given by witnesses at trial.

Interrogatories

Interrogatories are written questions submitted by one party to a lawsuit to another party. The questions can be very detailed. In addition, certain documents might be attached to the answers. A party is required to answer interrogatories in writing within a specified time period (e.g., 60 to 90 days). An attorney usually helps with the preparation of the answers. The answers are signed under oath.

interrogatories

Written questions submitted by one party to another party. The questions must be answered in writing within a stipulated time.

Production of Documents

Often, particularly in complex business cases, a substantial portion of a lawsuit may be based on information contained in documents (e.g., memorandums, correspondence, and company records). One party to a lawsuit may request that the other party produce all documents that are relevant to the case prior to trial. This is called **production of documents**. If the documents sought are too voluminous to be moved or are in permanent storage or if their movement would disrupt the ongoing business of the party that is to produce them, the requesting party may be required to examine the documents at the other party's premises.

production of documents

A request by one party to another party to produce all documents relevant to the case prior to the trial.

Physical or Mental Examination

In cases that concern the physical or mental condition of a party, a court can order the party to submit to certain **physical or mental examinations** to determine the extent of the alleged injuries. This would occur, for example, where the plaintiff has been injured in an accident and is seeking damages for physical injury and mental distress.

physical or mental examination

A court-ordered examination of a party to a lawsuit before trial to determine the extent of the alleged injuries.

The following case involves the issue of discovery.

CASE 4.2 STATE COURT CASE *Discovery*

Averyt v. Wal-Mart Stores, Inc.

265 P.3d 456, 2011 Colo. Lexis 857 (2011)
Supreme Court of Colorado

"Rather, any prejudice that the jury may have harbored was due to Wal-Mart's initial refusal to produce evidence of or admit the evidence of the grease spill."

—Rice, Justice

Facts

Holly Averyt, a commercial truck driver, slipped in grease while making a delivery to Walmart store number 980 in Greeley, Colorado. As a result of the fall, Averyt ruptured a disc in her spine and injured her shoulder and neck. These injuries left her unable to perform many daily functions. Averyt sued Wal-Mart Stores, Inc. (Walmart), alleging claims of negligence and premises liability.

Averyt's attorney sought evidence from Walmart documenting the grease spill, but Walmart denied the existence of the grease spill and did not turn over documents to Averyt. During opening statements on the first day of trial, Walmart denied the existence of

the grease spill. On that day, Averyt's attorney contacted the government of the City of Greeley and discovered a memorandum that referenced the grease spill and documentation of the cleanup of the spill. Averyt impeached a Walmart witness's statements using the Greeley report.

The next morning, Walmart informed the court and Averyt that it had located an assistant manager who remembered the grease spill and disclosed numerous documents that confirmed the existence of the spill, including documents from three companies that were involved in cleaning up the spill. From that point forward, Walmart ceased to deny the existence of the grease spill and instead asserted that it had exercised reasonable care to clean up the spill.

The jury found in Averyt's favor and awarded her \$15 million in damages. The trial court judge applied a legal cap on damages, reducing the award to approximately \$11 million. Walmart made a motion for a new trial, alleging nondisclosure of the Greeley

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23.2 Cosmetics Regulation FBNH Enterprises, Inc. (FBNH), was a distributor of a product known as French Bronze Tablets. The purpose of the tablets was to allow a person to achieve an even tan without exposure to the sun. When ingested, the tablets imparted color to the skin through the use of various ingredients, one of which is canthaxanthin, a coloring agent. The Food and Drug Administration (FDA) had not approved the use of canthaxanthin as a coloring additive. The FDA became

aware that FBNH was marketing the tablets and that each contained 30 milligrams of canthaxanthin. The FDA filed a lawsuit, seeking the forfeiture and condemnation of 8 cases of the tablets in the possession of FBNH. FBNH challenged the government's right to seize the tablets.

Who wins? *United States v. Eight Unlabeled Cases of an Article of Cosmetic*, 888 F.2d 945, 1989 U.S. App. Lexis 15589 (United States Court of Appeals for the Second Circuit)

Ethical

Ethics Case

23.3 Ethics Case The Colgate-Palmolive Co. (Colgate) manufactured and sold a shaving cream called Rapid Shave. Colgate hired Ted Bates & Company (Bates), an advertising agency, to prepare television commercials designed to show that Rapid Shave could shave the toughest beards. With Colgate's consent, Bates prepared a television commercial that included the sandpaper test. The announcer informed the audience, "To prove Rapid Shave's super-moisturizing power, we put it right from the can onto this tough, dry sandpaper. And off in a stroke."

While the announcer was speaking, Rapid Shave was applied to a substance that appeared to be sandpaper, and immediately a razor was shown shaving the substance clean. Evidence showed that the substance

resembling sandpaper was in fact a simulated prop, or "mock-up," made of Plexiglas to which sand had been glued. The Federal Trade Commission (FTC) issued a complaint against Colgate and Bates, alleging a violation of Section 5 of the Federal Trade Commission Act. *Federal Trade Commission v. Colgate-Palmolive Company*, 380 U.S. 374, 85 S.Ct. 1035, 1965 U.S. Lexis 2300 (Supreme Court of the United States)

1. What does Section 5 of the Federal Trade Commission Act prohibit?
2. Did the defendants act ethically in this case?
3. Have the defendants engaged in false and deceptive advertising, in violation of Section 5 of the FTC Act?

Notes

1. 21 U.S.C. Section 301.
2. Public Law 101-535.
3. 21 U.S.C. Section 321.
4. 21 U.S.C. Sections 360(c) et seq.
5. 15 U.S.C. Section 2051.
6. Public Law Sections 111-148.
7. Public Law Sections 111-152.
8. 15 U.S.C. Sections 41-58.
9. 15 U.S.C. Section 1602.
10. 15 U.S.C. Sections 1601-1667.

11. 12 C.F.R. 226.
12. 15 U.S.C. Sections 1667-1667f.
13. 15 U.S.C. Sections 1666-1666j.
14. Public Law 24, 123 Stat. 1734-1766.
15. 15 U.S.C. Sections 1681-1681u.
16. 15 U.S.C. Sections 1681-1681x.
17. 15 U.S.C. Sections 1692-1692o.
18. 15 U.S.C. Sections 1691-1691f.
19. 15 U.S.C. Sections 1637c-g.
20. Public Law 111-203 (2010).