

Kraft Settles Hot Dog Plant Don, Doff Action

By **Dietrich Knauth**

Law360, New York (November 09, 2010) -- Kraft Foods International Inc. has settled a lawsuit alleging the company violated the Fair Labor Standards Act and Missouri law by failing to pay workers at a hot dog processing plant for time spent putting on and taking off necessary protective gear.

Judge Nanette Laughrey of the U.S. District Court for the Western District of Missouri signed off Monday on the \$207,000 settlement, preliminarily approved in May, saying the deal was fair and had widespread support among the class members.

"No individuals have formally objected to this settlement, and the opt-out rate is extremely low," the judge wrote. The opt-out rate was less than 1 percent, according to the order.

The settlement will cover a class of approximately 705 production employees who worked for Kraft between Sept. 18, 2004, and March 31, 2010, at Kraft's Columbia, Mo., hot dog processing plant.

Judge Laughrey also approved a motion for attorneys' fees Monday, awarding \$68,000 to the class counsel and \$3,000 to the class representative.

"Kraft is pleased to settle this litigation and put it behind us," said Daniel Kaplan of Foley & Lardner LLP. Kraft is confident that its pay practices are fully legal, but it made a business decision to settle the suit and avoid further court costs, Kraft said.

A former Kraft line worker filed the complaint in September 2009, also alleging breach of contract and unjust enrichment claims and that employees effectively worked off the clock for Kraft in violation of their employment agreements.

Employees have to wear protective gear including steel-toed boots, hard hats, safety glasses, work pants, hair nets, earplugs and gloves, according to the complaint.

In addition to time spent changing, the employees also have to walk between the clothing storage station, the locker room and their work departments without compensation, the complaint says. The employees didn't punch in until they had their gear on and reached their designated work area, and had to punch out before changing clothes and dropping off the gear for cleaning, the complaint says.

The complaint cites the 2005 Supreme Court decision in *IBP Inc. v. Alvarez*, which held that "preparatory work duties that are integral and indispensable to the principal work activity are compensable under the FLSA." Because *IBP v. Alvarez* concerned claims at a meat processing plant, the complaint says, the decision was "directly applicable" to the current case.

The complaint says Kraft was already "on notice" that its practices violated the FLSA because of a 2007 suit filed against Kraft by line workers at one of its Oscar Mayer hot dog processing plants in Wisconsin. Kraft is currently asking the U.S. Supreme Court to review that case, which resulted in a \$2.2 million judgment against Kraft.

Kaplan said the Wisconsin suit "had no impact" on the decision to settle the Missouri suit, since they involved different questions of law. The Supreme Court will make a decision after the Dec. 3 due date for the plaintiffs' response and all amicus briefs, Kaplan said.

Attorneys for the plaintiffs did not immediately respond to requests for comment Tuesday.

Stueve Siegel Hanson LLP represents the plaintiffs.

Kraft is represented by Foley & Lardner LLP and Ogletree Deakins Nash Smoak & Stewart PC.

The case is *Stull v. Kraft Foods Global Inc.*, case number 2:09-CV-04187, in the U.S. District Court for the Western District of Missouri.

--Additional reporting by Christopher Norton