

## Wal-Mart Slams Class Cert. Bid In Mexico Bribery Suit

By Cara Salvatore



Peter Wald  
Latham & Watkins LLP



Brian Glennon  
Latham & Watkins LLP



Colleen Smith  
Latham & Watkins LLP

*Law360, New York (November 25, 2015, 6:46 PM ET)* -- Wal-Mart Stores Inc. urged an Arkansas federal judge Tuesday not to certify a class of investors in a shareholder suit claiming it concealed the extent of the company's possible bribery of Mexican officials.

The retail giant was responding to a request by the City of Pontiac General Employees' Retirement System asking U.S. District Judge Susan O. Hickey to certify the class of shareholders. Wal-Mart says PGERS hasn't met one of the pillar requirements for class certification, typicality.

PGERS "is not a suitable class representative because it did not lose any money — not one penny — on its Wal-Mart investment," according to the filing. "As a matter of law, PGERS cannot satisfy Rule 23(a)'s requirement that the lead plaintiff suffer damages typical of the class.

"The analysis must end there, and PGERS's motion for class certification must be denied," the filing said.

Representatives for Wal-Mart and PGERS weren't immediately available for comment Wednesday.

The pension fund asked for certification earlier in November, saying the case was ideal for certification because of the far-reaching common issues for investors. PGERS told Judge Hickey that the action involves thousands of class members with "uniform claims and defenses."

In December 2011, Wal-Mart filed a U.S. Securities and Exchange Commission form that disclosed the retailer's investigation of possible Foreign Corrupt Practices Act violations but — allegedly misleadingly

— failed to mention the allegations dated back to 2005 and that an internal probe was undertaken in 2006, the pension fund said.

The fund also claims Wal-Mart disclosed the issue only because of a New York Times investigation into possible bribes paid to Mexican officials, and it said the company concealed possible FCPA violations from the SEC, the U.S. Department of Justice and shareholders until then. The New York Times story was published in early 2012, following a 2011 investigation.

The actions affected thousands of investors holding 3 billion Wal-Mart shares, according to the suit.

"This case overwhelmingly satisfies the requirements of numerosity, typicality, commonality and adequacy," PGERS said. "In addition, the case presents nothing but common questions of law and fact, so there is clear predominance over what are few, if any, individual questions."

The publication of the Times story caused a media firestorm and the biggest drop in the company's shares in years. Multiple investigations by U.S. and Mexican authorities followed, according to the fund.

Wal-Mart lost a bid to toss the suit in late September.

PGERS is represented by Jason Forge, Debra Wyman, Laura Andracchio, Austin Brane and Michael Albert of Robbins Geller Rudman & Dowd LLP, Nicholas Patton and Geoffrey Culbertson of Patton Tidwell & Culbertson LLP and Douglas Johnston Jr. and Timothy Miles of Barrett Johnston Martin & Garrison LLC.

Wal-Mart is represented by Peter Wald, Brian Glennon and Colleen Smith of Latham & Watkins LLP and by Jess Askew and Teresa Wineland of Kutak Rock LLP

The case is City of Pontiac General Employees' Retirement System v. Wal-Mart Stores Inc. et al., case number 5:12-cv-05162, in the U.S. District Court for the Western District of Arkansas.

--Additional reporting by Jonathan Randles, Kali Hays and Ed Beeson. Editing by Catherine Sum.