



EXHIBIT B

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Not Reported in F.Supp.2d, 2005 WL 1155751 (E.D.Pa.), 10 Wage & Hour Cas.2d (BNA) 1237
(Cite as: 2005 WL 1155751 (E.D.Pa.))

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United States District Court,
E.D. Pennsylvania.
Mark GOLDMAN, Individually and on behalf of
all others similarly situated
v.
RADIOSHACK CORPORATION

No. Civ.A.03-0032.
May 13, 2005.

Anthony J. Sievert, Elizabeth Fegan Hartweg,
Timothy A. Scott, The Wexler Firm, Chicago, IL,
Michele Stawinski, Roda & Nast, P.C., Lancaster,
PA, for Mark Goldman.

James S. McNeill, Robert S. Brewer, Jr., Robert A.
Cocchia, Ross H. Hyslop, McKenna Long and Ald-
ridge, LLP, San Diego, CA, Marybeth S. Christi-
ansen, McKenna, Long & Aldridge, LLP, Devon,
PA, for Radioshack Corporation.

MEMORANDUM AND ORDER

SÁNCHEZ, J.

*1 RadioShack Corporation asks this Court to Bifurcate the liability and damages phases of the trial and to set order of proof at trial. RadioShack argues bifurcation will expedite the presentation of evidence, promote efficiency and avoid undue prejudice. RadioShack also argues it should be permitted to open first, present evidence first and present rebuttal final argument because it bears the burden of proof. For the reasons that follow, this Court grants both motions.

FACTS

Goldman filed a complaint against RadioShack in the Court of Common Pleas of Philadelphia County on December 17, 2002, claiming he was denied overtime wages in violation of the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201 *et seq.*; Pennsylvania's Minimum Wage Act (MWA), 43 P.S. § 333.102 *et seq.*; and Pennsylvania's Wage

Payment and Collection Law (WPCL), 43 P.S. § 260.1 *et seq.* RadioShack removed the action to this Court in January 2003.^{FN1} On April 16, 2003, Judge Van Antwerpen granted Goldman's Motion for Conditional Certification of the FLSA claim. On May 10, 2005, this Court granted Goldman's Motion for Class Certification of the state law claims under Fed.R.Civ.P. Rule 23(b)(3) and set trial for June 21, 2005. RadioShack now moves to bifurcate the liability and damages phases of trial and to set order of proof at trial.

FN1. The FLSA confers federal question jurisdiction.

DISCUSSION

Rule 42(b) governs a party's request to bifurcate. It states, "[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, ... or of any separate issue...." Fed.R.Civ.P. 42. The decision whether to bifurcate is within the sound discretion of the district court. *Barr Laboratories, Inc. v. Abbott Laboratories*, 978 F.2d 98, 115 (3d Cir.1992). "Bifurcation should be granted only where the court concludes that separate liability and damage trials further convenience or avoid prejudice." *Lowe v. Philadelphia Newspapers, Inc.*, 594 F.Supp. 123, 125 (E.D.Pa.1984) (citations omitted). Other courts in the Third Circuit have permitted bifurcation in FLSA actions. See *McGrath v. City of Philadelphia*, 864 F.Supp. 466, 490 (E.D.Pa.1994); *Brock v. DialAmerica Marketing, Inc.*, 1987 U.S. Dist. LEXIS 15845 (D.N.J.1987); *Maldonado v. Lucca*, 629 F.Supp. 483 (D.N.J.1986).

Bifurcation is appropriate in this case because it will promote judicial economy by limiting the presentation of lengthy evidence which may be irrelevant if the jury does not find RadioShack liable. For example, if RadioShack is not found liable for overtime wages, there is no need for evidence on willfulness and damages. Bifurcating the trial pro-

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motes judicial expedition and economy by limiting evidence to that which is essential to the disposition of the case. Bifurcation is also appropriate because the standards and evidence required to prove liability are entirely different than the evidence required to prove damages.

*2 Finally, bifurcation is appropriate because it will not prejudice the Goldman and may avoid prejudice to RadioShack. The issue of liability and the issue of damages are legally distinct; therefore, bifurcation will not prejudice Goldman. Conversely, if the Court did not bifurcate, the intermingling of liability with issues of willfulness and damages might prejudice RadioShack.

Similarly, the Court's allocation of the right to open and close also rests within the sound discretion of the trial court. *Moreau v. Oppenheim*, 663 F.2d 1300, 1311 (5th Cir.1981), cert denied 458 U.S. 1107, 102 S.Ct. 3486, 73 L.Ed.2d 1368. When setting the order of proof at trial "[i]t is customary for the party bearing the burden of proof to open and close the argument." *Moylan v. Meadow Club, Inc.*, 979 F.2d 1246, 1251 (7th Cir.1992); see also 53 A.L.R. Fed. 900 (stating "the party with the affirmative of the issue has the right to open and close..."); *Silver v. New York Life Ins. Co.*, 116 F.2d 59, 62 (7th Cir.1940)(finding appellant carried the burden of proof and was entitled to open and close the evidence and arguments); *Montwood Corp. v. Hot Springs Theme Park Corp.*, 766 F.2d 359, 364 (8th Cir.1985)(holding the party with the burden of proof properly was allowed to open closing arguments). As Goldman acknowledged in his pleadings and oral argument, RadioShack bears the burden of proving Goldman is an exempt employee. To prove exemption, RadioShack must prove Goldman's primary duty was managerial and Goldman customarily and regularly directed the work of two or more employees. Former C.F.R. § 541.1(f). Because RadioShack bears the burden of proof in the liability portion of the trial, RadioShack will open first and present argument first in this portion of the trial.

Goldman argues he bears the burden to make a *prima facie* showing that he and all other members of the class worked more than forty hours a week without overtime. This burden, however, is not as significant as RadioShack's burden to dispute liability. Furthermore, RadioShack has offered to stipulate to this fact. This Court will not prohibit Goldman from introducing evidence regarding the number of overtime hours the class worked. This evidence, however is appropriate for the damages portion of the trial.

Goldman also argues he bears the burden of establishing RadioShack acted willfully in failing to pay overtime wages. The Court agrees. Goldman will therefore address the jury first and present evidence first during the damages portion of the trial. Accordingly, this Court enters the following:

ORDER

And now, this 13th day of May, 2005, it is hereby ORDERED that Defendant's Motion to Bifurcate (Doc. 145) is GRANTED. Defendant's Motion to Set Order of Proof at Trial (Doc. 155) is GRANTED in part and DENIED in part. Defendant will be permitted to open first and present argument first in the liability portion of the trial.

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