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Wage Fixing Suit Is Back On

Court: Class-action
lawsuit against area
fruit companies,
employment agency
can go ahead

By **TOM ROEDER**
YAKIMA HERALD-REPUBLIC

A federal wage-fixing and racketeering lawsuit against two Selah fruit companies and a Yakima employment agency will go forward under a ruling from three-judge panel from the 9th U.S. Circuit Court of Appeals.

The ruling, issued late Tuesday, overturns a U.S. District Court ruling last year that threw out the case. The class-action suit claims the three companies — Zirkle Fruit Co., Matson Fruit Co. and Selective Employment Agency — criminally conspired to keep wages low by hiring illegal immigrants.

"Now we get our day in court," said Howard Foster, a Chicago lawyer who represents the two primary plaintiffs in the suit, Olivia Mendoza and Juana Mendiola — former workers for Zirkle.

Though neither Mendoza nor Mendiola worked for Matson Fruit, Foster contends that Matson was part of a conspiracy with the other two firms to hire illegal aliens. Foster said that because illegal aliens would work for less money, wages at Zirkle and Mat-

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son were unreasonably low.

Attorneys for the three defendants have strongly denied conspiracy claims, saying that they do not knowingly employ illegal aliens.

The 9th Circuit's ruling, unless appealed, lands the case back in District Court, where the suit will proceed. Essentially, the ruling said a jury should decide whether employment practices existed that kept wages artificially low. A jury would also be responsible for figuring out if a damage award is required.

"We really could not have asked for a better decision," Foster said.

Several attorneys for the defendants couldn't be reached on Wednesday. The one attorney for the defendants who could be reached by phone, Sheryl McCloud of Seattle, declined comment.

"I just read this last night and I haven't been able to speak with my clients," she explained.

The suit said the fruit companies pressured Selective Employment to send them temporary workers who weren't eligible for legal employment in the United States.

By using Selective Employment, Zirkle and Matson were shielded from federal immigration authorities, the suit claims.

At a 2001 hearing, attorneys for the warehouses said the suit didn't meet the standard necessary under the federal Racketeer Influenced and Corrupt Organizations Act, or RICO. The RICO Act would allow the laborers to collect three times the normal compensation for damages, but requires them to prove that the damages were caused by a racketeering scheme that violated federal law.

The 9th Circuit, in an opinion authored by Judge M. Margaret McKeown, found that RICO statutes could apply in the case.

Foster said the defendants in the case have 30 days to object to the ruling. The matter could be appealed to a full nine-judge panel of the circuit court in San Francisco.

Barring appeal, Foster said he will ask District Court Judge Fred Van Sickle of Spokane to award him access to employment records, correspondence and e-mail among Zirkle, Matson and Selective.

Foster said those records could help him prove that the three conspired to deflate wages.

There is no limit
to the amount
of good that
people can
accomplish
if they don't
care who gets
the credit.

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