

The Daily Transcript

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Trial's Digest Case of the Week

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Limousine drivers bring class action for unpaid overtime and gratuities

LABOR-CIVIL ACTIONS

CODE VIOLATION

CLASS ACTION

SAN DIEGO COUNTY SUPERIOR COURT

Livingston v. Chester, No. GIC768263, Central. Robert E. May. Jury trial: 6 days. Verdict/judgment: 10/9/2002.

VERDICT/JUDGMENT: \$550,000

Judgment in favor of plaintiff class included awards of interest and attorney fees, plus an injunction mandating future compliance with the Labor Code and with Wage Order No. 9. The jury votes ranged from 9 to 3 to 12 to 0 in favor of plaintiffs. Vote: Mixed poll. Deliberations: 1 day.

TRIAL COUNSEL

Plaintiff: David J. Gallo, Law Office of David J. Gallo, Del Mar.

Defendant: Richard A. Higgins, Law Office of Richard A. Higgins, San Diego. William T. Carss, Law Office of Richard A. Higgins, San Diego.

FACTS/CONTENTIONS

According to plaintiff: A class of limousine drivers claimed that they were not being paid for the overtime and gratuities to which they were entitled. The plaintiffs were Scott Livingston; Robert Pimentel; and Ronald Portz, former limousine drivers as representatives of a class of approximately 59 drivers. The defendant was Jonathan P. Chester, operator of a limousine company. Drivers for the limousine company were to be paid minimum wage, plus a gratuity, which was included in the fare charged to the customer. Defendant failed to pay drivers for all hours worked and sought to credit the included gratuities against his obligation to pay minimum wage. Plaintiffs alleged that the included gratuities were gratuities that should not be credited against minimum wage (Labor Code §351). Plaintiffs also alleged that defendant was required to pay overtime when drivers worked the number of hours stated in Wage Order No. 9.

Defendant contended that the element of compensa-

tion entitled "gratuity" was not a true gratuity because it was included in the fare billed to the customer and thus could be credited against the requirement to pay minimum wage. Defendant did not dispute applicability of the requirement to pay overtime and offered no explanation for his failure to do so.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to plaintiff: Minimum wage, overtime, Labor Code §203 penalties, unliquidated prior to trial.

SETTLEMENT DISCUSSIONS

Not reported.

TRIAL EXPERTS

Plaintiff: Tucker McElroy, Ph.D., statistician, University of San Diego, San Diego (619) 743-2837. Patrick Jelsema, forensic financial analyst (619) 823-7070.

Defendant: None.

COMMENTS

According to plaintiff: Defendant's post-trial motions for new trial/JNOV were denied. Defendant appealed and on appeal the parties stipulated to participation in the Fourth Appellate District Mediation Program. The Hon. Cynthia G. Aaron was assigned as Settlement Justice. Justice Aaron devoted two full days to settlement efforts. Under the settlement, the plaintiff class agreed to discount the monetary award portion of the judgment and to accept payment over time in exchange for dismissal of the appeal and consensual pledge of substantial exempt assets to secure the payment stream. Because the case was a class action, the parties stipulated to an order in the Court of Appeal that revested jurisdiction in the Superior Court to consider approval of the proposed settlement and to administer the same if approved. On May 20, 2003, the Superior Court approved the settlement. Under the settlement, the injunction mandating future compliance with the Labor Code and Wage Order No. 9 remains in effect.

Ryan Saunders and Roshni V. Patel assisted plaintiff's counsel David J. Gallo as certified law students.