

**Objection Overruled: Miller & Martin Bucks Trend and Obtains Affirmation of an Early Settlement in a California Wage and Hour Class Action**

Pilot fish shadow sharks, letting the sharks do the hard work and then feeding off their leftovers. The “objector” to class action settlements in California has assumed a similar role. Any company with employees in California already is at risk of being bitten by a wage and hour class action. The parties often settle these lawsuits, but the court must approve the settlement before it becomes final. During this process, class members may file “objections” to the proposed settlement. An increasing number of plaintiffs’ law firms are now filing objections in cases that are not their own, hoping to ratchet up the cost of settlement and to earn a piece of the pie for their efforts. Objectors typically claim that the parties have not investigated the claims sufficiently and that the dollar value of the settlement is too low relative to total potential exposure.

Once upon a time courts tended to approve wage and hour class action settlements as a matter of course. Those times are gone. A number of California appellate court decisions, led by Kullar v. Foot Locker Retail (2008) 168 Cal.App.4<sup>th</sup> 116 and Clark v. American Residential Services (2009) 175 Cal.App.4<sup>th</sup> 785, have reversed approval of these class action settlements. Meanwhile, some lower courts have established guidelines calling for greater scrutiny of class action settlements. These developments make for rough waters for employers hoping to reach early, reasonable settlements, while minimizing litigation costs.

Nevertheless, it remains possible to achieve excellent results. Miller & Martin recently represented a large company facing a class action which alleged that it had misclassified supervisors as exempt from overtime requirements and deprived these supervisors of meal and rest periods under California law. Early in the case, we obtained a number of witness declarations, exchanged certain information and data with the plaintiffs, and scheduled a mediation. At mediation, the parties settled the case for a fraction of total potential liability. No company representative ever was deposed, the scope of discovery was contained, and the attorneys’ fees were modest.

Too good to be true? So thought one prominent plaintiffs’ law firm. It objected to the settlement and continued to press its objection before the California Court of Appeal. On June 10, 2010, the Court of Appeal affirmed approval of the class action settlement. Interestingly, the court evaluated the settlement primarily based on the work of the defendant, rather than the plaintiffs, as the court repeatedly cited witness declarations, data, and legal arguments that the defendant had presented.

**There are a number of lessons for employers in this changing landscape.** (Keep in mind that wage and hour class actions have increasingly begun to spread from California to become popular throughout the country.)

- Consider audits of job descriptions, classification of workers as exempt or non-exempt, and other wage and hour policies and practices *before* litigation hits.
- If your company is sued, a strong early investigation can save money in the long run. Witness declarations can reveal what is actually going on at ground level out in the field. This reality often does not fit the plaintiffs’ theory for class certification.
- Consider early but limited exchanges of information, data, and interviews, as well as an early mediation, so that the parties may explore the possibility of early settlement before they have invested too much in the litigation process.

- Balanced against the interests of efficiency, make sure the parties present enough of a record to the court to allow it to evaluate and approve the settlement.

*If you have any questions about this alert or California collective actions, please contact [Jennifer Robinson](mailto:jrobinson@millermartin.com) at ([jrobinson@millermartin.com](mailto:jrobinson@millermartin.com)) or [Brad Harvey](mailto:bharvey@millermartin.com) at ([bharvey@millermartin.com](mailto:bharvey@millermartin.com).) For more information on Miller & Martin's Class & Collective Actions Practice Group, please [click here](#).*

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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