Perseverance Pays Off For Employer In Class Action Litigation

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A federal court in Los Angeles just proved that, even after many years of difficult, protracted litigation, and despite several pretrial rulings in plaintiffs' favor, an employer that is willing to take a wage and hour dispute to trial can still pull out a victory, even at the last minute—and even on relatively close questions. The *Ortega v. J.B. Hunt Transport* decision is one that all California employers can look to as a beacon of hope in a sometimes-murky legal atmosphere.

Employer Faces Several Stumbling Blocks During Class Claim
In 2008, a group of California truck drivers filed suit against their employer, J.B. Hunt Transport, Inc. Their claims included allegations that their employer's piece-rate compensation system (which provided payment by the mile) did not pay them wages for all time worked; for example, they pointed to the fact that some of their work duties involved tasks where the trucks were not moving (such as cleaning and fueling, waiting at depots, etc.). The workers also claimed that their jobs interfered with their ability to take meal and rest periods.

The next year, the plaintiffs asked the U.S. District Court for the Central District of California to certify a proposed class consisting of all of J.B. Hunt's California-based drivers. The employer opposed certification, arguing that a class action should not be permitted given the facts at play. It pointed to the variances among the many thousands of drivers in the proposed class, all of them subject to many different pay plans. Moreover, it argued, the drivers' experiences regarding breaks differed based on their great variety of driving routes and working conditions. Despite these arguments, the court permitted the class to be certified, meaning that J.B. Hunt would be subject to trial and potential judgment on claims of thousands upon thousands of employees.

In 2011, in a (potential) blow to the plaintiffs, the U.S. Supreme Court published the seminal *Dukes* decision, in which the court clarified (mainly in defendants' favor) the standard federal courts should follow in certifying or declining to certify classes. As a result, J.B. Hunt moved to "de-certify" the class in its own case. It argued that, based on further discovery and investigation, and in light of the *Dukes* decision, certification was no longer justified. But once again, the court ruled in the plaintiffs' favor and allowed the avalanche of class claims to proceed.

Apparent Win Goes Up In Smoke
In 2014, the tables appeared to turn in J.B. Hunt's favor. The court held that the plaintiffs' meal and rest period claims (based entirely on California law) were preempted by federal law. J.B. Hunt's theory was that California's meal and rest period laws improperly related to its "prices, routes, and

services" and thus should be preempted as to it and other similar trucking companies under a federal interstate motor carrier statute. This ruling amounted to a complete victory for J.B. Hunt on those claims, because federal law does not impose any meal or rest period requirements as does California state law.

However, the victory proved to be short-lived. The tables turned again in 2017 when the 9th Circuit Court of Appeals reversed the trial court's preemption decision and once more cleared the case to head to a trial. Eight years after the case commenced, and with trial imminent, J.B. Hunt took one last shot to try to kill off the case before a jury could decide its fate. It filed its third attempt to try to decertify the class and short-circuit the massive claim.

Victory At The End: Employer's Persistence Carries The Day

This time, J.B. Hunt emerged victorious, proving that long-fought battles can sometimes pay off in the end. In an August 7 decision, Judge R. Gary Klausner ruled that plaintiffs' unpaid wage claims (and the related claims alleging improper wage statements and failure to pay wages on termination of employment) were not manageable in a class action setting. He pointed to the great variety of pay plans at issue, some of which included hourly pay components that arguably paid for the allegedly unpaid tasks.

He also ruled that plaintiffs' rest period claims were similarly subject to multiple individual issues not befitting class litigation. In order for them to be properly handled, the judge said, he would have needed to determine on an individual basis whether each particular driver worked three-and-a-half or more hours per day without a pay plan that paid for all time worked. Concluding that such a task would have been unwieldy at best, the court concluded the claims could not proceed on a class basis.

But that wasn't the only good news for the employer. Judge Klausner also ruled that there was no evidence to show that J.B. Hunt engaged in willful or bad faith conduct, thereby eliminating large categories of applicable penalties for the alleged minimum wage and "final pay" claims. He went further and decided that J.B. Hunt complied with California's meal break laws because the workers admitted in deposition that they could take meal breaks if they wanted to. Because the plaintiffs were truck drivers, he said, they acted independently and the employer lacked the ability to interfere with the breaks as a practical matter.

The only victory for the workers was a pyrrhic one. The court cleared the rest break claim to proceed to trial under the theory that J.B. Hunt's pay plans may have effectively discouraged workers from taking their permitted breaks. However, because the court had already de-certified the class as to this claim, the value of this ruling to plaintiffs was significantly diminished.

What Can Employers Take From This Decision?

Businesses operating in California can take three important lessons away from the recent *Ortega* decision. First, even when a court grants class certification, do not despair. Once your judge is faced with holding an actual trial involving thousands upon thousands of class members and multiple

with holding an actual trial involving thousands upon thousands of class members and multiple issues at play, they may change their mind. Second, losing one—or even multiple—pretrial motions does not necessarily mean that your case is lost. Finally, taking effective depositions of plaintiffs early in the case can pay big dividends down the road, as it did here with plaintiffs' admissions on the meal period claim, so you should have your eyes on the big picture when preparing for these pivotal encounters.

Every case has a different life span, and most employers desire to end litigation promptly for economic reasons. However, an effective litigation strategy should include the option of fighting claims to a trial. Should a class action or representative action be threatened or actually filed, you should retain legal counsel early during the litigation process in order to develop a strategy best suited to reaching a desirable result.

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