

Daily Journal

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TOP VERDICTS OF 2011

TOP DEFENSE VERDICTS

Marlo v. United Parcel Service and Related Cases



Courtesy of Paul Hastings LLP

Front row: George Abele, Elena Baca

Back row: Lisa Brown, Holly Lake, Caroline Elkin, Jennifer Baldocchi

The challenge for Elena Baca was to find an efficient way to defend a far-flung batch of wage and hour disputes.

Some history: In 2003, a UPS full-time supervisor sued UPS, alleging that he was misclassified as exempt and therefore denied overtime and payments for missed meal and rest breaks.

He claimed to represent a class of about 1,300 full-time supervisors and sought back pay and penalties, a potential liability in the eight-to-nine figure range.

Paul Hastings convinced the federal court judge to decertify the class, an action that the 9th U.S. Circuit Court of Appeals later affirmed.

Wage and Hour Dispute

Los Angeles Superior Court

Los Angeles

Judge Carl West

Defendant's attorneys: Paul Hastings LLP, Elena Baca, Kirby Wilcox, George Abele

Plaintiff's attorneys: Furutani & Peters; Duckworth Peters Lebowitz Olivier LLP

Without a class, 54 other supervisors then filed individual misclassification suits, each seeking between \$500,000 to \$1 million for their claims and attorneys fees.

The team coordinated the cases before the court and racked up 16 wins, two published decisions in its favor and no monetary losses on the 54 individually filed cases. The remaining 38 plaintiffs walked away. *Coordinated UPS Wage and Hour Cases*, JCCP4606 (Los Angeles Super. Ct.).

"These cases were around for a long time," said lead defense attorney Elena Baca. "People hung in, but the writing was on the wall that we would go to trial and try every one. Odds were not in their favor as things unfolded."

Defending against individual plaintiffs, rather than a class, proved challenging.

"Every trial was different," she said. "They would change their legal arguments and we would have to modify what we were doing. We'd have to stay nimble from one case to another."

Bottom line: Baca had to find "the kill shot."

"We had to figure out how to efficiently eliminate them," she said. "It was exciting, because it's not often that you have so many moving pieces that you need to coordinate."

The case, Baca said, demonstrated the high bar that plaintiffs must meet to achieve class certification.

Failing that, she added, individual plaintiffs, as in the UPS case, face years of what can be unsuccessful litigation.

— Pat Broderick