



COUNSEL TO GREAT COMPANIES

Lessons Learned From a Rest Break Class Action

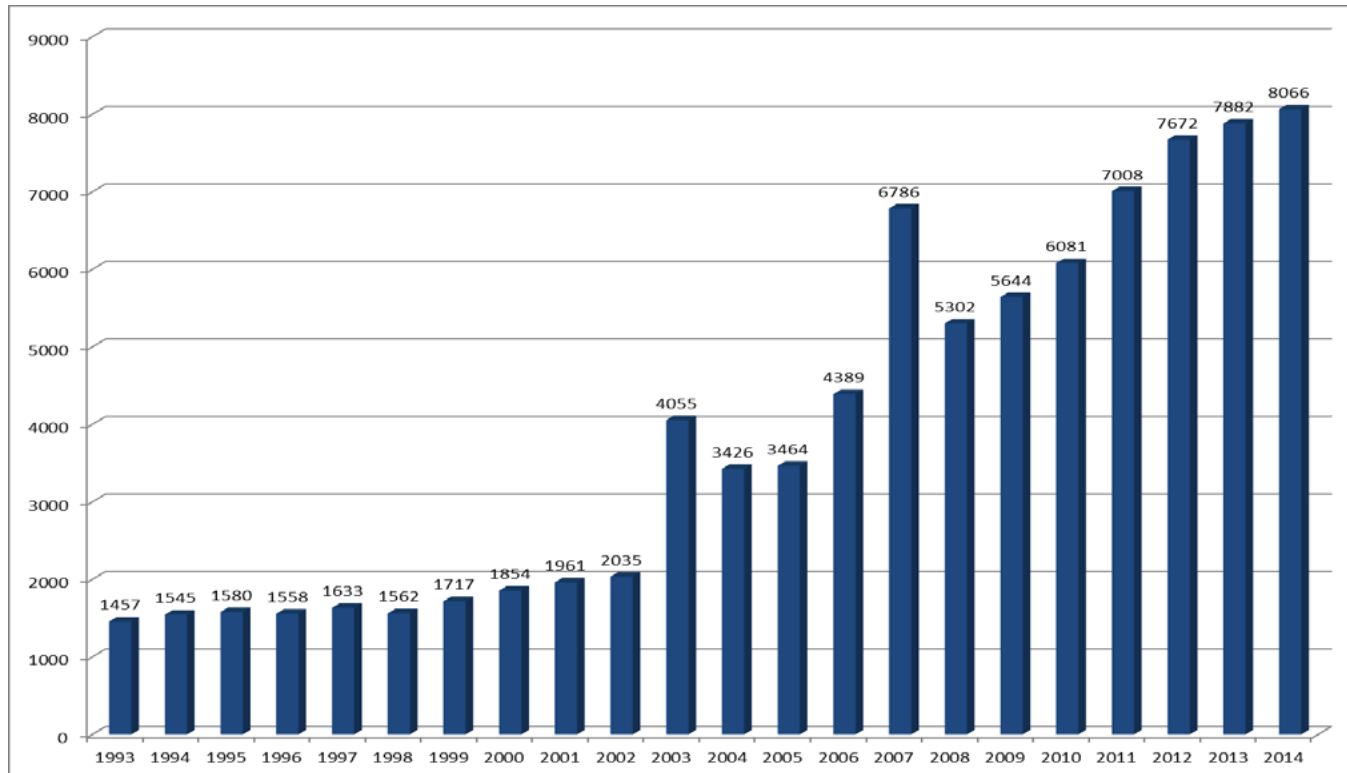
October 12, 2017

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Resources, IMCO**

**Chelsea Petersen – Partner,
Perkins Coie**

Perkins Coie LLP

Wage and Hour Class/Collective Actions



Source: Federal Judicial Caseload Statistics, Federal Judicial Center

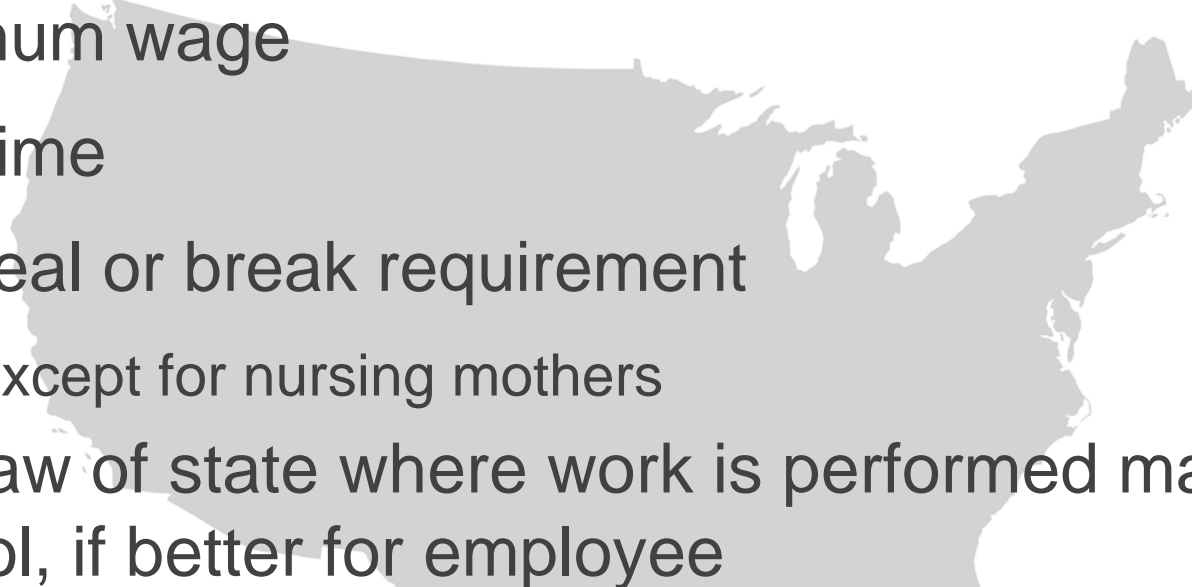
Wage and Hour Class/Collective Actions

- 90% of all class actions filed in U.S.
- Average settlement: \$1.9 million
- Average top 10 settlement: \$22 million
- The top 10 Wage & Hour Settlements in 2016 totaled **\$695.5 million**



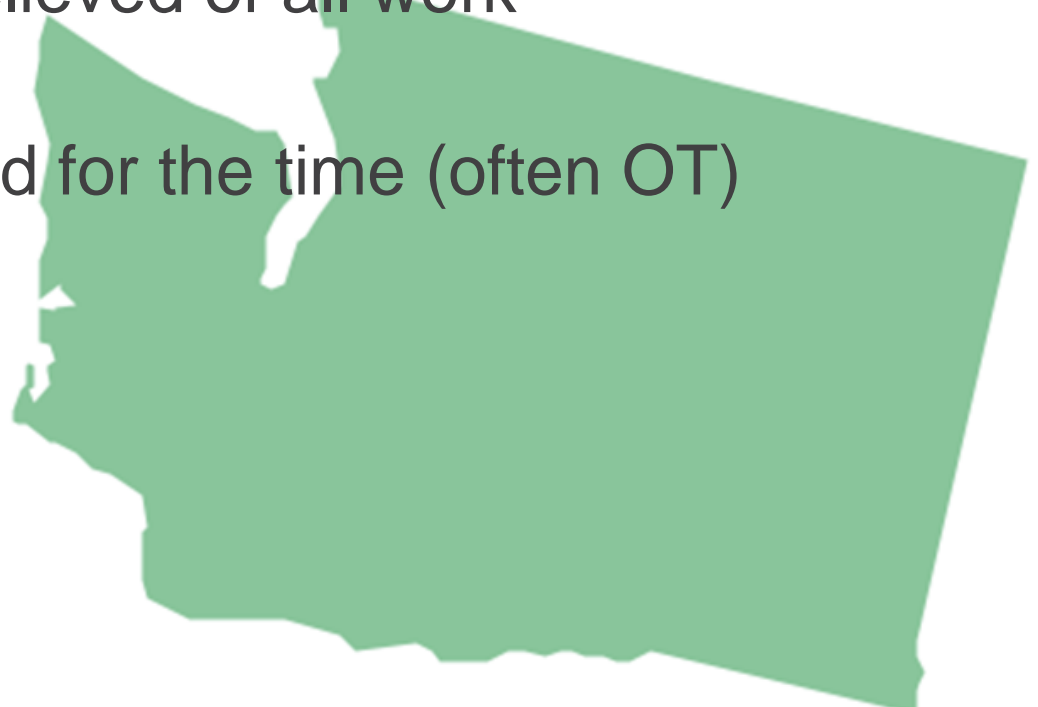
Source: ACC Conference "Avoiding Costly Wage and Hour Class Litigation"

Federal Law: FLSA

- Minimum wage
 - Overtime
 - No meal or break requirement
 - except for nursing mothers
 - But, law of state where work is performed may control, if better for employee
- 

Washington: Meal Periods

- 30 minutes, unpaid
- Cannot work more than 5 hours without a meal break
- Must be **uninterrupted**
- Must be completely relieved of all work responsibilities
- If missed, must be paid for the time (often OT)
- **Can** be waived



Washington: Rest Breaks

- 10 minutes, paid
- One break every 4 hours worked
- Cannot work more than 3 hours without a rest break
- Doesn't need to be scheduled
- Can be "intermittent"
- If missed, must be paid an *extra* 10 minutes
- **Cannot** be waived



Witschel v. IMCO: The Claims

6

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

8 COUNTY OF SKAGIT

9 MORGAN WITSCHTEL, individually and on
behalf of all others similarly situated,

10 Plaintiff,

11

12 v.

13 IMCO GENERAL CONSTRUCTION, INC.;
CITY OF ANACORTES; and FIDELITY
AND DEPOSIT COMPANY OF
14 MARYLAND,

15 Defendants.

16

17

18 Plaintiff Morgan Witschel, by his undersigned attorneys, for this class action complaint
19 against Defendants IMCO General Construction, Inc., City of Anacortes, and Fidelity and
20 Deposit Company of Maryland (collectively "Defendants"), alleges as follows:

21 **I. INTRODUCTION**

22 1.1 Nature of Action. Plaintiff Morgan Witschel brings this action against
23 Defendants for Defendant IMCO's systematic scheme of wage and hour abuse against

NO. 13 2 00975 0
CLASS ACTION COMPLAINT

- Failure to provide rest breaks
- Breach of express and implied contract
- Failure to pay OT
- Willful refusal to pay

Witschel v. IMCO: The Outcome

NO. 13-2-00975-0

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

NOTED FOR HEARING:
February 11, 2016 at 9:30 a.m.

Clerk's Action
4-21-16

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SKAGIT COUNTY

Witschel v. IMCO General Construction, Inc. et al, Case No. 13-2-00975-0

NOTICE OF CLASS ACTION SETTLEMENT

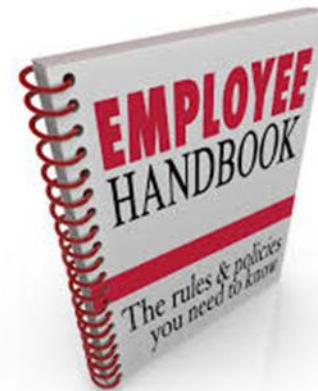
A court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or not.

Payee	Amount	Void	Checks	CM Ref Seq	Date	Source
95417	265.25		32402		0 08/03/16	PR Update
95012	247.68		32408	***	0 08/03/16	PR Update
95043	2.41		32439	***	0 08/03/16	PR Update
95045	18.08		32441	***	0 08/03/16	PR Update
95046	80.75		32442		0 08/03/16	PR Update
95048	8.82		32444	***	0 08/03/16	PR Update
95051	21.87		32447	***	0 08/03/16	PR Update
95064	7.95		32460	***	0 08/03/16	PR Update
95069	39.33		32465	***	0 08/03/16	PR Update
95074	14.30		32470	***	0 08/03/16	PR Update
95078	69.52		32474	***	0 08/03/16	PR Update
95084	42.23		32480	***	0 08/03/16	PR Update
95090	249.89		32486	***	0 08/03/16	PR Update
95091	129.47		32487		0 08/03/16	PR Update
95098	70.83		32494	***	0 08/03/16	PR Update
95103	17.69		32499	***	0 08/03/16	PR Update
95128	223.16		32524	***	0 08/03/16	PR Update
95144	148.48		32540	***	0 08/03/16	PR Update

Lessons Learned: Exhibit A, Your Policy

- Have a strong, clear policy
- Train *all* supervisors on policy
- Discipline any supervisor who fails to enforce the policy

1 A. No -- I mean yes.
2 Q. In your opinion, is there anyone at IMCO on the
3 project that you're on who has more knowledge about IMCO's
4 rest break practices on site than you?
5 A. No.
6 Q. Okay. Do you know if before November 2014 IMCO
7 had a policy of paying an employee an additional ten minutes
8 if they missed a rest break?
9 A. I'm not aware of any of that.
10 Q. You just don't know either way?
11 A. No.



Lessons Learned: Documentation

- **At hire:**
 - Policy
 - Training
- **Daily:**
 - Meal breaks
 - Rest breaks
 - Accurate

Employee TIMECARD and Daily REPORT				
EMPLOYEE NAME: _____			JOB # _____	
			TODAY'S DATE: _____	
HOURS	COST CODE	EQUIPMENT OPERATED	CRAFT	Description of activity worked
HOURS WORKED: _____			Start Day _____	End Day _____
MEALS: Did you take your uninterrupted 30-minute meal period(s) today? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Meal start _____ Meal stop _____				
if applicable 2nd Meal start _____ 2nd Meal stop _____				
If "no," I opted to voluntarily waive my meal period(s) today: _____ (initial)				
If "no," and not voluntarily waived, I reported missed meal(s) to: _____ (supervisor)				
REST BREAKS: Did you take each of your rest breaks today? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If "no," number missed: ____; If "no," I reported missed rest break(s) to: _____ (supervisor)				
INJURIES: Were you injured today? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If "yes," did you fill out the required accident report? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Employee Signature: _____			Supervisor Signature: _____	
Date: _____			Date: _____	
By signing this time card, I certify that:				
(1) The reported hours are accurate;				
(2) I was given the opportunity for and took all meal periods and rest breaks (or have noted otherwise on this timesheet); and				
(3) I have reported all injuries that may have occurred at this job and on this day.				
Submission of fraudulent timecard entries may be subject to termination as well as civil and criminal prosecution. Please see the IMCO employee handbook for policies related to meal and rest breaks.				
IMCO requires any craft or office hourly employee who has missed a rest period to record the missed rest period on their daily or weekly timesheet. IMCO requires any employee who believes that he or she has not received a required meal break or rest periods to report the matter immediately to the employee's supervisor and/or HR so that the issue can be addressed.				

Lessons Learned: HR Vigilance



Lessons Learned: If Sued

- Notify counsel immediately
- Invest in good counsel
- Get ready...

