



## MEMORANDUM

**TO:** Marketing  
**FROM:** A. Shalauta  
**DATE:** September 19, 2007  
**CASE:** Rowe v. Morisoli Construction, Inc.

**Harmonie Members Defeat Certification Of Prevailing Wage Class Action In Public Works Projects**

In a significant victory that may have ramifications across the construction industry, the Burnham Brown Employment Group team of Cathy Arias and Andrew Shalauta defeated class certification in a case involving Laborers who allegedly performed Electrician Services on public works projects throughout Northern California. Burnham Brown represented a construction company that performed electrical lighting for highways. The stakes were high as the representative plaintiff was seeking to classify numerous scopes of work as “Electrical” that previously fell under the Laborer Classification under Department of Industrial Relations Scope of Work Provisions. The case potentially affected over 100 completed projects over a four-year period. The decision was issued by California Superior Court Judge Bonnie Sabraw on September 12, 2007.

In California, class certification in wage and hour cases is common and readily granted by the courts. This presented an uphill battle to defeat class certification and convince the trial court that this matter was not appropriate for certification. Trial courts have great discretion to determine whether a case should proceed as a class action. In the context of wage and hour cases, the California Supreme Court determined certification was appropriate for managers of large chain stores simply based on evidence of uniform practices and job descriptions. See Sav-On Drug Stores, Inc. v. Superior Court (Rocher), 34 Cal. 4th 319 (2004). Under Sav-On, there has been a strong tendency for courts to certify wage and hour class actions.

More recently, the California Court of Appeals upheld the denial of class certification in a wage and hour case brought by Albertson’s grocery managers. Dunbar v. Albertson’s, Inc., 141 Cal. 4th 1422 (2006). In Dunbar, the trial court held that because the grocery manager’s daily work varied significantly based on factors that included store features, geographic location, and personal style of managers, the claims were not suitable for class treatment. The court in Dunbar focused on the actual work of each manager in determining certification was not appropriate.

In our case, attorneys for Burnham Brown obtained declarations from numerous putative class members, the California Department of Transportation, the Laborers Union, and the Department of Industrial Relations to show that plaintiff could not prove the elements of typicality and commonality necessary for class certification. Judge Sabraw accepted all of Burnham Brown’s arguments in denying class certification. Judge Sabraw found the proposed class was not ascertainable because the scope of work was not readily identifiable. The trial court further found the common issues of fact did not predominate, and the representative plaintiff had

adverse interests to the class because the class allegations sought to strip work away from the Laborers and Laborers Union. Burnham Brown will now continued to defend the individual wage and hour claim of the representative plaintiff Rowe.

Ms. Arias and Mr. Shalauta are both partners at Burnham Brown, which is a Harmonie member. Ms. Arias is the chair of Burnham Brown's Employment Law Group and specializes in counseling and defending employers. Mr. Shalauta handles both commercial and employment litigation matters for businesses. Ms. Arias can be reached at (510) 835-6806 and [carias@burnhambrown.com](mailto:carias@burnhambrown.com). Mr. Shalauta can be reached at (510) 835-6720 and [ashalauta@burnhambrown.com](mailto:ashalauta@burnhambrown.com).

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