

ACI's 26<sup>th</sup> National Forum on



# WAGE HOUR

## CLAIMS AND CLASS ACTIONS

January 28 – 29, 2016 • Viceroy Miami • Miami, FL

The ACI Wage & Hour conference is the only one that provides a truly national View from the Bench. Learn from:



*Hon. Eduardo C. Robreno*  
U.S. Dist. Ct., E.D. Pa.



*Hon. Michael J. Davis*  
U.S. Dist. Ct., D. Minn.



*Hon. Wiley Y. Daniel*  
U.S. Dist. Ct., D. Co.



*Hon. Fernando J. Gaitan*  
U.S. Dist. Ct., W.D. Mo.



*Hon. George C. Steeb*  
U.S. Dist. Ct., E.D. Mich.



*Hon. James L. Robart*  
U.S. Dist. Ct., W.D. Wa.



*Hon. Tonianne J. Bongiovanni*  
U.S. Dist. Ct., D. N.J.



*Hon. Elizabeth W. Magner*  
U.S. Bankr. Ct., E.D. La.



*Hon. Alan S. Trust*  
U.S. Bankr. Ct., E.D.N.Y.



*Hon. Steven A. Brick*  
Calif. Sup. Ct., Alameda County

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Masco Corporation	Standard Chartered Bank

### Sessions include:

- **Wage and hour year in review:** analyzing the key wage & hour case law developments and DOL initiatives of 2015, and what they mean for your practice in 2016
- **The Latest on DOL white collar exemption changes:** analyzing the practical implications of the new rules & strategies for minimizing litigation risks
- **Joint employer liability** under the wage and hour laws: the implications of the NLRB *Browning-Ferris* decision on the wage and hour landscape
- The latest claims arising out of **minimum and prevailing wage violations**, improper tip and **tip credit** practices, **state paid sick leave** & scheduling laws
- The **role of an economic expert** in measuring and demonstrating damages in wage and hour
- Winning strategies for handling **class & collective wage and hour actions**
- **Ethical issues** in wage & hour litigation and settlement
- Preparing for and **surviving a DOL audit** and aggressive investigations by state equivalents
- The latest DOL guidance on **independent contractor vs. employee**; and defending federal and state claims involving the improper labeling of exempt/non-exempt employees by key industry
- The expanding utility of **wage & hour insurance**
- **Compensable time** in the modern day workplace – the latest off-the-clock claims relating to employee use of **mobile devices**, BYOD policies & working remotely

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# Class Certification Developments...Joint Employer Liability...Misclassification and Exempt Employee Determinations... FLSA Revisions to White Collar Exemption Requirements... Off-the-Clock Claims... Minimum Wage Violations... THE LIST GOES ON

It has never been more essential to be well versed in all the new nuances involved in defending against and managing the latest wage and hour claims and class actions. Come join your colleagues and clients at the nation's premier wage and hour forum and hone your skills and strategies needed to keep pace with this rapidly changing area of law, manage and defend against new and innovative claims, and prepare for emerging regulations and evolving enforcement priorities.

American Conference Institute's 26<sup>th</sup> National Forum on Wage & Hour Claims and Class Actions will provide you with an unparalleled opportunity to convene with expert in-house counsel from *Jos. A. Bank Clothiers, Bank of America, Nordstrom, Interval Leisure Group, Boehringer Ingelheim, Family Dollar Stores, Masco Corporation, Canam Steel Corporation, PSEG Services, Equifax, Marsh & McLennan, Allied World Insurance, Nordstrom, Allegis Group and more*, as well as renowned federal and state judges, and leading outside counsel from around the nation, who will provide you with expert advice, insider strategies, and comprehensive updates on:

- Wage and hour year in review: analyzing the key wage & hour case law developments and DOL initiatives of 2015, and what they mean for your practice in 2016
- The Latest on DOL white collar exemption changes: analyzing the practical implications of the new rules & strategies for minimizing litigation risks
- Joint employer liability under the wage and hour laws: the implications of the NLRB *Browning-Ferris* decision on the wage and hour landscape
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- The role of an economic expert in measuring and demonstrating damages in wage and hour class actions
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- The expanding utility of wage & hour insurance
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## WHO YOU WILL MEET:

### In-House Employment Counsel

#### Outside Counsel practicing in the areas of:

- Labor and Employment Law
- Employment Discrimination
- Class Actions

### Human Resources Professionals

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7:15 Registration and Continental Breakfast

7:55 **Opening Announcements & Co-Chair Welcome**

**Reginald Johnson**  
Family Dollar Stores, Inc.

**William C. Martucci**  
Shook, Hardy & Bacon LLP

8:00 **Views from the Bench: What Works and What Doesn't in Their Courtrooms, Why Employers Succeed and Don't Succeed in Wage & Hour Litigation, Novel Trial and Case Management Strategies, Examples of Bad Lawyering, Judicial Perspectives on Class Certification, and More**

This panel will provide you with a comprehensive survey of the year's most important court decisions involving wage and hour claims as well as the year's most notable moves by the DOL and state equivalents. Follow along as counsel well versed in the latest developments over the past year engage you in an in-depth examination of the real-life impact of each case and federal/state initiative on wage and hour litigation practice. Participants will learn what these cases reveal about trends in wage and hour litigation as well as recommendations for how in house counsel and practitioners can update their litigation strategies in response to recent developments going forward.

Whether you are new to the practice of wage and hour litigation or a senior practitioner in need of a refresher, you will find this session invaluable for getting up to speed on the latest cases and administrative movements, while maximizing your opportunity to engage in the advanced discussion that will be the hallmark of the main conference.

Please note that the cases covered during this session will be updated to include all high profile cases resolved by January 2016.

**JUDGES PANEL 1**

8:00 – 9:00

**Hon. Eduardo C. Robreno**  
U.S. Dist. Ct., E.D. Pa.

**Hon. Michael J. Davis**  
U.S. Dist. Ct., D. Minn.

**Hon. Wiley Y. Daniel**  
U.S. Dist. Ct., D. Co.

**Hon. Tonianne J. Bongiovanni**  
U.S. Dist. Ct., D. N.J.

**Hon. Elizabeth W. Magner**  
U.S. Bankr. Ct., E.D. La.

**JUDGES PANEL 2**

9:00 – 10:00

**Hon. Fernando J. Gaitan**  
U.S. Dist. Ct., W.D. Mo.

**Hon. George C. Steeh**  
U.S. Dist. Ct., E.D. Mich.

**Hon. James L. Robart**  
U.S. Dist. Ct., W.D. Wa.

**Hon. Alan S. Trust**  
U.S. Bankr. Ct., E.D.N.Y.

**Hon. Steven A. Brick**  
Calif. Sup. Ct., Alameda Co.

**Panel 1 Moderator:**

**Jason C. Schwartz**  
Gibson, Dunn & Crutcher LLP

**Panel 2 Moderator:**

**J. Nelson Thomas**  
Thomas & Solomon LLP

10:00 Break

10:05 **Wage and Hour Year in Review: Analyzing the Key Wage & Hour Case Law Developments and DOL Initiatives of 2015, and What They Mean For Your Practice in 2016**

**D. Charles Stohler**  
Carmody Torrance Sandak & Hennessey LLP

**Dennis M. McClelland**  
Phelps Dunbar LLP

10:50 **The Latest on DOL White Collar Exemption Changes: Analyzing the Practical Implications of the New Rules, Strategies for Minimizing Litigation Risks, and Defending Against Claims of Violation Once Litigation is Brought**

**Emil Czechowski**  
Resolution Economics LLC

**John Ho**  
Bond Schoeneck & King PLLC

**Juan Lopez-Campillo**  
Wilson Elser Moskowitz Edelman & Dicker LLP

- Examining the implications of the DOL's new/proposed federal overtime regulations and "white collar exemption" requirements
- Paying employees who no longer meet the salary basis test of the "white collar" exemption
- The latest on the "duties" portion of the "white collar" exemption test
- What are the litigation risks associated with these new changes
- What organizational and/or pay practice changes will employers need to make to achieve business objectives and minimize the litigation risks?
- The challenges associated with reclassifying workers as hourly-paid employees to avoid overtime payment – adapting new policies and practices to track hours worked by employees whose time wasn't tracked before
- Trends in white collar exemption litigation
- DOL enforcement strategies
- What damages can a private litigant recover in these claims?
- Strategies for defending against claims of violation once litigation is brought

11:55 Networking Lunch for Speakers and Delegates

12:55 **Joint Employer Liability Under the Wage and Hour Laws: The Implications of the NLRB *Browning-Ferris* Decision on the Wage and Hour Landscape, Mitigating Risk of Joint Employment Liability, and Defeating Joint Employment Allegations Early in Employment Litigation**

**Michael W. Hawkins**  
Dinsmore & Shohl LLP

**John D. Cole**  
Nexsen Pruet

- The latest on the NLRB's redefinition of "joint employer" in *Browning-Ferris*, and the decision's implications on franchisor/franchisees, sub-contractors, and other businesses that use outsourcing or staffing agencies to supply their workers
- What far reaching impacts will this have on business practices, transactions and litigation? What impacts are already being seen?
- What industries are being targeted?
- What litigation trends are being seen?
- Advising clients to review their policies, procedures, business relationships and practices to limit their potential exposure to wage and hour claims based on a joint employer theory
- Carefully examining contractual relationships with third-party employers to determine whether changes can be made to those agreements to reduce the risk of joint employer liability
- The "red flag" issues that can lead to joint employer liability
- Tips, strategies and best practices for avoiding and defending against these claims
- Defeating joint employment allegations early in employment litigation; attacking these claims at the pleading stage

1:45 **The Latest Claims Arising Out of Minimum and Prevailing Wage Violations, Improper Tip and Tip Credit Practices, State Paid Sick Leave and Scheduling Laws, and Other Pay Practice Irregularities Under State and Common Laws**

**Vincent M. Avery**  
Gordon & Rees, LLP

**Jonathan W. Yarbrough**  
Constangy, Brooks, Smith & Prophete, LLP

- The latest litigation trends involving minimum wage violations — pitfalls to avoid when having one payroll system and varying state and federal requirements; strategies for litigating these claims once you are sued
- Avoiding and defending against claims and class actions alleging prevailing wage violations

- Service industry employee claims regarding tips & service charges; & the surge in class actions involving compulsory tip pools & distributions of service charges to employees
- Federal law on tips, tip credits and service charges and the interaction with varying state laws
  - Who are considered tipped employees?
  - Disbursement of tips and service charges; tip credits, tip pooling
  - States experiencing a high volume of class action litigation
- Keeping in line with varying and competing state, city and county paid sick leave requirements and scheduling laws
  - Pitfalls to avoid when operating across states
  - Nuances of recent California paid sick leave law
  - Avoiding and defending litigation of these claims

2:30 **Winning Strategies For Handling Class & Collective Wage And Hour Actions: The Latest Developments and Nuances in Class Certification, Obtaining Decertification, Managing Hybrid Claims, and Defending Against FLSA Collective Actions and State Law Class Actions**

**Ted C. Craig**  
GrayRobinson, P.A.

**Arthur Rooney**  
Baker & McKenzie LLP

- The latest developments in wage and hour class and collective action treatment post-*Dukes* and *Comcast*
- Assessing the implications of the Supreme Court's decision in *Tyson Foods, Inc. v. Bouaphakeo*
  - Can differences among individual class members be ignored, and a class certified, when plaintiffs use statistical techniques that presume all class members are identical?
  - Can a class be certified that contains hundreds of members who were not injured and have no legal right to damages?
- The latest innovative strategies for winning and defeating certification motions
- Leveraging lessons from *Dukes*, *Comcast* and *Duran* to challenge evidence on liability and damages
- Fights over proper forum – state or federal court?
- Using merits and experts to defeat certification
- The latest rulings on class treatment in misclassification, exemption and off-the-clock actions
- Effectively managing hybrid federal and state law class actions
- Rule 68 Offers of Judgment
  - Implications of the Supreme Court's decision in *Campbell-Ewold Co. v. Gomez*
  - Can "picking off" class representatives through a Rule 68 offer of judgment moot class action claims?
- CAFA Removal Jurisdiction

3:15 **Break**



3:20 **Views From the Plaintiffs' Bar: Adapting Your Defense Strategies to New and Innovative Techniques and Tactics**

**David Sanford**  
Sanford Heisler Kimpel, LLP

**Justin M. Swartz**  
Outten & Golden LLP

**David Gottlieb**  
Wigdor LLP

**Aashish Y. Desai**  
Desai Law Firm

**Sarah R. Schalman-Bergen**  
Berger & Montague, P.C.

4:20 **The Role of an Economic Expert in Measuring and Demonstrating Damages in Wage and Hour Class Actions**

**G. Edward (Ted) Anderson, Ph.D.**  
Welch Consulting

**Linda M. Doyle**  
McDermott Will & Emery LLP

**William C. Martucci**  
Shook, Hardy & Bacon LLP

- Teaming counsel with an expert to make confidential (attorney-client privileged) assessment of current pay and to prevent FLSA claims
- Calculating FLSA damages from weekly compensation and work data for “regular rate of pay”, “fluctuating work week employees” and “piece rates and overtime damages”
- Presenting damages at mediation when data is entirely lacking
  - Expert reports
  - Surveys
  - Time and motion studies

5:25 **Ethical Issues in Wage & Hour Litigation and Settlement (.5 CLE Ethics Credit)**



**Trishanda L. Treadwell**  
Parker, Hudson, Rainer & Dobbs LLP

**Timothy J. Long**  
Orrick, Herrington & Sutcliffe LLP

- Examining the key ethical issues that practitioners should be on the look-out for during the litigation and settlement of wage and hour claims and class actions
- Ethical duties and best practices during the discovery process:
  - Document management, retention and preservation
  - Document reviews, including computer-assisted and outsourced reviews
  - Review and production of metadata associated with cell phones and social media

- Handling conflicts within classes
- Ethical duties and best practices for communications with the class
- Unique ethical considerations in negotiating collective, class action and hybrid wage and hour settlements; guidelines and best practices to employ and ethical pitfalls to avoid
  - Attorney/client conflicts of interest in class settlement context
  - Conflict issues amongst plaintiffs
  - Attorney's fees/fee awards
  - Communications with potential class members or opt-ins
  - Duties owed to absent class members during course of settlement/litigation

6:15 **Conference Adjourns**

**Cocktail Reception**

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For more than 30 years, Welch Consulting has assisted clients in class action matters involving employment practices and complex business litigation. Rigorous analyses with the highest standards of accuracy, clarity and punctuality make Welch Consulting the top choice for the nation's preeminent law firms and corporations throughout the US.

7:30 Continental Breakfast

8:00 **In-House Insights on New and Emerging Areas of Risk in the Wage & Hour Landscape; Responding to Enhanced Enforcement Initiatives; Compliance Strategies; Selecting and Retaining Law Firms; Internal Audit Assessment; Managing Complex Litigation; and More**

**PANEL 1 8:00 – 9:10**

**Catherine A. Spicer**  
Vice President – Associate General Counsel  
Jos. A. Bank Clothiers

**Aaron J. Longo**  
SVP & Assistant General Counsel  
Bank of America, N.A.

**Mary Cheddie**  
Senior Vice President, Human Resources  
Interval Leisure Group

**Philip I. Weis**  
Director & Senior Employment Counsel  
Boehringer Ingelheim Pharmaceuticals, Inc.

**Reginald Johnson**  
Assistant General Counsel  
Family Dollar Stores, Inc.

**Keith James**  
Corporate Employment Counsel  
Masco Corporation

**Andrew H. Smith**  
Head of Employment Legal, Americas  
Standard Chartered Bank

**Ron Peppe**  
Vice President Legal & Human Resources  
Canam Steel Corporation

**Panel 1 Moderator:**

**Cheryl D. Orr**  
Drinker Biddle & Reath LLP

**PANEL 2 9:10 – 10:15**

**Joseph F. Accardo Jr.**  
Deputy General Counsel  
PSEG Services Corporation

**Suzanne Alford**  
Assistant General Counsel  
Equifax Inc.

**Raphael Lee**  
Senior Employment Counsel  
Marsh & McLennan Companies, Inc.

**Jennifer J. Hamilton**  
AVP, North American Claims Group  
Allied World Insurance Company

**Mary Ulmer-Jones**  
Associate General Counsel  
Bank of America

**Sarah Johnson**  
Senior Employment Counsel  
Nordstrom

**Taren Butcher**  
Associate General Counsel  
Allegis Group

**Panel 2 Moderator:**

**Jeffrey D. Patton**  
Spilman Thomas & Battle, PLLC

- New and emerging areas of risk in the wage & hour landscape
- Common mistakes and pitfalls to avoid in wage & hour compliance
- Employment agreements that reduce exposure to claims and keep workers in compliance
- Implementing and enforcing policies that will protect employers, both locally and nationally
- Internal audit and assessment: policies, practices, classifications
- Management and employee training
- Developing and disseminating response plans
- Engaging field personnel
- Factors to consider when deciding whether to hire outside counsel
- Coordinating your defense, both inside and outside the company
- Managing complex litigation on a realistic and accurate budget
- And much more

10:15 **Break**

10:20 **The Latest DOL Guidance on Independent Contractor vs. Employee; and Defending Federal and State Claims Involving the Improper Labeling of Exempt/Non-Exempt Employees By Key Industry**

**Patrick G. DeBlasio, III**  
Littler Mendelson P.C.

**Philip Marchion**  
ADT Security Services

**Andrew S. Rosenman**  
Mayer Brown LLP

**Christopher M. Trebilcock**  
Miller, Canfield, Paddock and Stone, P.L.C.

- An industry discussion of the recent DOL “letter of guidance” clarifying who is an employee vs. “independent contractor”
- What are the far reaching implications of this highly important guidance letter? What does this mean for employers? Which industries are being targeted for increased state and federal audits following this new guidance?

- Examining the latest trends in independent contractor misclassification claims — what industry niches are being targeted for these claims and how to best avoid and defend them?
- Increased claims stemming from non-traditional jobs challenging independent contractor status (e.g. ride hailing services (Uber, Lyft), exotic dancers, cheerleaders, athletic trainers, assistant coaches, cable/appliance installers, oil drillers/workers; etc.) — what are the succeeding theories and defenses in these cases?
- Continued focus on misclassification of interns as volunteers — the latest court rulings and tips, strategies and best practices for avoiding and defending against such claims
- The latest changes and nuances in federal and state rules governing classification
- An overview of the latest exemption developments by key industry, including but not limited to:
  - The home healthcare services industry
  - Exempt status of paralegals, legal analysts, temp attorneys
  - Seasonal employees
  - Restaurant/hospitality, retail, IT and tech industries
  - The latest clarification on the motor carrier exemption

## 11:25 **Preparing For and Surviving a DOL Audit and Aggressive Investigations by State Equivalents**

**Staci Ketay Rotman**  
Franczet Radelet, PC

**Theresa Smith Lloyd**  
Plunkett Cooney

- Steps employers should take to prepare for a DOL audit
- What rights do employers have during a DOL audit
- The most common red flags that trigger an audit and how to avoid them
- What happens if an employer disagrees with DOL finding?
- What triggers / initiates litigation?
- What types of cases are more likely to trigger litigation early on?
- Examples of cases that fit the Wage & Hour Division's "potential litigation" criteria
- Preparing for new state initiatives and enforcement efforts – with a focus on employee misclassification
- Government misclassification audits and settlements: preparing for and surviving comprehensive federal and state integrated audits as coordination efforts improve among and across federal and state agencies

## 12:10 **The Expanding Utility of Wage & Hour Insurance**

**Julianna Ryan**  
Kaufman Borgeest & Ryan LLP

**Adeola Adele**  
Willis North America

**Machua Millett**  
Marsh USA, Inc.

**Anthony Humphries**  
Arch Intermediaries, Ltd.

Wage & Hour exposures were largely uninsured until recently. As the frequency and severity of Wage & Hour cases began to grow, the insurance market responded. Wage & Hour is now one of the fastest-developing types of insurance.

The speakers on this panel are all leading experts on crafting W&H coverage and knowing what the needs are and where the solutions lie. This panel will be of great interest to defense lawyers who counsel companies on dealing with W&H risks, plaintiffs lawyers who will want to understand the role insurance will now play in resolving the cases, and corporate risk managers who have an interest in learning more about this new kind of insurance and how it can offset the sting of burgeoning W&H exposures.

- The New Player in the Mix – Insurance
- Why was W&H never covered by insurance before? Legal Implications
- One Size Does Not Fit All: An Update on the Availability of Insurance for W&H in All Shapes and Sizes
- What's covered?; What's not?
- What type of information is considered by the insurer at the application stage?
- The Role of Insurance in the Life of a W&H Case

## 1:10 **Compensable Time in the Modern Day Workplace – Defending and Managing The Latest Off-the-Clock Claims Relating to Employee Use of Blackberry's/ Mobile Devices, BYOD Policies, Working Remotely, Booting Up/Down & Logging On/Off, and Alternative Working Arrangements**

**Jessica Golden Cortes**  
Davis & Gilbert LLP

**Albert (Bert) B. Randall, Jr.**  
Franklin & Prokopik, P.C.

- Latest FLSA and state wage & hour case law involving:
  - Mobile devices and emails (BlackBerry, smartphones, VPN)
  - Telephone calls (texts): How are text messages interpreted?; identifying business versus personal calls and texts?; employee to employee calls
  - Employees giving email and/or cell phone to customers or potential customers
  - Computer network log-in data
  - VPN or Virtual Desktop
  - Transaction data
  - GPS Data/Work order data
  - Work assignment upload and downloading data
- Innovative defense strategies to claims involving uncompensated, work-related use of smartphones and other personal mobile devices by non-exempt employees outside their working hours
- How to defeat the similarly situated requirement of the collective action certification process
- Winning the issue of whether putative class members are similarly situated for purposes of the class and collective action certification process
- The latest trends/developments in case law involving:
  - Unpaid time for booting up/down and logging on/off your computer pre and post-shift
  - Employees who work in call centers; or computer based office workers






## 1:55 **Conference Ends**

# WAGE & HOUR

## CLAIMS AND CLASS ACTIONS

January 28 – 29, 2016  
Viceroy Miami • Miami, FL

### 5 Easy Ways to Register

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