

Daily Journal

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TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP DEFENSE VERDICTS

In re: Garda Wage and Hour Cases

**case
INFO**

Wage and hour class action

Los Angeles County

Superior Court Judge William F. Highberger

Defense Lawyers:

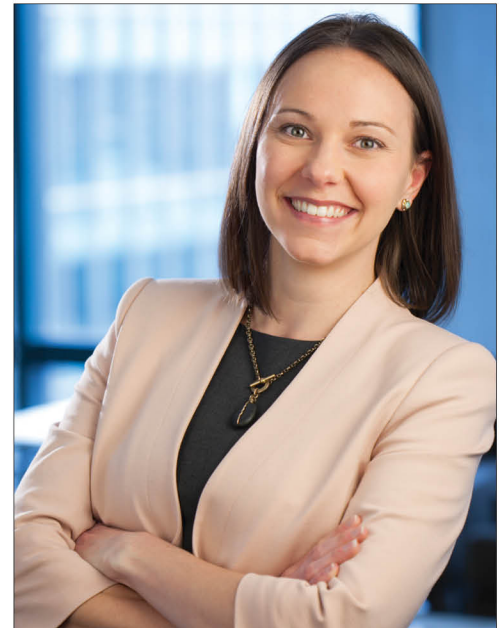
Malcolm A. Heinicke, Joseph D. Lee, Marja-Liisa Overbeck, Sara A. McDermott, Munger, Tolles & Olson LLP; Keith A. Jacoby, Robert S. Blumberg, Littler Mendelson PC

Plaintiff's Lawyers:

Stanley D. Saltzman, Marlin & Saltzman LLP; Ira Spiro, Spiro Law Group



MALCOLM A. HEINICKE



MARJA-LIISA OVERBECK

In November, a Munger, Tolles & Olson LLP defense team led by partner Malcolm A. Heinicke took the aggressive approach by seeking summary judgment in the early stages of a class action against their client, an armored truck company.

They argued, successfully, that off-the-clock breaks in the high-risk industry are incompatible with the work performed by drivers and messengers, giving solid legal justification to the company's practice of on-the-clock meals.

Requirements to eat meals during work time have been disputed in certain industries in which employers say workers must be accessible during their entire shift, typically to protect life or property.

According to Heinicke, the biggest hurdle was showing how necessary the policy is for his client, Garda CL West Inc. The fact that many drivers prefer it to off-the-clock breaks would not be enough.

"We needed to explain the security-sensitive and safety-critical nature of the policies at issue. If we just went in and said we have these practices because our drivers like it better, that's

true but it isn't going to carry the day," he said.

In addition to the on-clock meal break claims, the judge dismissed allegations of unpaid overtime and rest breaks.

Heinicke paid credit to fellow attorney Sara A. McDermott for the motion that defeated the overtime claims based on a legal exemption and an applicable collective bargaining agreement.

"The armored car industry is a relatively unique industry where people are employees responsible for large sums of money and valuable items out in the field. There's all sorts of employees in the state with access to lots of money and security risks, but they're all secured in a building," Heinicke said.

He said the most important part of the victory goes beyond the win for Garda, with Los Angeles County Superior Court Judge William F. Highberger's ruling upholding the on-duty meal practice as generally valid. *In re: Garda Wage and Hour Cases*, JCCP4828 (L.A. County Super. Ct., filed June 1, 2015).

Heinicke's team proved that by taking plaintiff depositions describing the dangers of the job

and pairing it with expert testimony that leaving one employee inaccessible for an off-the-clock break creates huge security risks.

"I think this is very significant because it's a legal affirmation of the validity of on-clock meal periods when a job necessitates them," Heinicke said.

He added that Garda deserves credit for standing its ground on an essential practice.

"This isn't just about business issues, it's about safety issues. I think there's a strong sense a company takes those issues seriously if it feels obligated to fight these suits," he said.

One claim in the case is still being litigated in trial court.

Garda was also represented by Joseph D. Lee and Marja-Liisa Overbeck of Munger Tolles with Keith A. Jacoby and Robert S. Blumberg of Littler Mendelson PC.

The plaintiffs were represented by Stanley D. Saltzman of Marlin & Saltzman LLP, who did not return a phone call seeking comment, and Ira Spiro of Spiro Law Corp.

— Andy Serbe