

# Daily Journal

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## TOP VERDICTS OF 2011

### TOP DEFENSE VERDICTS

#### *Driscoll v. Granite Rock Company*



Courtesy of Littler Mendelson PC

Jay Sutton, Alison S. Hightower, Alan S. Levins, Garry G. Mathiason and Laura E. Hayward

This case is the “poster child” for what’s wrong with the law in California right now, so says Alan Levins, who defended his client against a wage-and-hour class action. *Driscoll v. Granite Rock Co.*, 1-08-CV-103426 (Santa Clara Super. Ct.).

At issue was whether the Granite Rock Co. provided off-duty meal breaks to class members when it made meal periods available, but didn’t force drivers to take them.

Granite Rock proved the its employees knew that they could take meal breaks whenever they wanted, Levins said, but that most voluntarily waived the breaks.

#### **Wage and Hour Dispute**

Santa Clara County Superior  
Court  
San Jose  
Judge James P. Kleinberg

**Defendant’s attorneys:** Littler Mendelson P.C., Alan Levins, Laura Hayward, Alison Hightower

**Plaintiff’s attorneys:** Herron & Herron ; Law Offices of Sohnen & Kelly, Harvey Sohnen; Beeson, Tayer & Bodine

Evidence included signed on-duty meal period waiver agreements and testimony from 25 current drivers who were satisfied with their ability to obtain meal periods when they chose, but preferred to work through lunch for various reasons.

The class — more than 200 concrete mixer truck drivers — sought more than \$6 million in damages, restitution and penalties, plus attorneys fees of presumably more than \$1 million.

Last year, Judge James P. Kleinberg issued a 27-page opinion in favor of Granite Rock after a 14-day bench trial, noting, “This court declines to adopt a ‘gotcha’ theory of litigation that imposes liability when the facts and real-world concerns dictate no liability.”

But these types of cases, Levins said, can be an uphill battle for employers.

“Meal break cases are everywhere and they unfortunately can be so expensive, and there is such risk involved, that few employers actually go ahead to trial,” Levins said. “I think we showed them, if they go to trial, they can win some of these cases.”

— Pat Broderick