

**COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
CIVIL DIVISION NO. 7  
CIVIL ACTION NO. 10-CI-3986**

JAMES MELVIN HENSLEY, DANNY LAINHART,  
JAMES D. FETTERS, TONY MITCHELL,  
CHARLES BUSSELL and WILLIAM E. ABNEY,  
individually and on behalf of all other persons  
similarly situated who were employed by  
HAYNES & TRUCKING, LLC  
and / or any other entities affiliated  
with or controlled by HAYNES TRUCKING, LLC PLAINTIFFS

VS.

HAYNES TRUCKING, LLC  
and any other related entities affiliated  
with or controlled by Haynes Trucking LLC

and

L-M ASPHALT PARTNERS, LTD  
D/B/A/ ATS CONSTRUCTION, and any other  
related entities affiliated with or controlled by L-M Asphalt  
Partners, LTD

and HARTFORD FIRE INSURANCE COMPANY. DEFENDANTS

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**CLASS ACTION COMPLAINT AND JURY DEMAND**

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Come the Plaintiffs, individually and on behalf of the putative class, by and through their attorneys of record, and pursuant to Kentucky Rules of Civil Procedure 15.01 and 23.02, and KRS 337.550(2), hereby amend their Complaint as follows:

**PRELIMINARY STATEMENT**

1. This action is brought on behalf of Plaintiffs and a putative class of individuals who work, or worked, as dump truck drivers, and in other construction-related trades, for Haynes

Trucking, LLC (hereinafter referred to as "Haynes"), to recover wages and benefits which Plaintiffs and the members of the putative class were statutorily and contractually entitled to receive for work they performed on various public works contracted with government entities including, but not limited to, the Lexington Fayette Urban County Government ("LFUCG"), Lexington Fayette Urban County Airport Board ("LFUCGAB), Kentucky Horse Park ("KHP") and the Commonwealth of Kentucky ("KY"). Specific examples of such projects include, but are not limited to: Newtown Pike extension from Main Street to Versailles Road; Iron Works Pike traffic operation improvements to the Iron Works Interchange at I-75 with minor improvements to Iron Works Pike; New Circle Road; Resurfacing and Safety Improvement on New Circle Road; Liberty-Todds Road/Cadentown Bypass; Lexington Streetscape Phase One-South Limestone; and the Bluegrass Airport. A list of some of the known contracts may be found in the attached Exhibit 1. These and all other projects for government entities undertaken and performed by Haynes between January of 1995 and the present are hereinafter collectively referred to as the "Public Works Projects". Defendants, Haynes and ATS, performed Public Works Projects throughout the Commonwealth of Kentucky and, perhaps, beyond its borders and it is those Projects that are the subject of this action.

### **THE PARTIES**

1. Plaintiff, James Melvin Hensley, was and is a citizen and resident of Fayette County, Kentucky, residing at 521 East 7th Street, Lexington, Kentucky, 40505; Plaintiff, Danny Lainhart, was and is a citizen and resident of Fayette County, Kentucky, residing at 1963 Spring Station Drive, Lexington, Kentucky; Plaintiff, Tony Mitchell, was and is a citizen of Fayette County, Kentucky, residing at 1126 Sports Road, Lexington, Kentucky, 40505; Plaintiff, James D. Fetters, was and is a citizen of Jessamine County, Kentucky, residing at 261 Rebel Road, Apt.

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five (5), Nicholasville, Kentucky, 40509; Plaintiff, Charles Bussell, was and is a resident of Nicholas County, Kentucky, residing at 800 Mt. Carmel Road, Carlisle, Kentucky, 40311; Plaintiff, William E. Abney, was and is a resident of Fayette County, Kentucky, residing at 1908 Leitner Court, Lexington, Kentucky, 40511.

2. Plaintiffs, and other members of the putative class, are individuals residing in the Commonwealth of Kentucky who worked for Haynes at the sites of the Public Works Projects, together with other subsidiaries, subcontractors, affiliates, and joint venturers.

3. Defendant, Haynes Trucking, LLC, is a Kentucky Limited Liability Corporation organized and existing under the laws of the Commonwealth of Kentucky, with its principal office at P.O. Box 8638, Lexington, Kentucky, 40533, with Alvin D. Haynes, 1229 Versailles Road, P.O. Box 8638, Lexington, Kentucky, 40533 listed as its agent for service of process.

4. Defendant, L-M Asphalt Partners, LTD, is a Kentucky Limited Partnership organized and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 3009 Atkinson Avenue, Suite 400, Lexington, Kentucky, 40509 with Gary R. Weitkamp, 500 West Jefferson Street, Suite 2400, Louisville, Kentucky 40202 listed as its agent for service of process and doing business as ATS Construction, an assumed name partnership organized and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 2257 Executive Drive, Lexington, Kentucky, 40505 with L-M Asphalt Partners, LTD, at the above address, listed as its agent for service of process.

5. Defendant, Hartford Fire Insurance Company, is a corporation organized and existing under and by virtue of the laws of the state of Connecticut and is authorized to do business under the laws of the Commonwealth of Kentucky, engaged in surety bonding business, and, issued to L-M Asphalt Partners, LTD, d/b/a/ ATS Construction payment bonds in

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connection with some or all of the Public Works Projects with CSC Lawyers Incorporating Service, 421 West Main Street, Frankfort, Kentucky 40601 listed as its registered agent for service of process.

6. Venue is proper in this County pursuant to KRS 452.475, because Defendants conduct business in this County, can be found in this County and a majority of the labor at issue was done in this County.

### **CLASS ALLEGATIONS**

7. This action is brought by the named representative Plaintiffs pursuant to Kentucky Rule of Civil Procedure 23.02. A class action is appropriate and necessary in this instance because the Defendants have engaged in conduct violative of Kentucky prevailing wage statutes and laws on a widespread and systematic basis.

8. The class that the Plaintiffs represent is defined as each and every person who performed work on-site, at any public works projects, in prevailing wage trades, which include tandem axle truck driving, for Haynes and/or ATS, during the past fifteen (15) years, and who were not paid the applicable prevailing wage.

9. Plaintiffs are informed, and on that basis allege, that the putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 60 individuals. In addition, the names of all potential members of the putative class are not presently known to the Plaintiffs. The exact size of the putative class and the identity of all of its members are ascertainable from the business records of the Defendants.

10. There are substantial questions of law and fact common to the claims of the putative class against the Defendants and the claim of each of the class members against the Defendants. Questions of law governing, and dispositive of, the putative class against the

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Defendants are precisely the same as the questions of law governing, and dispositive of, each class member's claims against the Defendants. Except the number of hours worked on-site at public works by each individual Plaintiff and the correlative damage calculation, the questions of fact governing, and dispositive of, the claims of the putative class against the Defendants are precisely the same as the questions of fact governing, and dispositive of, the claims of each class member against the Defendants.

11. Questions of law and fact common to the putative class predominate over questions affecting only individual members, including, *inter alia*, the following: whether Plaintiffs were or are employees of Haynes; whether Plaintiffs drove Haynes trucks; whether Plaintiffs performed work on-site at Public Works Projects during their employment with Haynes; whether Plaintiffs were entitled to the Prevailing Wage for their time working on the site of such Public Works Projects; whether Plaintiffs were paid the Prevailing Wage for the work they performed on the site of such Public Works Projects; whether a particular job site, on which Plaintiffs and class members worked, was a Public Works Project; the determination of the Prevailing Wage required for the Plaintiffs' class on each particular Public Works Project; whether Plaintiffs are third party beneficiaries of the public works contracts; whether Defendants' failure to pay the Prevailing Wage on Public Works Projects was willful; whether Defendants should be required to pay statutory penalties for their violation of the Kentucky prevailing wage law; the total number of penalties and amount of each penalty that Defendants should be required to pay for their violation of the Kentucky prevailing wage law; Defendants' knowledge that they were violating the Kentucky prevailing wage law; whether Defendants failed to meet their contractual requirements to pay Prevailing Wages on Public Works Projects;

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and, whether the bonding companies owe Plaintiffs prevailing wage pay, because the Defendants have failed to pay prevailing wages.

12. The claims of the Plaintiffs in this action are typical of the claims of the putative class members. The claims of each Plaintiff are typical, in all important respects, of the claims of each and all of the class members and the class representative's claims arise out of the same common nucleus of operative facts, and unlawful conduct by Defendants, as the claims of the class members.

13. Plaintiffs have obtained competent and experienced class counsel and will fairly and adequately protect the interests of the members of the putative class. The class representatives have no interests adverse to the class members.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all members is impracticable. Litigating the claims of all class members in a single forum would prevent inconsistent rulings. Inconsistent rulings could make the future conduct of the plaintiffs and Defendants difficult. The class representatives are former employees and can represent current employees' interests without the fear of being fired. In addition, because economic damages suffered by the individual class member may be relatively modest compared to the expense and burden of individual litigation, it would be impracticable for members of the putative class to seek individual redress for the wrongful conduct alleged herein. A class action will achieve economies of time, effort and expenses and promote uniformity of decision as to other persons similarly situated, without sacrificing procedural fairness.

15. There will be no undue difficulty in the management of this litigation as a class action.

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## FACTS

16. Upon information and belief, beginning in or about 1995, Haynes and L-M Asphalt Partners, LTD, d/b/a/ ATS Construction (hereinafter collectively referred to as "ATS") entered into a number of contracts to transport material to and on the site of Prevailing Wage Projects and perform other related construction work for Government Entities on the sites of Public Works Projects in Lexington, Fayette County, Kentucky and other counties within the Commonwealth.

17. Kentucky Revised Statute ("KRS") 337.530 provides that: all contractors and subcontractors, required by KRS 337.505 to 337.550, and by contracts with any public authority, to pay not less than the prevailing rate of wages and to pay such wages in legal tender without any deductions.

18. The "Prevailing Wage" is the basic hourly rate paid or being paid subsequent to the executive director's most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed; such rate shall be determined by the executive director in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520. See KRS 337.505.

19. KRS 337.505 also requires that the laborers, workmen, and mechanics employed in each classification of construction upon such public work be provided "fringe benefits" at the prevailing wage rate. "Fringe benefits" are all forms of remuneration for employment paid in any medium, including but not limited to medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance,

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accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits. The prevailing rate of fringe benefits is determined in the same manner as wages.

20. On information and belief, pursuant to KRS 337.530, the Public Works Contracts contained a provision requiring the general contractor and all of his subcontractors to pay not less than the rate of the wages so established to all workmen on the Public Works Projects.

21. Upon information and belief, a schedule of prevailing rates of wages and fringe benefits ("Prevailing Wage Schedule") to be paid was annexed to, and was made a part of each of the Public Works Contract. Upon further information and belief, the Prevailing Wage Schedule annexed to each Public Works Contract was the schedule of prevailing rates of wages and fringe benefits issued for each year in which each Public Works contract was let.

22. This promise to pay and ensure payment of the prevailing wage and fringe benefit rates in the Public Works Contracts was made for the benefit of all workers furnishing labor on the sites of the Public Works Projects and, as such, the workers furnishing labor on the sites of the Public Works Projects are the beneficiaries of that promise.

23. At all times relevant to this action, Plaintiffs and other members of the putative class performed labor on-site at the Public Works Projects, for the benefit of and at the direction of ATS.

24. At all times relevant to this action, Plaintiffs and other members of the putative class performed labor on-site at the Public Works Projects, for the benefit of and at the direction of Haynes.

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25. Plaintiffs performed trucking work that included milling work, rock laying, earth moving and paving on Public Works Projects which were integral to the construction work, but did not receive prevailing wage for such projects.

26. Defendant, Hartford Fire Insurance Company, furnished a Payment Bond(s) to ATS in furtherance of one or more Public Works Projects, the terms which insured that Hartford Fire Insurance Company would pay unpaid prevailing wages and supplemental benefits to the Plaintiffs and the putative class members in the event ATS and Haynes failed to pay these wages.

**FIRST CAUSE OF ACTION  
AGAINST HAYNES AND ATS  
VIOLATION OF KENTUCKY PREVAILING WAGE LAW**

27. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 26 hereof.

28. Defendants were required to pay Plaintiffs and other members of the putative class prevailing wages for work done on-site at all Public Works projects.

29. Defendants violated the Kentucky prevailing wage law by failing to pay the prevailing wages to Plaintiffs and the putative class members for work done on-site at Public works projects.

30. KRS 337.550 concerning Wages on Public Works provides that "[a] laborer, workmen, or mechanic may by civil action recover any sum due him as the result of the failure of his employer to comply with the terms of KRS 337.505 to 337.550."

31. In violation of KRS 337.530, Haynes and ATS willfully paid Plaintiffs and the other members of the putative class less than the prevailing rates of wages and supplemental benefits to which Plaintiffs and the other members of the putative class were entitled for the

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labor which they furnished Haynes and ATS on the sites of the Fayette County Public Works Projects and other Public Works projects within the Commonwealth.

32. By reason of the foregoing, Defendants, Haynes and ATS, are liable to Plaintiffs and the other members of the putative class in an amount to be determined at trial, plus interest, penalties, attorneys' fees and costs.

**SECOND CAUSE OF ACTION  
AGAINST HAYNES AND ATS  
KENTUCKY LABOR LAW OVERTIME COMPENSATION**

33. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 32 hereof.

34. In violation of KRS 337.540 and Haynes and ATS willfully failed to pay Plaintiffs and the other members of the putative class their statutorily required overtime compensation for the time they worked in excess of eight hours a day and/or forty hours a week for Haynes and ATS on the Public Works Projects. By willfully refusing to pay the prevailing wage, Defendants underpaid overtime to the Plaintiffs because overtime wages were calculated on an incorrect, lower wage rate.

35. For the foregoing reasons, Haynes and ATS are liable to Plaintiffs and the other members of the putative class in an amount to be determined at trial, plus interest, penalties, attorneys' fees and costs.

**THIRD CAUSE OF ACTION  
AGAINST HAYNES AND ATS  
FAILURE TO PAY WAGES**

36. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 35 hereof.

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37. The prevailing wages, fringe benefits and overtime compensation not paid to the Plaintiffs' and the other members of the putative class were wages within the meaning of KRS 337.010.

38. Haynes and ATS violated KRS 337.020 and 337.060 by failing to timely pay to Plaintiffs and the other members of the putative class the statutorily and contractually required prevailing wages, fringe benefits and overtime compensation for the work they performed on the Public Works Projects.

39. By reason of the foregoing, Haynes and ATS are liable to Plaintiffs and the other members of the putative class in an amount to be determined at trial, plus interest, attorneys' fees and costs.

**FOURTH CAUSE OF ACTION  
AGAINST DEFENDANTS HAYNES AND ATS  
BREACH OF THE PUBLIC WORKS CONTRACTS**

40. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 39 hereof.

41. Upon information and belief, the Public Works Contracts entered into by Defendants, Haynes and ATS, contained schedules of the prevailing rates, wages and fringe benefits to be paid Plaintiffs and the other members of the putative class.

42. Those prevailing rates, wages and fringe benefits were made a part of the Haynes and ATS Public Works Contracts for the benefit of Plaintiffs and the other members of the putative class.

43. Defendants, Haynes and ATS, breached the Public Works Contracts by willfully failing to pay and ensure payment to Plaintiffs and the other members of the putative class the

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prevailing rates, wages and supplemental benefits for all labor performed upon the Public Works Projects.

44. By reason of their breach of each Public Works Contract, Defendants, Haynes and ATS, are liable to Plaintiffs and the other members of the putative class in the amount to be determined at the trial, plus interest, penalties, costs and attorneys' fees.

**FIFTH CAUSE OF ACTION  
AGAINST HAYNES AND ATS  
QUANTUM MERUIT (PLED IN THE ALTERNATIVE)**

45. Plaintiffs repeat and reallege the allegations set forth in paragraph 1 through 44 hereof.

46. Plaintiffs and the other members of the putative class have performed numerous and valuable services at the request, and for the benefit of, Haynes and ATS. The reasonable value of those services for which Plaintiffs and the other members of the putative class have not been paid is in an amount to be determined at trial.

47. Plaintiffs and the other members of the putative class seek payment from Haynes and ATS for the reasonable value of services provided to Haynes and ATS.

48. Haynes and ATS have never paid Plaintiffs at the correct prevailing wage and benefit rate.

49. By reason of the foregoing, Haynes and ATS are liable to the Plaintiffs and other members of the putative class in an amount to be determined at trial, plus interest and professional fees.

**SIXTH CAUSE OF ACTION  
AGAINST HAYNES AND ATS  
UNJUST ENRICHMENT (PLED IN THE ALTERNATIVE)**

50. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 49

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hereof.

51. Plaintiffs and the other members of the putative class have performed a significant amount of work for the benefit and enrichment of Haynes and ATS for which they have not been paid.

52. Upon information and belief, when Haynes and ATS entered into the Public Works Contracts, they agreed to pay the statutorily required prevailing wage, fringe benefits and overtime compensation rates to Plaintiffs and the other members of the putative class.

53. Upon information and belief, Haynes and ATS billed the government entities for labor performed by Plaintiffs and the other members of the putative class at the higher statutorily required prevailing wage, supplemental benefit, overtime compensation rates, which Haynes and ATS did not pay to Plaintiffs and the other members of the putative class.

54. As a result of Haynes' and ATS' failure to pay said wages, Haynes and ATS were unjustly enriched for work and services performed by Plaintiffs and the other members of the putative class in an amount to be determined at trial.

55. By reason of the foregoing, Plaintiffs and the other members of the putative class have been damaged in an amount to be determined at trial, plus interest and professional fees.

**SEVENTH CAUSE OF ACTION**  
**AGAINST DEFENDANT HARTFORD FIRE INSURANCE - SURETYSHIP**

56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 55 hereof.

57. By issuing performance bonds to ATS and Haynes, Hartford Fire Insurance assumed joint and several liability to pay Plaintiffs any and all prevailing wages and supplemental benefits due and owing to them which ATS and Haynes failed to pay pursuant to the terms of each bond.

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58. ATS and Haynes have failed to ensure payment of prevailing wages and fringe benefits to Plaintiffs for work performed on the sites of each Public Works where a bond was furnished in a collective amount to be determined at trial, plus interest, costs and attorneys' fees.

59. Pursuant to the terms of the Bonds, Hartford Fire Insurance Co. is required to make payment to Plaintiffs in an amount not yet known, but to be determined through discovery or trial, plus interest, costs and attorneys' fees.

**EIGHTH CAUSE OF ACTION**  
**AGAINST DEFENDANT HARTFORD FIRE INSURANCE CO. - KRS 337.200**

60. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 59 hereof.

61. As a matter of law, the bonds issued by Hartford Fire Insurance Co. were issued pursuant to KRS 337.200.

62. KRS 337.200 explicitly grants affected employees the right to "obtain payment of those wages, liquidated damages, and attorney's fees as provided by law on presentation to the executive director of a final judgment entered by a court of competent jurisdiction."

63. Plaintiffs and other members of the putative class are affected employees as they have performed work for ATS and Haynes on the Public Works Projects bonded by the Surety Defendants, and did not receive the prevailing rate of wages and fringe benefits from ATS and Haynes.

64. For the foregoing reasons, the Surety Defendants are liable to Plaintiffs and other members of the putative class for all sums owed by Defendants ATS and Haynes in an amount to be determined at trial, plus interest, in an amount apportioned to each bonding company as per terms of the applicable bonds.

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**REMEDIES SOUGHT**

WHEREFORE, Plaintiffs and the members of the putative class demand judgment:

(1) that this Court declare Defendants' practice of failing to pay the prevailing wage to tandem axel truck drivers working on-site at Public Works Projects violative of prevailing wage laws;

(2) on their first cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, penalties, attorneys' fees and costs;

(3) on their second cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, penalties, attorneys' fees and costs;

(4) on their third cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, penalties, attorneys' fees and costs;

(5) on their fourth cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, attorneys' fees and costs;

(6) on their fifth cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, attorneys' fees and costs;

(7) on their sixth cause of action against Defendants ATS and Haynes in an amount to be determined at trial, plus interest, attorneys' fees and costs;

(8) on their seventh cause of action against Hartford Fire Insurance Co. in an amount not yet known, but to be determined at trial, plus interest, costs and attorneys' fees, and in an amount apportioned to each bonding company as per the terms of the applicable bonds.

(9) on their eighth cause of action against Hartford Fire Insurance Co. in an amount not yet known, but to be determined at trial, plus interest, costs and attorneys' fees, and in an amount apportioned to each bonding company as per the terms of the applicable bonds.

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(11) such other and further relief as to the Court may deem just and proper.

RESPECTFULLY SUBMITTED on this 27th day of January, 2011.

**PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY**

Respectfully submitted,

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/s/ William R. Garmer  
WILLIAM R. GARMER



**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing document has been served by mailing and faxing same on January 18, 2011, to the following counsel and parties of record:

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