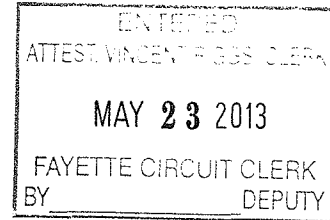


COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
CIVIL DIVISION 7



JAMES MELVIN HENSLEY, DANNY  
LAINHART, JAMES D. FETTERS, TONY  
MITCHELL, WILLIAM ABNEY, and  
CHARLES BUSSELL, et al.,

Plaintiffs,

v.

HAYNES TRUCKING, LLC, L-M ASPHALT  
PARTNERS, LTD. d/b/a ATS  
CONSTRUCTION, HARTFORD FIRE  
INSURANCE COMPANY, and JOHN DOE  
BONDING COMPANIES,

Defendants.

Case No. 10-CI-3986

**AMENDED ORDER CERTIFYING CLASS**

Having been fully advised, the Court hereby **GRANTS** Defendant's Hartford Fire Insurance Company's motion to alter, amend, or vacate, the January 23, 2013, Order Certifying Class and **AMENDS** the Order Certifying Class as follows:

This matter was submitted to the Court following a hearing upon Plaintiff's motion for Class Certification against Co-Defendants Haynes Trucking, LLC and L-M Asphalt Partners, Ltd., d/b/a ATS Construction. All parties presented to the Court extensive oral arguments, briefs and exhibits supporting their respective positions. The Court considered the arguments of counsel, as well as the briefs and exhibits submitted by the parties, and otherwise being sufficiently advised, It is now therefore ordered and adjudged that Plaintiff's Motion to Certify Class Actions against Co-Defendants Haynes

Trucking, LLC and L-M Asphalt Partners, Ltd., d/b/a ATS Construction is hereby **GRANTED** for the reasons as stated herein.

### **Findings of Fact**

1. Plaintiffs filed a Class Action Complaint alleging violations of Kentucky prevailing wage law and breach of contract against Defendants.
2. The class is definite and members are ascertainable. With at least 139 members, and perhaps many more, the class is so numerous that joinder of all members is impracticable.
3. There are questions of law and fact common to the class. Specifically, all liability issues are common to the class, including whether the defendants were required to pay prevailing wages to truck drivers for the time spent on the site of public works projects.
4. The claims of the representative parties are typical of the claims of the class.
5. The representative parties will fairly and adequately protect the interests of the class. In their depositions they have shown an appreciation of the issues in this case. Furthermore they have come forward to speak on behalf of current employees who may fear repercussions, including loss of their employment, should they come forward individually. This additional fact enhances their ability to represent the class.
6. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members. All legal issues are common and predominate.
7. Counsel for the Plaintiffs, Garmer & Prather, PLLC, Hare, Wynn, Newell & Newton, LLP, and James T. Harris are sufficiently experienced and qualified to serve as class

counsel, and have demonstrated their knowledge of the law, procedure, and the requisite ability to fairly and adequately represent the interests of the class.

### **Conclusions of Law**

The requirements of CR 23.01 have been met. The Plaintiffs have demonstrated that they also satisfy each of the elements of CR 23.02(c). The prosecution of separate actions by members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. This is especially so since there is an absence of applicable Kentucky Appellate Court rulings on Kentucky's prevailing wage law.

A class action is the superior method to resolve the common issues in this case. What is not common is the extent of damages, if any, each of the plaintiffs may be entitled to. However, the Court can craft a method to resolve the individual damages determination if that is necessary. The Court hereby certifies a class of plaintiffs as follows:

All persons who were employed by Haynes Trucking, at any time since 1995, who have not been paid prevailing wages or proper overtime but who transported asphalt, gravel, sand and/or other road building materials to various locations on the site of public works projects in the Commonwealth, distributed road building materials from the truck bed in a controlled manner on the site of the project, unloaded asphalt directly into paving machinery at a specific regulated rate so that such machinery could lay asphalt concurrently on the site of the project, and/or loaded recyclable and non-recyclable materials in conjunction with other heavy machinery for removal of the same from the site of the project.

For the foregoing reasons, Plaintiffs' Motion to Certify a Class against Co-Defendants Haynes Trucking, LLC and L-M Asphalt Partners, Ltd., d/b/a ATS Construction is hereby Granted and Garmer & Prather, PLLC, Hare, Wynn, Newell & Newton, LLP, Caldwell law Firm, PLLC and James T. Harris are appointed as Class Counsel pursuant to CR 23.07.

**SO ORDERED** this 23 day of May, 2013.

/S/ ERNESTO SCORSONE

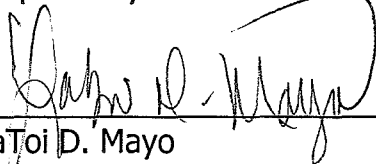
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ATTEST: VINCENT RIGGS, CLERK

FAYETTE CIRCUIT COURT

BY: K. Mulholland DEPUTY  
Judge Ernesto Scorsone

Prepared by:

  
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LaToi D. Mayo

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*Attorneys for Defendant The Hartford Fire Insurance Company*

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that ~~MAY 23 2013~~ of May, 2013, a true and accurate copy of the foregoing has been served via U.S. mail to the following Parties:

<p>William R. Garmer Jerome P. Prather Garmer &amp; Prather, PLLC 141 North Broadway Lexington, KY 40507</p> <p>James T. Harris 112 North Upper Street Lexington, KY 40507</p> <p>Brent L. Caldwell Noel E. Caldwell Bryce L. Caldwell Caldwell Law Firm, PLLC 213 St. Clair Street Frankfort, KY 40601</p> <p>Scott A. Powell Donald P. McKenna Matthew C. Minner Ashley B. Reitz Hare, Wynn, Newell and Newton 2025 Third Avenue North, Suite 800 Birmingham, AL 35203</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Susan C. Sears LaToi D. Mayo Littler Mendelson, P.S.C. 333 W. Vine Street, Ste. 1620 Lexington, KY 40507</p> <p>Robert E. Maclin, III Jon A. Woodall David A. Cohen McBrayer, McGinnis, Leslie &amp; Kirkland, PLLC 201 E. Main Street, Ste. 1000 Lexington, KY 40507</p> <p><i>Attorneys for Defendants</i></p>
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Fayette Circuit Court Clerk

~~MAY 23 2013~~