

# *Third Thursday – Crowell & Moring’s Wage Hour Briefing*

October 18, 2012

Tom Gies

Andrew Bagley

Chris Calsyn

Jonathan Moskowitz



# Wage and Hour Cases Pending at the Supreme Court

Tom Gies

## *Comcast Corp. v. Behrend*

- » Antitrust class action
  
- » Question presented: “Whether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis.”
  
- » Third Circuit decision: 655 F.3d 182

## *Genesis HealthCare Corp. v. Symczyk*

- » FLSA collective action
  
- » Question presented: “Whether a case becomes moot, and thus beyond the judicial power of Article III, when the lone plaintiff receives an offer from the defendants to satisfy all of the plaintiff’s claims.”
  
- » Third Circuit decision: 656 F.3d 189

# **FLSA Class Action Settlements: Factors to Consider When Seeking Judicial Approval**

**Andrew Bagley  
Chris Calsyn  
Jonathan Moskowitz**

## Judicial Approval of Class Action Settlements

- » FLSA settlements must be deemed “**Fair and Reasonable**” by the Court
  - No Collusion Between Counsel
  - Timing of Settlement and Impact on Court Approval
  - Settlement Fund and Amount Paid to Plaintiffs

## Judicial Approval of Class Action Settlements

- » Compensating Plaintiffs for Compromises Made in Settlement
- » Apprising Court of the Nature of Dispute(s) and Parties' Respective Positions
- » Providing Sufficient Information to the Court to Evaluate Settlement

## Attorney's Fees

- » Percentage of fund – increased court scrutiny
- » Scrutiny even stricter if settlement allows reversion
- » Lodestar method – Plaintiffs' attorneys resistance
- » Know your judge/court



# Confidentiality of Class Action Settlements

- » Mixed results on settlement confidentiality
  - Presumption of no confidentiality in many courts
  - Other courts willingly approve confidential settlements
  - Redaction of settlement amounts may be an alternative to full confidentiality
  
- » Question whether employer wants to keep settlement amount confidential
  - Setting the floor v. setting the ceiling for future cases

## Contact Information

- » Tom Gies
  - (202) 624-2690 or [tgies@crowell.com](mailto:tgies@crowell.com)
- » Andrew Bagley
  - (202) 624-2672 or [abagley@crowell.com](mailto:abagley@crowell.com)
- » Chris Calsyn
  - (202) 624-2602 or [ccalsyn@crowell.com](mailto:ccalsyn@crowell.com)
- » Jonathan Moskowitz
  - (212) 895-4228 or [jmoskowitz@crowell.com](mailto:jmoskowitz@crowell.com)