

Honorable Jay White

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

ZACHARY OWENS, CONRADO MORA,  
LUIS GARCIA, PAUL VARGAS, and  
MICHAEL PARDO, individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

BETHLEHEM CONSTRUCTION  
INCORPORATED; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND;  
ZURICH AMERICAN INSURANCE  
COMPANY; FEDERAL INSURANCE  
COMPANY; and ST. PAUL FIRE AND  
MARINE INSURANCE COMPANY,

Defendants.

BETHLEHEM CONSTRUCTION  
INCORPORATED, a Washington  
corporation,

Third Party Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF LABOR AND INDUSTRIES, a division  
of the State of Washington,

Third Party Defendant.

No. 08-2-31509-6 KNT

NOTICE OF CLASS ACTION AND  
RIGHT TO REQUEST EXCLUSION  
FROM THE CLASS

**THIS NOTICE HAS BEEN APPROVED BY THIS COURT  
AND MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**(Si usted desea recibir una copia de este aviso en español, comuníquese con los Abogados de la Clase al 1-800-809-2234 o visite nuestra página web: [www.sgb-abogados.com](http://www.sgb-abogados.com), Owens v. Bethlehem Construction: Aviso de La Demanda Colectiva y El Derecho De Pedir La Exclusión de La Clase.)**

TO: ALL INDIVIDUALS WHO WORKED FOR BETHLEHEM CONSTRUCTION INCORPORATED IN CASHMERE WASHINGTON ON THE SOUND TRANSIT CENTRAL LINK LIGHT RAIL PROJECT AND WERE CLASSIFIED BY BETHLEHEM AS "PRECAST CONCRETE WORKERS"

1 On September 12, 2008, a lawsuit was initiated by Plaintiffs Zachary Owens,  
2 Conrado Mora, and Luis Garcia against Bethlehem Construction Incorporated  
3 (“Bethlehem”) in King County Superior Court on behalf of current and former employees  
4 who were classified as “precast concrete workers” in connection with their work for  
5 Bethlehem on the Sound Transit Central Link Light Rail Project (“Light Rail Project”).  
6 Plaintiffs Paul Vargas, and Michael Pardo subsequently joined the lawsuit as class  
7 representatives. Defendants Fidelity and Deposit Company of Maryland, Zurich American  
8 Insurance Company, and St. Paul Fire and Marine Insurance Company (collectively, “the  
9 Sureties”) were added as defendants in their capacities as sureties who issued bonds in  
10 connection with the construction of the Light Rail Project.

11 The purpose of this notice is to advise you that the Court has held that this case may  
12 proceed as a class action and that you have been identified as potentially eligible to  
13 participate in this lawsuit as a member of the class. However, you have the choice as to  
14 whether you wish to be involved in the lawsuit or not. If you want to be part of this lawsuit,  
15 you do not need to do anything further at this time. You will automatically be a part of the  
16 case and receive more information in the future. If you do not want to be part of this  
17 lawsuit, you must send in a “Request to be Excluded From the Class” form by mail,  
18 postmarked on or before August 12, 2011.

### 19 **PLAINTIFFS’ CLAIM AND THE COURT’S RULING**

20 Plaintiffs claim that Bethlehem misclassified its employees working on the Light  
21 Rail Project as “precast concrete workers” in violation of the Prevailing Wage Act, RCW  
22 39.12, and should have paid them at construction trade rates.

23 On March 23, 2011, the Court found that Bethlehem failed to administratively  
24 appeal an April 30, 2008 ruling by Patrick Woods, who was the Assistant Director of the  
25 Washington Department of Labor and Industries, and, as a result, Bethlehem is bound by  
26 Mr. Woods’ finding that construction rates should have been paid to the workers on the  
Light Rail Project. The Court has not yet determined the amount of damages that are or  
could be owed.

### 27 **BETHLEHEM’S DEFENSES**

28 Bethlehem and the Sureties deny these allegations and allege, among other things,  
29 that Bethlehem correctly classified the employees who worked on the Light Rail Project and  
30 that the Court’s ruling regarding application of the construction rates was in error and will  
be overturned on appeal. Bethlehem asserts that all workers were fully and correctly  
compensated as required by all Washington laws, including the Prevailing Wage Act, for all  
work performed.

### 31 **WHAT IS A CLASS ACTION?**

32 A “class action” is a type of lawsuit in which the named plaintiffs are empowered to  
bring a lawsuit for themselves and on behalf of a larger group of similarly situated "class

1 members." In such a class action, the final outcome of the lawsuit will apply in the same  
2 manner to all class members unless they choose not to be included in the lawsuit.

### 3 **CLASS REPRESENTATIVES**

4 Zachary Owens, Conrado Mora, Luis Garcia, Paul Vargas, and Michael Pardo have  
5 been approved by the Court to serve as the class representatives.

### 6 **OPTION TO REMAIN IN CLASS ACTION**

7 If you want to remain a member of the class and participate in the class action  
8 lawsuit against Bethlehem and the Sureties, you are not required to do anything at this time.

### 9 **OPTION TO DECLINE PARTICIPATION**

10 If you do not want to remain a member of the class in this lawsuit, you must make a  
11 request to be excluded from the case. If you want to be excluded, you must communicate  
12 your desire by mail, postmarked on or before August 12, 2011, to the Class Counsel, whose  
13 address is stated below in this Notice. You should use the enclosed "Request to be Excluded  
14 from the Class" form for this purpose. This form is on the last page of this Notice.

### 15 **CONSIDERATIONS REGARDING DECISION TO PARTICIPATE OR NOT**

16 It is not possible to address all of the considerations that might influence an  
17 individual's decision to participate as a class member in this lawsuit. But here are a few:

- 18 ▪ If you choose to be included in the class, you will be bound by any decision of  
19 the courts in this case, whether favorable or unfavorable to the class.
- 20 ▪ If you choose to sign and return the form below, you still have the right to file  
21 your own lawsuit against Bethlehem and the Sureties, subject to any individual  
22 defenses that Bethlehem and the Sureties may have. You just won't be part of the  
23 class.
- 24 ▪ If you choose to participate in this class action, you can engage an attorney of  
25 your own choosing at your own expense. If you do not wish to engage your own  
26 attorney, your interests will be represented by the law firms of Schroeter  
Goldmark & Bender (by Martin S. Garfinkel and Adam J. Berger) and Robblee  
Detwiler & Black, PLLP (by Richard H. Robblee and Jacob H. Black) as counsel  
for the class ("Class Counsel").
- Your decision not to participate in this lawsuit, or to participate in this lawsuit,  
will have no impact whatsoever on your current or future employment  
relationship with Bethlehem. Bethlehem will not retaliate against you, or provide  
you any benefits, regardless of the decision you make. The decision is yours.
- If you choose to be included in the class, you may not receive a monetary  
recovery if it is determined that you did not perform "blue collar" work on the

1 Light Rail Project, which would mean that your work was not covered by the  
2 Prevailing Wage Act.

- 3 ▪ If you choose to be excluded from the class, you may pursue any wage claims  
4 you may have against Bethlehem by filing your own lawsuit.
- 5 ▪ If you choose to be excluded from the class, you will not share in any recovery  
6 that might be paid to class members if they win this lawsuit at trial or if there is a  
7 settlement of this lawsuit.

8 **ADDITIONAL INFORMATION**

9 **DO NOT CONTACT THE COURT FOR FURTHER INFORMATION AT**  
10 **THIS TIME.** Any questions you have concerning this notice and any corrections or  
11 changes of name and address should be directed in writing to Class Counsel:

12 **Bethlehem Litigation**  
13 **Schroeter Goldmark & Bender**  
14 **810 Third Avenue, Suite 500**  
15 **Seattle, Washington 98104**  
16 **(206) 622-8000 or 1-800-809-2234**  
17 **(Sheila Cronan, Paralegal, cronan@sgb-law.com)**

18 You may call, write, or send an e-mail to Class Counsel with questions. You may  
19 also seek the advice of your own attorney if you desire. Pleadings and other records in this  
20 litigation may be examined and copied at any time during regular office hours at the Office  
21 of the Clerk, King County Superior Court, 401 4<sup>th</sup> Avenue North, Kent, WA 98032.

22 **REMINDER OF THE TIME LIMIT**

23 If you wish to be excluded from the class on whose behalf this lawsuit is being  
24 brought against Bethlehem and the Sureties, you must return the completed Request to be  
25 Excluded from the Class to Class Counsel by mail postmarked on or before August 12,  
26 2011.

Dated this 28<sup>th</sup> day of June, 2011.

