

In The News

DOL Settles Oil Field Service Co.'s Bad Faith Case For \$1.5 MM

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Law360, Dallas (September 17, 2015, 8:30 PM ET) -- The U.S. Department of Labor on Thursday said it reached a \$1.5 million settlement with oil field service company Gate Guard Services LP, after the Fifth Circuit held that the agency violated internal procedures and ethical litigation practices “at nearly every turn” in an investigation of the company’s use of independent contractors.

The Fifth Circuit in July held that Gate Guard was entitled to collect attorneys’ fees under a bad faith provision of the Equal Access to Justice Act and remanded the case to trial court to determine the amount of the fee award. The court said the DOL engaged in egregious conduct as it aggressively pursued a deeply flawed and “legally insupportable” case alleging Gate Guard violated the Fair Labor Standards Act by misclassifying oil field gate agents as independent contractors and underpaying them.

A lawyer for Gate Guard confirmed a settlement has been reached and said the \$1.5 million is set to be paid Sept. 30. DOL representatives did not immediately return requests for comment Thursday.

The agency had previously been ordered to pay Gate Guard more than \$565,000 in attorneys’ fees under the EAJA’s substantially-justified provision, but a trial judge declined to award fees under the EAJA’s provision for fees when the government has acted in bad faith, vexatiously, wantonly or for oppressive reasons.

The Fifth Circuit said although the government on appeal conceded that “mistakes were made,” its contrition was “too little, too late.” The court said the government’s conduct both before and during litigation, and the legal gaps in the case, merited a greater fee award.

According to court records, a DOL investigator who was untrained in investigating contractor misclassifications opened a case against Gate Guard after learning about the company from a former Gate Guard service technician who was the investigator’s “drinking companion.” The investigator “ambushed a low-level employee for an interview without counsel,” concluded Gate Guard was violating FLSA based on just three interviews, destroyed material information, repeatedly deviated from internal policy in pressing the charges and demanded a \$6 million penalty that the Fifth Circuit called “grossly inflated.”

Gate Guard denied wrongdoing, refused to treat its gate attendants — who allegedly often live and sleep in trailers at the sites they monitor — as employees under the FLSA and eventually sued the agency for a declaration it was in compliance with the act. The DOL then filed a separate FLSA suit for back wages and injunctive relief.

According to the court, the DOL used “belligerent” litigation tactics, refusing to consolidate the cases or have its case transferred to another division of the Southern District of Texas and stonewalling the deposition of its lead investigator. The DOL also continued to pursue the case against Gate Guard even after the same district court held, in a nearly identical case, that gate attendants are not employees under FLSA and after discovering the federal Army Corps of Engineers uses gate attendants and classifies them as independent contractors, the court said.

The court said the DOL pursued the penalty against Gate Guard even after realizing how shoddy its investigation had been and how many deviations from internal policy were made in pressing the charges. Even if the litigation was colorable at the outset, it was revealed as frivolous through the discovery process, but instead of acting responsibly and abandoning the case, the DOL continued its prosecution despite overwhelming contradictory evidence, and used “extraordinarily uncivil and costly litigation tactics,” the court said.

The settlement covers attorneys' fees both for the substantially justified and bad faith provisions of the EAJA, according to Gate Guard's counsel.

The DOL was represented by its own Mary Kathryn Cobb and John A. Smith III of the U.S. Department of Justice.

Gate Guard was represented by Daniel Pipitone of Munsch Hardt Kopf & Harr PC.

The case is Gate Guard Services LP et al. v. Perez, case number 6:10-cv-00091, in the U.S. District Court for the Southern District of Texas.

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