

In The News

Appeals court finds 'government overreach' in DOL's handling of Eagle Ford case

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The U.S. Department of Labor may soon have to pay up to \$1 million in attorneys fees after the 5th Circuit Court of Appeals found examples of "bad faith" the agency's investigation of a company that provides security services to oil fields in the Eagle Ford Shale.

After more than a year in review, panel of three judges handed down an opinion late last week in favor of Corpus Christi-based Gate Guard Services LP, entitling the oil field security company to full reimbursement of it legal expenses.

The Department of Labor originally lost a Fair Labor Standards Act lawsuit against Gate Guard and its owner Bert Steindorf back in February 2013 but a legal battle over attorneys fees erupted before U.S. District Court Judge John Rainey in Victoria.

Judge Rainey ultimately ordered the Department of Labor to pay \$565,000 in attorneys fees based on a \$125 per hour limit set under the "substantially justified" clause of the Equal Access to Justice Act, which allows companies who are wrongfully sued by the government to recover legal expenses.

The Department of Labor filed an appeal fighting the order to pay but the July 2 appeals court opinion took the judge's order a step further. The appeals court found that the Department of Labor was "rife" with misconduct and acted in "bad faith" during its investigation of the company.

Under a federal law, a finding under the "bad faith" clause of the Equal Access to Justice Act means that the Department of Labor will now have to pay full market value for the attorneys fees instead of the \$125 per hour limit set by the "substantially justified" clause.

A federal court hearing to decide the final dollar amount has not been set but is expected to take place before Judge Rainey in Victoria. Daniel Pipitone with the Houston office of Munsch Hardt Kopf & Harr, who was one of Gate Guard's defense attorneys, said the award will now be much higher.

"I am hopeful that Judge Rainey will award Bert Steindorf and Gate Guard Services up to \$1 million," Pipitone said.

The Houston-based attorney said Steindorf paid for his Gate Guard's legal defenses out of his own pocket, meaning that he will be reimbursed from the award that the judge hands down.

"Not many small service companies in the energy sector can afford to fight," Pipitone said. "They simply do not have the the financial wherewithal in a prolonged legal battle."

Calling the case an example of "government overreach," Pipitone compared Steindorf's legal battle to the biblical story of David vs. Goliath.

"It took a lot of guts and some financial backing to do this," Pipitone said. "He is David and he won."

Under federal law, a company must prove "bad faith" by showing that the government's position was meritless and that the government knew its position was meritless but went through it with anyways for an improper purpose such as harassment.

The appeals court determined that Department of Labor investigator David Rapstine, who has since left the agency, shredded and burned his notes so they could not be scrutinized in legal proceedings. Rapstine started the investigation based on a tip from a field named Jerry Studlar, who was a former Gate Guard employee. Pipitone said the case is very significant for the energy sector in Texas and other shale plays across the United States where gate guards are independent contractors and not company employees as the Department of Labor alleged in the Gate Guard case.

But he said it also sets precedent in other cases where companies wrongly sued by the Department of Labor attempt to recover attorneys fees under the "bad faith" clause of the Equal Access to Justice Act.

"The 5th Circuit has made the standard more reasonable to show that the government has acted in bad faith thereby allowing some of these wronged businesses to recover attorneys fees in these types of cases," Pipitone said.

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