

## In The News

# Appeals court says Labor Department acted in bad faith in contractor case

07.02.15

*Houston Chronicle*

An oil and gas servicing company will likely be getting a bigger check from the federal government to pay its legal expenses after the 5th U.S. Circuit Court of Appeals said the government acted in bad faith.

In a ruling Thursday, the appeals court said that at nearly every turn, the Department of Labor investigation and prosecution of Gate Guard Services "violated the internal procedures and ethical litigation practices" of the department.

Legal observers say the ruling will make it easier for others to bring bad-faith claims against the government.

The government pressed on even after it discovered its lead investigator based his conclusions on just three interviews, destroyed evidence and demanded a "grossly inflated" multimillion-dollar penalty, according to the ruling. Once in litigation, the appellate court found, the government opposed routine motions, refused to produce evidence and "stonewalled" the deposition of its lead investigator.

The Labor Department did not respond to requests for comment.

Five years ago, Corpus Christi-based Gate Guard was told by the Labor Department that it owed \$6.2 million in back pay, including minimum wage and overtime for the attendants who log traffic at oil and gas drilling sites. The company had classified its 400 gate attendants as independent contractors.

Two years ago, Senior U.S. District Judge John Rainey in Victoria sided with the company and ruled that its 400 gate attendants are independent contractors and not employees who would be entitled to minimum wage and overtime pay.

Last year, Rainey ordered the Labor Department to pay Gate Guard nearly \$600,000 to cover part of its legal fees after it was able to prove the government didn't have "substantial justification" to prosecute. However, Rainey ruled against the company on its bad-faith claim.

Gate Guard will head back to Rainey's court to determine how much more the company will receive.

Daniel Pipitone, a lawyer with Munsch Hardt Kopf & Harr in Houston who represents Gate Guard, believes his client will eventually receive between \$850,000 and \$1.1 million to cover its legal bills.

It was an expensive case to fight, said Pipitone, with the government disputing every motion and evidence request. The firm also interviewed nearly 100 gate guards.

Pipitone believes the ruling lowered the bar to bring bad-faith claims, making it easier for others to fight when they don't believe they're violating the law.

Houston lawyer Rex Burch said he worries the ruling will make investigators less likely to go after wage and hour violators.

"You'd think we'd want to encourage the government to go after wage and hour violators, but I guess this panel of judges disagrees," he said.

By: L.M. Sixel

## Primary Contacts



**Daniel Pipitone**

Houston  
713.222.4060  
dpipitone@munsch.com

## Related Practices

Labor & Employment  
FLSA

## Related Industries

Energy