

In The News

Munsch Hardt attorney already making a difference with labor-law ruling

04.10.14

Houston Business Journal

In February 2013, Gate Guard Services L.P. of Corpus Christi won an important labor-law case against the Department of Labor. On April 7, Judge John D. Rainey of the U.S. District Court for the Southern District of Texas, Victoria Division, awarded Gate Guard \$565,527.61 in attorneys' fees and other expenses.

The case is expected to have wide-ranging implications for the energy sector and other industries that use contractors, said Dan Pipitone, the attorney at Munsch Hardt Kopf and Hardt, which represented Gate Guard. He recently spoke to Houston Business Journal:

WHAT'S THE BACKGROUND ON THE CASE?

The case is significant because it is the first time the Department of Labor has lost an employee misclassification case in 75 years. The case has implications directly with energy companies because many of them use contractors instead of employees. But so do construction companies, cable TV companies, taxi services.

WHAT ARE THE FACTS OF THE CASE?

In 2011, Gate Guard Services was investigated by Department of Labor and the government determined that they were using contractors who should have been classified as employees. A lot of South Texas drilling operators have a gate attendant. That's so if you come on site, you have to pass through a gate, register, put on any safety equipment that's required.

Many of the guards live on site. A lot of them are winter Texans or people who just like a quiet job. Some of these sites are pretty rural. Gate Guard Services paid them a "day rate." Sometimes, they'd work three hours a day, sometimes 10 hours a day. There was no overtime. The Department of Labor argued that they were employees and should get overtime. Labor said Gate Guard owed \$6 million in back wages.

Instead of agreeing to that, like a lot of companies do, Gate Guard fought and won in February 2013. Judge John Rainey of U.S. District Court for the Southern District of Texas, Victoria division, issued a ruling saying Gate Guard was right, Labor was wrong and awarded Gate Guard \$30,000 in court costs.

It's the first time the Department of Labor has lost an employee misclassification case in 75 years.

THAT RULING WAS IN 2013. WHAT WAS THE RULING ON APRIL 7, 2014?

The owner of Gate Guard, Bert Steindorf, assumed that he was right in calling the gate guards independent contractors. It cost him a lot of money. After he won, we filed a motion to collect attorneys' fees using something called the Equal Access to Justice Act. It's available to citizens whenever the government acts in bad faith, or acts unreasonably in pursuing litigation. In this case, Judge Rainey found that the government, while not in bad faith, Labor was unreasonable in pursuing Gate Guard. He awarded Gate Guard roughly \$560,000 in attorneys fees.

SO DID GATE GUARD GET BACK ALL OF ITS LEGAL COSTS?

He got about 75 percent. But the reason this opinion is more important than the first, people see that if the government comes after them, they not only have the chance to win, but get paid back. You'd be amazed at how many people capitulated to Labor because they couldn't afford to fight."

By: Mark Yost

Primary Contacts



Daniel Pipitone

Houston

713.222.4060

dpipitone@munsch.com

Related Practices

Labor & Employment
FLSA

Related Industries

Energy