

In The News

DOL Dinged \$600K For Oil Field Service Co.'s Atty Fees

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Law360

Law360, Los Angeles (April 08, 2014, 8:32 PM ET) -- A Texas federal judge on Monday ordered the U.S. Department of Labor to pay Gate Guard Services LP, which records traffic for oil fields, nearly \$600,000 in attorneys' fees and other expenses after Gate Guard was accused of owing millions of dollars in fines and back pay to independent contractors.

The gate attendance business filed suit in 2010, after the DOL said the company had "misclassified" its workers as independent contractors rather than employees and ordered Gate Guard owner Bert Steindorf to pay \$6.19 million in owed back wages, which included overtime payments. In February 2013, the district court granted summary judgment to Gate Guard and Steindorf, and dismissed all the claims in the DOL's Fair Labor Standards Act enforcement action.

Now, U.S. District Judge John D. Rainey has granted Gate Guard's supplemental motion to recover attorneys' fees, after previously denying a similar motion without prejudice.

"Had the DOL interviewed more than just a handful of GGS's roughly 400 gate attendants before presenting GGS with a \$6,000,000.00 demand and filing its enforcement action against GGS, it would have known the gate attendants were not employees," Judge Rainey wrote in the 24-page memorandum opinion and order. "The DOL failed to act in a reasonable manner both before and during the course of this litigation, and it continues to insist that the gate attendants are employees, despite overwhelming contradictory evidence."

Monday's order, which included awards for \$521,813 in attorneys' fees, \$10,752 in paralegal fees and \$32,963 in travel expenses, is the most recent development in the long-running dispute between Gate Guard and the DOL. In February 2013, the court ruled in favor of Gate Guard and validated its business model, according to the company.

Gate Guard attorney Daniel Pipitone of Munsch Hardt Kopf & Harr PC hailed the importance of the attorneys' fee ruling.

"It was one thing for the court to find in favor of Gate Guard a year ago, but the real importance for today's supplemental ruling for businesses is that not only can David take on Goliath and win the fight, but David can also get reimbursed by Goliath for having to fight in the first instance," Pipitone told Law360 on Tuesday. "Furthermore, the energy industry utilizes independent contractors to a great extent, so they will obviously benefit from this precedent, but other industries such as construction, transportation, health care, energy and technology are in a similar situation, so this is significant."

In July 2010, the DOL began investigating Corpus Christi, Texas-based Gate Guard, which locates gate attendants for oil field operators, after receiving complaints from former service technicians. After an initial conference and interviewing 17 of approximately 400 gate attendants, the DOL's lead wage-and-hour

investigator David Rapstine concluded his investigation, according to court documents.

In October 2010, Rapstine informed Gate Guard that the DOL found it to be in violation of the FLSA because the gate attendants were employees, and advised the company to pay \$6,192,752 in back wages and unpaid overtime to the gate attendants and service technicians to come into compliance.

The next month, Gate Guard hit the DOL with a declaratory judgment action seeking a determination of whether it was in compliance with the FLSA. After extensive briefing, the court granted Gate Guard's cross-motion for summary judgment on the action and dismissed the DOL's counterclaims, according to court documents.

Gate Guard then sought to recover attorneys' fees incurred in the prosecution of its declaratory judgment action and in the defense of the FLSA enforcement action. The prevailing party, Gate Guard argued, is entitled to attorneys' fees under the Equal Access to Justice Act because the DOL's actions, both during its administrative investigation and in the course of litigation, were taken without substantial justification.

Representatives for the DOL didn't immediately return requests for comment Tuesday.

Gate Guard is represented by Daniel D. Pipitone and Kenneth Wayne Bullock III of Munsch Hardt Kopf & Harr PC and by Annette A. Idalski of Chamberlain Hrdlicka White Williams & Aughtry.

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, Victoria Division.

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