

Oil Well Monitors Score Cert. In OT Collective Action

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Law360, New York (August 27, 2015, 5:20 PM ET) -- Flow testers responsible for monitoring oil and gas wells scored conditional certification in Texas federal court Thursday in a collective action accusing their employer of violating the Fair Labor Standards Act by improperly classifying them as independent contractors in order to stiff them on overtime pay.

Lead plaintiff Rory Dyson met the evidence burden for certification of a suit in its initial stages, U.S. District Judge Robert L. Pitman ruled, concluding that the flow tester offered enough proof of other potential plaintiffs who were misclassified by Stuart Petroleum Testers Inc. and effectively demonstrated a widespread discriminatory plan.

The judge explained that Dyson and co-worker Alvin Garvey provided declarations claiming that "other flow testers were subject to the same working and pay conditions as they were, and state their belief that other flow testers may be interested in joining the lawsuit should it be certified as a collective action."

"The court finds this sufficient to carry plaintiff's burden at this early stage," the order said.

The April suit — filed against Stuart Petroleum and its president — alleges that some flow testers were classified as independent contractors and paid straight time for overtime hours worked, despite the fact that the company was entirely in charge of their work.

The company also employs many flow testers whom it classifies as employees and pays overtime, even though they perform the same work as the so-called independent contractors under the same conditions, according to the complaint.

The policy is willful and "all the more egregious" because the company set up a paper profile intended to give the impression that its workforce was composed of independent contractors, the complaint alleged, pointing out that workers were required to submit "invoices" instead of timesheets.

Dyson asked for collective certification in July, claiming that declarations provided by him and another employee meet the lenient requirements to show that other workers are similarly situated.

The defendants fired back with contentions that under prior case law, proving the existence of other potential plaintiffs isn't enough to warrant certification as there is no guarantee the others will join the suit.

But Judge Pitman sided with the plaintiff Thursday, concluding that the cases cited by Stuart Petroleum were in a much more advanced stage. The parties in those suits had already conducted discovery before the plaintiffs asked for certification, which hasn't yet occurred in this suit.

The judge also held that the plaintiff provided sufficient evidence of a widespread discriminatory plan, even though the testimony is conveyed in general terms.

He explained that the two declarations reiterated that flow testers were treated the same way, pointing out that Garvey's statements about Stuart Petroleum's company-wide employment practices derive from more than a year on the job.

Garvey claimed to have worked closely with other flow testers and talked to them about their jobs, pay and hours, learning that the company's policies seem to apply to all similarly situated employees at locations in Texas, Louisiana and Arkansas, according to the order.

Judge Pitman granted collective certification to all of Stuart Petroleum's current and former hourly-paid workers who monitored and maintained oil and gas wells within the last three years and were classified as independent contractors, rejecting the company's concerns that the class should be limited to flow testers.

According to Garvey, Stuart used five or six different job titles to refer to workers performing the same duties as flow testers, the opinion said.

The parties didn't immediately return request for comment Thursday.

The class is represented by Galvin B. Kennedy of [Kennedy Hodges LLP](#).

Stuart Petroleum and its president are represented by James D. Rosenblatt and Tiffanie S. Clausewitz of the Rosenblatt Law Firm PC.

The case is Dyson v. Stuart Petroleum Inc. et al., case number [1:15-cv-00282](#), in the U.S. District Court for the Western District of Texas.

--Editing by Philip Shea.