

## 5th Circuit Sanctions Federal Government in FLSA Case

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The U.S. Court of Appeals for the Fifth Circuit issued a favorable ruling for a company that sued the federal government after the U.S. Department of Labor alleged that it had violated the nation's overtime laws.

"This is a landmark decision, a case of the first impression," said Annette Idalski, a shareholder in Chamberlain, Hrdlicka, White, Williams & Aughtry in Atlanta, who represented plaintiff Corpus Christi-based Gate Guard Services at the trial court.

"If an employer is unjustly accused of independent contractor misclassification by the DOL, this unprecedented ruling will give them added protection to defend that business model, and will have wide-ranging implications in sectors that use contractors, such as the oil and gas and construction industries," said Daniel Pipitone of Munsch Hardt Kopf & Harr in Houston, in a written statement. Pipitone represented Gate Guard at the trial court while at Chamberlain Hrdlicka and handled the appeal for the company after he moved to Munsch Hardt.

With its ruling, the Fifth Circuit sanctioned the federal government for bad faith and ruled that it owes attorney fees and travel expenses to Gate Guard.

A trial court will determine the exact amount of the fees and expenses, but Idalski estimated those could amount to about \$1 million.

According to the ruling, issued by a three-judge Fifth Circuit panel, when the Department of Labor investigated Gate Guard for alleged Fair Labor Standards Act violations, the federal agency violated its own internal procedures and ethical litigation practices.

The department "pressed on" with its case against Gate Guard, even after it discovered that its lead investigator conducted an investigation for which he was not trained; concluded Gate Guard had violated the FLSA based on just three interviews; destroyed evidence; ambushed a low-level employee for an interview without counsel; and demanded a grossly inflated multimillion-dollar penalty, the Fifth Circuit ruling states.

"It is often better to acknowledge an obvious mistake than defend it. When the government acknowledges mistakes, it preserves public trust and confidence. It can start to repair the damage done by erroneously, indeed vindictively, attempting to sanction an innocent business. Rather than acknowledge its mistakes, however, the government here chose to defend the indefensible in an indefensible manner," states the opinion, which was issued July 2 and written by Judge Edith Jones.

Rarely, when companies face FLSA investigations, do they turn around and pursue the government in court, Idalski said.



**Idalski**

But her client had to fight—because the government's proposed FLSA penalties equaled \$6 million and the company has only a net worth of \$7 million, she said.

During discovery, her client uncovered department emails and notes that showed that it was not following its own policies, Idalski said.

As a result of this case, FLSA defendants will consider more often fighting the government, Idalski predicted.

M. Patricia Smith, the solicitor for the Department of Labor, did not return a call.