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## FLSA: Oilfield Mud Engineers Found Exempt From Overtime by Jury

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On October 25, 2018, a jury in the Southern District of Texas found oilfield mud engineers were exempt from overtime requirements of the Fair Labor Standards Act (“FLSA”) under the Administrative Exemption. This victory for the employer is unique because exemptions under the FLSA—particularly regarding mud engineers/drilling fluid specialists in the oilfield industry—typically do not reach the jury-verdict stage. Moreover, this outcome follows a unique procedural background: this case was dismissed on summary judgment by the district court, but later reversed and remanded by the Fifth Circuit on the grounds that there were genuine issues of material fact as to whether the employees’ duties fell within the exemption.

### **Fair Labor Standards Act and the Administrative Exemption**

The FLSA requires overtime pay unless an employee meets one of the “white-collar” exemptions. In this case, the Defendants argued the applicability of the Administrative Exemption. To qualify for this exemption, an employee must meet the following: (i) the employee must be compensated on a salary basis of at least \$455/week; (ii) the employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and (iii) the employee must exercise discretion and independent judgment with respect to matters of significance in his or her primary job duties. Section 13(a)(1); DOL FactSheet #17C, available [here](#). To meet the “directly related to management or general business operations” requirement, courts may consider whether an employee performs work directly related to assisting with the running or servicing of the business, instead of, for example, working on a manufacturing production line or selling a product in a retail or service establishment. Factors to consider as stated in the U.S. Department of Labor regulations include, for example, whether the employee exercised “discretion and independent judgment” include: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; and whether the employee has authority to waive or deviate from established policies and procedures without prior approval.

### **Case Background**

This lawsuit has a particularly notable factual and procedural background. The Plaintiffs were employed as mud engineers for an oilfield service company that specializes in engineering

drilling-fluid systems. The mud engineers work to ensure that properties of drilling fluid/drilling mud are within designed specifications of a specific plan which is created by a project engineer at Defendant's headquarters and based on historical drilling in the area. At the summary judgment stage, both Plaintiffs claimed that they did not have authority to deviate from this plan.

To ensure the drilling fluid is performing adequately and within its designated parameters, mud engineers test the fluid. The tests are generally conducted either in a lab trailer at the customer's site, or in the tailgate of the mud engineer's assigned company vehicle. Following the test, mud engineers may provide recommendations to a "company man." These recommendations are usually accepted without further inquiry by the employer.

While the Southern District of Texas granted summary judgment on the basis that the Plaintiffs fell within the Administrative Exemption, the Fifth Circuit reversed and remanded the case. See *Dewan v. M-I, L.L.C.*, 858 F.3d 331 (5th Cir. 2017). The Fifth Circuit concluded there were genuine issues of material fact regarding whether the engineer's primary duties were related to the management or general business operations of the Defendant or its customers, and whether the engineers exercised discretion and independent judgment in matters of significance. Specifically, the court found it significant that the mud engineers supplied drilling-fluid systems – which may be more related to producing commodities, rather than the administering of Defendant's business under the exemption. Moreover, the court reasoned a jury could conclude the Plaintiffs did not exercise discretion because they were required to stay within the employer's drilling plan and program, and would have to request approval before taking action outside the plan.

#### **Jury Verdict**

Upon remand, this case was tried before a jury. Significantly, the "salaried status" prong of the Administrative Exemption was not at issue. The parties agreed the Plaintiffs met the exemption's salary threshold by being paid at least \$455 per week. (The Plaintiffs' salaries did not qualify for the potentially applicable highly compensated employee exemption.) Accordingly, the jury was tasked to decide whether, by a preponderance of the evidence, the Plaintiffs job duties brought them within the Administrative Exemption. Following deliberation, the jury found the Plaintiffs were exempt from overtime pay under the Administrative Exemption.

This verdict is noteworthy as it provides a rare example of a case involving the application of the Administrative Exemption in the oilfield industry which reached the jury-verdict stage. The result demonstrates that even where issues of fact as to the "duties" of employees preclude summary judgment on an exemption, employers may nonetheless prove the exemption applies by a preponderance of the evidence at trial. Notably, however, fact-specific inquiries will determine whether an employee's duties and compensation bring the employee within an FLSA exemption.

Please contact us if you have questions regarding overtime pay and FLSA exemption concerns.