

Dewan: A Watershed Overtime Opinion for the Energy Industry

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Overtime. It's the law. We get it. But just who, when, and in what amounts is not always clear.

An opinion delivered by Judge Harmon this week, in *Dewan v. M-I, L.L.C.* (2016 Westlaw 695717, Feb. 22, 2016), provides clarity in this murky area, much-needed particularly in the oil industry. *Dewan* holds that “mud men” or “mud engineers” are exempt from overtime under the “administrative” exception.

Dear Energy Industry, this is a watershed moment.

This powerful industry has faced a somewhat silent overtime conundrum. The puzzle involved the fact that the abundant jobs that many were lucky enough to have when the industry was crazy busy—*jobs that paid enormous amounts of money, often far in excess of \$100,000*—were usually not paid on the basis of time and a half for all hours over 40 in a workweek (the overtime standard).

What no overtime? How can that be?

Because that's what everyone was doing, through day bonuses, safety bonuses, attendance bonuses, and on and on. Everyone did so because that's how you attracted and retained American workers or your business would fail. And the plan worked well for a while, while money and oil was flowing freely and jobs were plentiful. Just one thing was not considered – the Fair Labor Standards Act.

That plan worked until plaintiffs' lawyers figured out that guys out at the rig sites, even workers making heady amounts of money, still had to be paid overtime – at least they argued. And so the class actions started, a veritable phalanx of them.

An industry was under siege.

“We will fight!” the companies vowed. “We paid people well—we *overpaid* them! This is not fair!” they cried. Defenses were raised, “you were exempt,” “you're a high earner.”

Despite the defenses, the cries of inequity, and the good lawyers hired by companies, the cases almost always have ended up being settled. Right and left, judges certified classes, often including hundreds of workers—such as, MWD (measurement while drilling) workers and DD (directional drilling) engineers, or coil tube operators, or pipeline inspectors, or any number of other categories that directly support the oil business, usually at the rig sites themselves. With class actions formed and with sirens promising pots of gold through lawyer advertising, there appeared to be little escape.

There have been multitudes of settlements, and over the last two-four years, literally millions of dollars have passed from the company side of the table to the plaintiff-workers (already well paid) and to their lawyers who, naturally, received a handsome cut. It has been like an ugly step-child, an unwanted progeny of generous and hard-charging oil.

And the lawsuits continue today, even with the market-crushing downturn in oil (of course, some of that downturn also spurs “RIF’d” ex-employees to sue).

While the defense arguments were logically made, the hard case law support for same was often difficult to find. In fact, the cases have settled so often and so quickly, that courts have never opined on the defenses in any definitive way. Up to now.

Enter Dewan.

Dewan concerns the overtime claims of mud men Matthew Dewan and William Casey, and the Court granted the employer’s (“M-I’s”) motion for summary judgment on the basis of the administrative exemption. As exempt, Dewan and Casey are not entitled to overtime.

The administrative exemption deals with generally non-manual labor work which must involve the “running or servicing” of a business. See 29 C.F.R. §541.201(a). The work cannot be considered “production,” but rather work directly related to the management policies or general business operations of the employer *and* its customers; the work has to include the exercise of discretion and independent judgment related to “significant” issues. See §541.200(a)(1)-(3).

Mud and mud men.

Those in the industry know the critical importance that drilling mud plays – the mix and its properties are essential to all kinds of issues in the drilling process—from stability of the drilling hole, to lubrication of the drill string, to prevention of corrosion, to the speed of the operation—to name just a few key considerations. Improperly handled, the results can be catastrophic (just like most things at a rig site).

Mud men, working independently, are hired through companies like M-I, who, in turn, contracts with other companies to send these workers out to oversee the drilling mud operation at rigs.

What did these mud men do that qualified them as exempt?

- While they used a plan from an engineer, Dewan and Casey were expected to exercise discretion with respect to, for example, the additives needed for particular conditions at a site.
- They tested the mud.
- They interacted with drilling crew at each rig site.
- They would provide recommendations (often accepted) for the mud mix and use.
- They wrote reports for their companies about each assignment.

The Court noted the importance of the mud engineers as intermediaries with customers and the key role that their work plays in the drilling operation.

The plaintiffs’ side strenuously argued that the work was really production-type work, not subject to any exemption. They noted that no high level degree was required for the work. They fixed on the mud plans and argued that the workers could not vary from the plans.

Dear Energy Industry, where have we heard these arguments before?

The answer: In any number of the overtime lawsuits, for any number of oilfield workers.

In the end, the *Dewan* Court held for M-I and wholesale rejected the plaintiffs’ arguments (the Court also rejected other arguments of the defense, such as that the outside sales exemption applied).

Focusing on the administrative exemption, the *Dewan* opinion likened the mud engineers to “advisors or consultants,” Judge Harmon focused on the vital importance of drilling mud, and she noted that the workers were basically on their own, independent, dealing with company men and others and providing their often-relied-upon recommendations, absolutely necessary for a successful and safe drilling operation.

Granting the summary judgment, the Court, after an exceedingly lengthy decision, concluded that “the evidence supports M-I’s claim that Dewan and Casey were administratively exempt and their primary duty was the management of mud systems to improve drilling performance.”

Boom! The case was over.

While an appeal is sure to follow, the decision is carefully reasoned. Fundamentally, today, it provides the industry a specific, much-needed weapon in the overtime battle. The *Dewan* logic has application to many oilfield situations because the same factors cited by Judge Harmon apply to MWDs, DDs, pipe inspectors, and many others bringing overtime lawsuits.

If your company is facing overtime issues, Kane Russell Coleman & Logan has seasoned employment lawyers who zealously advocate for employers, many in the energy industry. Email AJ at ajohnson@krcl.com, or call 713-425-7433.

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