How Citgo Fought Back Against FLSA Plaintiffs — And Won!

Law360, New York (November 25, 2013, 12:50 PM ET) -- Employers sometimes feel helpless in the face of wage-and-hour litigation, especially when dealing with plaintiffs' lawyers who play fast and loose with the court rules. Sometimes it pays to force the plaintiffs and their lawyer to play by the rules, as the recent Fifth Circuit decision in Moore et al. v. Citgo Refining & Chemicals Co. illustrates. That ruling affirmed the dismissal of 24 plaintiffs' claims, and ordered them to pay the defendant more than $53,000 for deposition costs.

Background

Twenty-six console supervisors at a refinery sued Citgo, claiming it misclassified them as exempt from the Fair Labor Standards Act's overtime provisions. The district court dismissed the first two plaintiffs who abandoned their claims; those plaintiffs did not appeal. By aggressively seeking discovery and enforcing plaintiffs' discovery obligations, Citgo was able to obtain dismissal of the remaining 24 plaintiffs' claims.

Citgo considered the plaintiffs' initial disclosures and responses to its interrogatories and requests for production deficient. But, unlike most defendants, Citgo didn't just shrug off the plaintiffs' noncompliance. Instead, Citgo brought the deficient discovery responses to the district court's attention and obtained an order requiring plaintiffs to respond.

When the plaintiffs didn't comply with the first order, Citgo convinced the court to issue a second order that required the plaintiffs to preserve documents, respond to specific interrogatories, and produce documents — and which put the plaintiffs on notice that violating the order to preserve their notes and other documents would result in dismissal of their claims.

Still unsatisfied with the plaintiffs' responses, Citgo hauled 18 of them into court for evidentiary hearings, and succeeded in having 17 plaintiffs' claims dismissed for failing to participate in discovery and to preserve documents.

Citgo then moved for summary judgment on the merits of the remaining seven plaintiffs' claims — and lost. By the time the court ruled on the motion, however, it had already dismissed four more plaintiffs for deleting or failing to preserve emails in violation of its second order. Twenty-one plaintiffs down, three to go.

Unable to convince the court to dismiss the plaintiffs' claims on their merits, Citgo moved to exclude the plaintiffs' testimony about their damages, which the court granted because the plaintiffs had refused throughout the litigation to provide a calculation of their damages as required by the court rules and had failed to timely designate a damages expert.

Since the plaintiffs were left with no way to prove their damages, the court granted Citgo's unopposed motion for summary judgment on damages and dismissed the final three plaintiffs' claims. As the prevailing party, Citgo sought $53,000 in costs for the plaintiffs' deposition transcripts, but the district court awarded only $5,000 in light of Citgo's "enormous wealth" and the plaintiffs' "limited resources."

On appeal, the Fifth Circuit affirmed dismissal of all 24 plaintiffs' claims, finding that the district court did not clearly err in finding that the plaintiffs' violations of the discovery orders (1) were attributable to their own bad faith or willfulness, (2) were accompanied by a record of delay, (3)

were the result of the plaintiffs' actions, not their attorney's, (4) substantially prejudiced Citgo, and that (5) a sanction less drastic than dismissal would not have achieved the desired deterrent effect.

And the Fifth Circuit found that the district court erred in reducing Citgo's cost award, holding that a defendant's "enormous wealth" is not an appropriate reason to reduce a cost award, nor is the parties' comparative wealth. And on the facts of this particular case, where the plaintiffs each made about $100,000 per year, it was not appropriate for the district court to reduce the cost award based on a finding that the plaintiffs had "limited resources." So, the Fifth Circuit awarded Citgo the full $53,000 it claimed in deposition costs.

Following Citgo's Lead

With the onslaught of wage-and-hour litigation in recent years, employers are sometimes bullied into settlements. The temptation to settle can be particularly strong where more than a handful of plaintiffs jump on the bandwagon, where the plaintiffs are highly compensated, or where the employer can't win summary judgment on the merits — all of which were the case in Moore.

But Citgo's success, both with the district court and on appeal, shows that sometimes defendants can succeed by holding the plaintiffs' feet to the fire and forcing them to participate in discovery. Before cutting a costly deal with plaintiffs that could incentivize copycat litigation, employers should consider whether Citgo's proactive approach might work for them.

—By John L. Collins and Rachel M. Hoffer, Seyfarth Shaw LLP

John Collins is a partner and Rachel Hoffer is an associate in Seyfarth Shaw's Houston, Texas, office.