

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

FLOYD W. THOMAS, JR., individually and on
behalf of all persons similarly situated,

Plaintiff,

v.

ALLIS-CHALMERS ENERGY, INC. and
AIRCOMP, LLC,

Defendants.

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:
: Civil Action No.: 2:10-cv-01591-RCM
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: Judge Robert C. Mitchell
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: Complaint—Collective Action
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: Jury Trial Demanded
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: ELECTRONICALLY FILED
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:
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FIRST AMENDED COLLECTIVE ACTION COMPLAINT

Plaintiff Floyd W. Thomas, Jr., by and through his undersigned counsel, individually and on behalf of all persons and similarly situated, files this First Amended Collective Action Complaint (the “First Amended Complaint”) against Defendants Allis-Chalmers Energy, Inc. and AirComp, LLC.¹ Plaintiffs’ First Amended Complaint is being filed pursuant to Fed. R. Civ. P. 15(a)(1)(B). This amendment relates back to the date of the original pleading pursuant to Fed. R. Civ. P. 15(c). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff’s FLSA claim is proper under 29 U.S.C. § 216(b).

¹ Plaintiff’s original Collective Action Complaint, filed on November 30, 2010, brought claims against Seawell Limited (“Seawell”) as successor in interest to Defendant Allis-Chalmers. Defendant Seawell entered into a merger agreement to acquire Defendant Allis-Chalmers on August 12, 2010. Pursuant to the merger agreement, Allis-Chalmers will merge and become a wholly owned subsidiary of Seawell. On February 2, 2011, Defendant Seawell Limited filed a motion to dismiss, relying in part on the fact that the merger agreement between Seawell and Allis-Chalmers had not yet closed. *See* Dkt. No. 23. Plaintiff agrees to stipulate to dismiss claims against Seawell Limited as a defendant, without prejudice to seek leave to amend the Complaint to add Seawell as a defendant in the future.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391. The events giving rise to Plaintiff's claim occurred within this judicial district.

RELEVANT TIME PERIOD

3. The FLSA permits Plaintiff to recover unpaid wages and liquidated damages for up to three years prior to the commencement of this lawsuit. Accordingly, the allegations set forth herein concern Defendants' employment practices since November 30, 2007.

PARTIES

4. Plaintiff Floyd W. Thomas, Jr. is an individual currently residing in Northport, Alabama, and, pursuant to 29 U.S.C. § 216(b), has consented in writing to being a Plaintiff in this action.

5. Defendant Allis-Chalmers Energy, Inc. ("Allis-Chalmers") is a Delaware corporation headquartered in Houston, Texas that operates throughout the United States, including in this judicial district. Allis-Chalmers and its subsidiaries are an energy service company that provides services and equipment to oil and natural gas exploration and production companies throughout the United States including Texas, Louisiana, Pennsylvania, Arkansas, West Virginia, Oklahoma, Colorado, offshore in the Gulf of Mexico, and internationally. Allis-Chalmers operates in three sectors of the oil and natural gas service industry: Oilfield Services; Drilling and Completion; and Rental Services.

6. Defendant AirComp, LLC ("AirComp") is a wholly owned subsidiary of Allis-Chalmers Energy, Inc. AirComp is headquartered in Houston, Texas and operates throughout the United States, including in this judicial district.

7. Defendants Allis-Chalmers and AirComp are referred to collectively as Defendants.

8. Allis-Chalmers employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

9. Allis-Chalmers' annual gross volume of business exceeds \$500,000.

10. AirComp employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

11. AirComp's annual gross volume of business exceeds \$500,000.

12. Defendants are not independently owned and controlled local enterprises within the meaning of 29 U.S.C. § 207(b)(3).

13. Defendants are employers or joint employers within the meaning of 29 U.S.C. § 203(d).

THE CLASS DEFINITION

14. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following class of potential opt-in litigants: all individuals employed by Defendants as an "Operator" or in a similarly titled position in the United States from November 29, 2007 to the present (the "Class").

FACTS

15. From approximately June 3, 2009 to August 2009, Plaintiff was employed as an Operator with Defendants at their Mount Morris, Pennsylvania location.

16. Operators who work for Defendants are primarily engaged in manual labor duties

such as unloading, handling, hooking up and maintenance of oil and gas drilling equipment, such as fluid lines and air compressors.

17. Allis-Chalmers has the power to hire Defendants' Operators. Plaintiff completed his employment application with Allis-Chalmers, and, based on information and belief, Allis-Chalmers performed a background check on Plaintiff as a term and condition of his employment.

18. Allis-Chalmers has the authority to control employment conditions of Defendants' Operators. As an example of this authority, employee handbooks distributed to Defendants' Operators, including Plaintiff, were issued by Allis-Chalmers. These employee handbooks set out the terms and conditions of employment with Defendants.

19. Allis-Chalmers has the authority to determine rates and methods of payment for Defendants' Operators. As an example of this authority, Allis-Chalmers issues earning statements and paychecks to Defendants' Operators in its name. Allis-Chalmers also provides health insurance and related employee benefits to Defendants' Operators.

20. Allis-Chalmers maintains employment records for Defendants' Operators, including, without limitation, information necessary to issue earnings statements and paychecks to Defendants' Operators, and information regarding Defendants' Operators' health insurance plan and related employee benefits.

21. Defendants' Operators use equipment that is owned, either in whole or in part, by Allis-Chalmers. Purchase orders for major purchases of equipment used by Defendants' Operators require pre-approval from management of Allis-Chalmers.

22. The rigs on which Plaintiff and the Class work are not used as a means of transportation.

23. Defendants' Operators, including Plaintiff, are paid a daily rate and are classified

as non-exempt from the overtime pay mandates of the FLSA.

24. Defendants' Operators, including Plaintiff, often work in excess of forty hours per week each week. In particular, Plaintiff estimates that he worked up to approximately twelve hours per day, seven days per week.

25. Defendants did not pay Plaintiff any compensation for hours worked over forty per workweek.

26. Defendants have acted willfully and with reckless disregard of clearly applicable FLSA provisions by failing to compensate Plaintiff and the Class for hours worked in excess of 40 during the workweek.

COLLECTIVE ACTION ALLEGATIONS

27. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the Class, as described above.

28. Plaintiff desires to pursue his FLSA claim on behalf of any individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).

29. Plaintiff and the Class are "similarly situated," as that term is used in 29 U.S.C. § 216(b), because, *inter alia*, all such individuals worked pursuant to Defendants' previously described common business practices and, as a result of such practices, were not paid the full and legally mandated overtime premium for hours worked over forty during the workweek. Resolution of this action requires inquiry into common facts, including, *inter alia*, Defendants' common compensation, timekeeping and payroll practices.

30. Specifically, Defendants paid Plaintiff and the Class a set amount of pay per day, regardless of the number of hours worked, and failed to pay overtime as required by law.

31. The similarly situated employees are known to Defendants, are readily

identifiable, and may be located through Defendants' records. Defendants employ many Operators throughout the United States. These similarly situated employees may be readily notified of this action through direct U.S. mail and/or other means, and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

COUNT I
Violation of the FLSA

32. All previous paragraphs are incorporated as though fully set forth herein.

33. The FLSA requires that covered employees be compensated for every hour worked in the workweek. *See* 29 U.S.C. § 206(b).

34. The FLSA provides that, if an employee is paid a flat sum for a day's work, the employee is entitled to extra half-time pay at his regular rate (determined by dividing the total pay by the total hours actually worked) for all hours worked in excess of forty in the workweek. *See* 29 C.F.R. § 778.112.

35. During all relevant times, Plaintiff and the Class were covered employees entitled to the above-described FLSA protections.

36. Defendants violated the FLSA by failing to pay Plaintiff and the Class overtime pay.

37. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

PRAYER FOR RELIEF

Wherefore, Plaintiff seeks the following relief on behalf of himself and all others similarly situated:

- A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all potential Class members;
- C. Back pay damages and prejudgment interest to the fullest extent permitted under the law;
- D. Liquidated damages to the fullest extent permitted under the law;
- E. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- F. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury for all issues of fact.

Dated: February 25, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing FIRST AMENDED COLLECTIVE ACTION COMPLAINT was served upon counsel for Defendants Allis-Chalmers Energy, Inc. and Seawell Limited through the Court's ECF system this 25th day of February, 2011, addressed as follows:

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s/ Shanon J. Carson _____
Shanon J. Carson