

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

WILLIAM WALLACE

Civil Action No.

on behalf of himself and  
all others similarly situated,

INDIVIDUAL AND COLLECTIVE/CLASS  
ACTION COMPLAINT

Plaintiff,

*Electronically Filed*

v.

Jury Trial Demanded

ECM ENERGY SERVICE, INC.

Defendant.

INDIVIDUAL AND COLLECTIVE/CLASS ACTION COMPLAINT

NATURE OF THE ACTION, JURISDICTION AND VENUE

1. This is an individual and collective/class action under the Fair Labor Standards Act of 1938, as amended (FLSA)(29 U.S.C. §201 et seq.), and the Pennsylvania Minimum Wage Act, as amended (PMWA)(43 P.S. §333.101 et seq.), to recover damages for non-payment of overtime wages for Plaintiff and all others similarly situated.

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1331 and, for supplemental state claims, 28 U.S.C. §1367(a). This action is authorized and instituted pursuant to the FLSA and the PMWA.

3. The actions, and policies, alleged to be unlawful have been committed substantially in and around Western Pennsylvania where Plaintiff worked and where Defendant has maintained a regular and continual business presence. Therefore, this action is within the jurisdiction of, and venue is proper in, the United States District Court for the Western District of Pennsylvania.

PARTIES

4. Plaintiff, William Wallace, (hereinafter referred to as "Plaintiff " or "Wallace"), has resided at all times relevant to this lawsuit at 466 Duck Hollow Road, Uniontown, Pennsylvania 15401. Plaintiff was employed by Defendant ECM Energy Services, Inc., as a Manifold Attendant from in or about August 2015 until in or about September 2015.

5. Defendant ECM Energy Services, Inc., (hereinafter referred to as "Defendant" or "ECM"), has maintained a headquarters at all times relevant to this lawsuit at 130 Court Street, Williamsport, Pennsylvania 17701. ECM has also maintained an office in Washington, Pennsylvania and performed operations at well sites throughout Western Pennsylvania, Ohio and West Virginia, supervised by the Williamsport Main Office, at all times relevant to this lawsuit.

6. Defendant has employees engaged in interstate commerce, has employees handling or otherwise working on goods that have been moved in or produced for interstate commerce, and has annual gross volume of sales in excess of \$500,000.

7. At all relevant times, Defendant has been subject to the duty to pay overtime under the FLSA of 1938, as amended (FLSA)(29 U.S.C. §201 et seq.), and the Pennsylvania Minimum Wage Act (PMWA)(43 P.S. §333.101 et seq.).

8. Plaintiff was an employee within the meaning of the FLSA and the PMWA.

9. Defendant is an employer within the meaning of the FLSA and the PMWA.

#### BACKGROUND AND STATEMENT OF CLAIMS

10. Plaintiff Wallace worked for Defendant as a Manifold Attendant assigned to the Washington, Pennsylvania, shop, from about August 2015 until in or about September 2015.

11. From the Washington shop Plaintiff Wallace was assigned to and worked at natural gas well sites in and around Washington and Waynesburg, Pennsylvania.

12. A Manifold Attendant conducts activities at gas wells involving the direction of traffic and water hauling vehicles (also on oil wells, but the primary focus of this case is gas wells).

13. The activity of ECM at well sites in respect to Plaintiff Wallace and others similarly situated, involved “water logistics” hauling water to and from well sites for use in the fracking process. Plaintiff and similarly situated employees of ECM are referred to as “traffic employees”.

14. Plaintiff was normally assigned to a 6-man crew.

15. The crew also consisted, at times, of a Supervisor (whose exempt status under the FLSA/PMWA is not being contested in this proceeding), and two Manifold Attendants (“traffic employees”).

16. From in or about November 2013, (three years prior to the filing of this lawsuit) until present, ECM, employed 157 Manifold Attendants in Western Pennsylvania, Ohio and West Virginia. Operations in Pennsylvania and West Virginia ceased at the end of 2015, but continue in Ohio.

17. Like Plaintiff Wallace, other Manifold Attendants (traffic employees) were assigned to work at well sites from the various shops, all under the direction of the Williamsport, Pennsylvania main office.

18. ECM assigned the Manifold Attendants to well sites in at least three (3) states from November 2013 until on or about December 31, 2015: (Pennsylvania, West Virginia and currently in Ohio.

19. Manifold Attendants drove no vehicles on behalf of ECM as part of their duties.

20. Prior to 2014, Manifold Attendants were paid a day rate of \$140 per day and

worked a typical workweek of 6 days of 12 hour shifts. They were paid no overtime compensation.

21. ECM was investigated by the U.S. Department of Labor in 2014 and assessed back wages calculated by dividing the sum of the day rates by the hours worked by the Manifold Attendants and charged one-half (1/2) the resulting rate for hours over forty (40) pursuant to the requirements of the FLSA.

22. Following the Department of Labor investigations, ECM adopted a pay plan to avoid paying additional overtime compensation which purported to show overtime paid, but effectively changed the payment of a day rate to a salary of \$840 for a 72 hour workweek with no overtime pay.

23. ECM's adoption of the pay plan ostensibly showing overtime paid constitutes a scheme to evade the overtime requirements of the FLSA and PMWA.

24. In or about January 2016, the U.S. Department of Labor conducted another investigation pursuant to the FLSA and determined the pay scheme adopted by ECM constitute a salary for all hours worked, and again calculated unpaid overtime pursuant to the FLSA.

25. ECM agreed to comply with the FLSA in the future but refused to pay the unpaid overtime compensation.

26. The U.S. Department of Labor notified the employees due unpaid overtime compensation of their rights pursuant to 29 U.S.C. §216(b).

27. The normal work schedule each day was to work a 12-hour shift on the well site, 6 days a week.

28. The U.S. Department of Labor calculated unpaid overtime compensation on all Manifold Attendants employed by ECM from the end of the 2014 investigation until the end of

December 2015.

29. All the Manifold Attendants employed by ECM during the period beginning after the 2014 investigation until the end of December 2015, performed the same duties and were subject to the same deceptive policy adopted by ECM to show overtime paid but, continuing to pay a salary with no overtime compensation paid.

30. The amounts of unpaid overtime compensation calculated by the U.S. Department of Labor for Manifold Attendants employed in West Virginia and Ohio are accurate pursuant to the requirements of this FLSA.

31. The amount of unpaid overtime compensation calculated by the U.S. Department of Labor are inaccurate pursuant to the PMWA which requires that a weekly salary be divided by forty (40) hours and time and one-half (1 ½) be calculated as due for all hours worked over forty (40) in a workweek.

32. Calculated on an hourly basis, Pennsylvania Plaintiffs regular rate of pay is \$21.00 an hour.

33. The overtime rate of the Plaintiff is, therefore, in excess of \$31.50 an hour.

34. Defendant maintained accurate records of the hours worked daily or weekly by the Manifold Attendants between the end of the first U.S. Department of Labor investigation until December 31, 2015.

35. Defendant employed 157 Manifold Attendants (traffic employees) in Pennsylvania, West Virginia and where Defendant provided well services, who were subject to the same pay and work policies (payment of salary and non-payment of overtime), working far in excess of forty (40) hours in a workweek.

36. The similarly situated employees of Defendant on whose behalf this lawsuit is

brought include all Manifold Attendants (traffic employees) who have worked hours in excess of forty (40) hours in workweeks between August 2013 and on or about December 31, 2015, in Pennsylvania, West Virginia and Ohio where Defendant provided well services, who were subjected by Defendant to the same pay and work policies, payment of salary and non-payment of overtime, who worked hours far in excess of forty (40) per workweek, and who have not been paid overtime compensation at rates required by the FLSA and/or the PMWA.

37. Defendant has violated §207(a) of the FLSA and §333.101 et seq. of the PMWA by failing to pay Plaintiff, and all similarly situated Manifold Attendants (traffic employees) in states where Defendant provided well services, who have performed work in excess of forty (40) hours in workweeks between November 2013 and on or about December 31, 2015, at a rate of required by the FLSA and PMWA, for the overtime hours worked.

38. Prosecuting this case as a collective class action under the FLSA and a class action under the PMWA for similarly situated employees (Manifold Attendants) who have been unlawfully denied overtime wages will promote judicial efficiency and will best protect the interest of the class members.

39. There are no conflicts of interest among the class members.

40. Counsel for the Representative Plaintiff, John R. Linkosky, Esquire and Joseph E. Fieschko, Jr., Esquire are experienced in the field of employment law (including FLSA and PMWA wage claims), and collective/class actions, and will fairly and competently represent the interests of the class members.

**COUNT I: FAIR LABOR STANDARDS ACT (FLSA)/ PA MINIMUM WAGE ACT (PMWA)  
FAILURE TO PAY OVERTIME (INDIVIDUAL AND COLLECTIVE/CLASS ACTION)**

41. Plaintiff hereby incorporate by reference Paragraphs 1 through 40 of his Complaint

as though the same were more fully set forth herein.

42. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, were employees of Defendant within the meaning of the FLSA/PMWA.

43. Defendant was and still is an employer within the meaning of the FLSA/PMWA.

44. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, worked in excess of forty (40) hours in workweeks between November 2013 and on or about December 31, 2015.

45. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, have been subject to the same pay and work policies between November 2013 and on or about December 31, 2015.

46. These policies resulted in denial of overtime pay at time-and-one-half (1½) the regular rate of pay in weeks where Plaintiff and the class members (Manifold Attendants) worked more than forty (40) hours between November 2013 and on or about December 31, 2015.

47. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, are entitled to be paid overtime compensation at time-and-one-half (1½) their regular rate of pay pursuant to the FLSA/PMWA, for hours worked in excess of forty (40) hours in workweeks between November 2013 and on or about December 31, 2015.

48. Defendant has violated the FLSA/PMWA by not paying Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, overtime compensation at time-and-one-half their regular rate of pay in workweeks in which the employees worked more than forty (40) hours

between November 2013 and on or about December 31, 2015.

49. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, are also entitled to liquidated damages (under the FLSA) in an amount equal to the unpaid overtime.

50. Defendant's failure to pay overtime at time-and-one-half (1½) the regular rate of pay was knowing and willful.

51. Defendant's failure to pay overtime at time-and-one-half (1½) the regular rate of pay was a violation of the FLSA/PMWA.

52. Because Defendant knowingly and intentionally violated the FLSA since November 2013, the three-year statute of limitations for intentional violations under the FLSA applies. (The statute of limitations is three years under the PMWA irrespective of willfulness.)

COUNT II: FAIR LABOR STANDARDS ACT (FLSA)/PA MINIMUM WAGE ACT (PMWA):  
FAILURE TO INCLUDE BONUSES IN THE CALCULATION OF REGULAR RATE OF  
PAY (INDIVIDUAL AND COLLECTIVE/CLASS ACTION)

53. Plaintiff hereby incorporate by reference Paragraphs 1 through 52 of his Complaint as though the same were more fully set forth herein.

54. Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio other states where Defendant provided well services, were employees of Defendant within the meaning of the FLSA and the PMWA.

55. Defendant was and is an employer within the meaning of the FLSA/PMWA.

56. Between November 2013 and on or about December 31, 2015 Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, were paid a salary.

57. This resulted in understating the regular rate of pay and, in turn, the proper

overtime rate pursuant to the PMWA.

58. This means Defendant owes Plaintiff, and the other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, additional overtime pay, plus liquidated damages (FLSA), for the period from November 2013 until on or about December 31, 2015.

PRAYER FOR RELIEF

59. Wherefore, Plaintiff, and all other similarly situated employees (Manifold Attendants) in Pennsylvania, West Virginia and Ohio where Defendant provided well services, who worked hours in excess of forty (40) hours in workweeks between November 2013 and on or about December 31, 2015, without being paid overtime compensation at a rate of time-and-one-half (1½) their regular rate of pay for the overtime hours worked, respectfully request that this Court enter judgment in their favor in an amount equal to the overtime compensation due, together with liquidated damages (FLSA), reasonable attorney's fees and costs.

Respectfully submitted,

/s/Joseph E. Fieschko, Jr.  
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s/John R. Linkosky  
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*Counsel for Plaintiff and Class*

DATED: November 9, 2016

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
William Wallace
on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Fayette
(c) Attorneys (Firm Name, Address, and Telephone Number)
Joseph E. Fieschko, Jr.
Fieschko & Associates, Inc.
Suite 2230, 436 7th Avenue, Pittsburgh, PA 15219

DEFENDANTS
ECM Energy Service, Inc.
County of Residence of First Listed Defendant Lycoming
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Section 201
Brief description of cause:
Non-payment of overtime wages

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE: 11/09/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/Joseph E. Fieschko, Jr.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JS 44A REVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the (  Erie  Johnstown  Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1.  This case is related to Number \_\_\_\_\_ . Short Caption \_\_\_\_\_
2.  This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

I. CIVIL CATEGORY (Select the applicable category).

1.  Antitrust and Securities Act Cases
2.  Labor-Management Relations
3.  Habeas corpus
4.  Civil Rights
5.  Patent, Copyright, and Trademark
6.  Eminent Domain
7.  All other federal question cases
8.  All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9.  Insurance indemnity, contract and other diversity cases.
10.  Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

/s/Joseph E. Fieschko, Jr.

Date: November 9, 2016

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Class Action Filed Against ECM Energy Services, Inc.](#)

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