

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ELSIE WILLIAMS, on behalf of
herself and those similarly situated

PLAINTIFF

vs.

CASE NO.: 4:16-CV-238-DMB-JMV

MISSISSIPPI LIMESTONE CORPORATION, and
CLIFTON DAVIS, INDIVIDUALLY

DEFENDANTS

VERIFIED COMPLAINT & DEMAND FOR JURY TRIAL
(Collective Action Complaint)

COMES NOW Plaintiff, Elsie Williams ("Plaintiff"), by and through counsel of record, on her own behalf and on behalf of those similarly situated (collectively "Plaintiffs"), files this action against Defendants Mississippi Limestone Corporation, and Clifton Davis, Individually (collectively "Defendants"), for unpaid overtime compensation, liquidated damages, declaratory relief and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the "FLSA").

NATURE OF SUIT

1. The FLSA was passed by Congress in 1938. The principal Congressional purpose in enacting the FLSA was to protect all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to maintenance of minimum standards of living necessary for health, efficiency, and general well-being of workers. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739, 101 S.Ct. 1437, 1444 (1981). The liquidated damage provision of the FLSA constitutes a Congressional recognition that failure to pay statutory minimum on time may be so detrimental to maintenance of minimum standard of living necessary for health, efficiency, and general well-being of workers and to the free flow of commerce, that double payment

must be made in event of delay in order to insure restoration of worker to that minimum standard of well-being. *Brooklyn v. Sav. Bank v. O'Neil*, 324 U.S. 697, 707-08, 65 S.Ct. 895, 902 (1945).

2. This action is brought by Plaintiff under the FLSA to recover overtime compensation, liquidated damages, and reasonable attorneys' fees and costs from Defendants.

3. Additionally, Plaintiff seeks a declaration of rights pursuant to Rule 57, Fed.R.Civ.P., and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §2201.

4. This action is intended to include each and every non-exempt employee who worked for the Defendants at any time within the past three (3) years.

JURISDICTION AND VENUE

5. Jurisdiction is proper as the claims are brought pursuant to the FLSA to recover unpaid back wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney's fees and costs.

6. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1337 and the FLSA, 29 U.S.C. §216(b).

7. Venue is proper in this Court because Plaintiff either worked for Defendants within this District during the relevant time period subject to this Complaint, Defendants maintained a business operation with the District, or because a substantial part of the events and/or omissions giving rise to the claims asserted herein arose in a substantial part within this District.

8. The Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-02.

PARTIES

9. At all times material hereto, Plaintiff and putative Opt-In Plaintiffs were employed by Defendants as non-exempt laborers.

10. Plaintiff Elsie Williams worked as a laborer for Defendants at one of its many work sites.

11. This action is intended to include any and all similarly situated employees that worked for Defendants within the last three (3) years and who likewise were not paid the correct overtime rate of time and one half their regular rate of pay for hours worked by them over forty (40) in a work week.

12. Defendant Mississippi Limestone Corporation is a corporation that is located at 1150 Port Road, Friars Point, Mississippi 38631.

13. Defendant Clifton Davis is an individual who conducts business in and around Coahoma County, Mississippi, as well as other locations in Mississippi and Tennessee.

14. Defendant Clifton Davis: (1) had the power to hire and fire Plaintiff, (2) supervised and controlled Plaintiff's work schedule or conditions of employment, (3) determined Plaintiff's rate and method of payment, and (4) maintained employment records.

15. As such, Defendant Clifton Davis is charged with responsibility for violations of Plaintiff's rights to overtime and resulting damages.

COVERAGE

16. At all material times hereto (2013 – 2016), Plaintiff was an "employee" within the meaning of the FLSA.

17. At all material times hereto (2013 – 2016), Defendants were the "employer" of Plaintiff within the meaning of the FLSA.

18. At all material times hereto (2013 – 2016), Plaintiff was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

19. At all material times hereto (2013 – 2016), Defendants were, and continue to be, an "enterprise engaged in commerce" and an enterprise engaged in the "production of goods for commerce" within the meaning of the FLSA.

20. At all material times hereto (2013 – 2016), Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203(s).

21. Based upon information and belief, Defendants earned gross revenues of at least Five Hundred Thousand and 0/100 dollars (\$500,000.00) per annum at all material times hereto (2013 - 2016).

22. At all material times hereto (2013 – 2016), Defendants employed two (2) or more employees engaged in interstate commerce in that said enterprise has had two (2) or more employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person such as office supplies, building maintenance supplies, tools and equipment, etc.

23. At all material times hereto (2013 – 2016), Plaintiff was "engaged in commerce" and subject to individual coverage under the FLSA in that she:

- a. Operated instrumentalities of commerce;
- b. Transported goods in commerce;
- c. Used channels of commerce;
- d. Communicated across state lines; and/or
- e. Performed work essential to any of the preceding activities.

24. At all material times hereto (2013 – 2016), the work performed by Plaintiff was directly essential to the business performed by Defendants.

25. At all material times hereto (2013 – 2016), Defendants failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff performed services for Defendants for which no provisions were made by Defendants to properly pay Plaintiff for those hours worked in excess of forty (40) within a workweek.

26. Defendants and its officers and agencies are responsible under the United States Constitution, federal law, and regulations for the establishment and administration of personnel, employment and compensation policies and practices and for applying to Plaintiff the provisions of the FLSA and other applicable federal pay and compensation statutes and regulations.

27. Upon information and belief, a complete set of records, to the extent that any exist, concerning the number of hours worked by Plaintiff and amounts paid to Plaintiff are in the possession, custody and control of Defendants.

28. At all material times hereto (2013 – 2016), Clifton Davis owned and operated Mississippi Limestone Corporation, and regularly exercised the authority to: (a) hire and fire employees of Mississippi Limestone Corporation; (b) determine the work schedules for the employees of Mississippi Limestone Corporation; and (c) control the finances and operations of Mississippi Limestone Corporation by virtue of having regularly exercised that authority on behalf of Mississippi Limestone Corporation, Clifton Davis is an employer as defined by 29 U.S.C. §201, *et seq*

FACTUAL ALLEGATIONS

29. Plaintiff reincorporates and readopts by reference the above paragraphs as fully set forth herein.

30. Plaintiff Elsie Williams worked for each of the named Defendants as a laborer from approximately May 1, 2016 through August 11, 2016. Her regular rate of pay is \$8.00 per hour.

31. Defendants operate a company that provides asphalt and paving materials to its customers.

32. Defendants earned at or above Five Hundred Thousand and 0/100 dollars (\$500,000.00) in annual gross sales or business during the relevant time period subject to Plaintiff's Complaint.

33. Defendant Clifton Davis is the owner and manager who is responsible for the overall business operations and sets the administrative policies, specifically the pay policies of Mississippi Limestone Corporation.

34. Defendants intentionally manually manipulated and reduced Plaintiff's actual work hours to avoid their obligation to pay overtime at a rate of time and one-half for all hours worked over forty (40) in a given workweek.

35. All of the tools used by the Plaintiff and/or those similarly situated are provided by the Defendants.

36. The majority of the employees work(ed) well over forty (40) hours per week.

37. Typically, the Plaintiff work(ed) approximately ten (10) overtime hours per week without any compensation whatsoever, including overtime compensation.

38. Despite working more than forty (40) hours per week, Defendants failed to pay Plaintiff, and those similarly situated to her, overtime compensation at a rate of time and a half her regular rate of pay for hours worked over forty (40) in a workweek.

39. Defendants have employed and are employing other individuals as laborers who perform(ed) the same or similar job duties under the same pay provision as Plaintiff and the class members.

40. Defendants knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation, or even apprise Plaintiff of her right to overtime pay, with respect to Plaintiff.

41. Defendants knowingly and willfully failed to fulfill its record keeping requirements with regard to Plaintiff under 29 C.F.R. 516.

42. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

COLLECTIVE ACTION ALLEGATIONS

44. Plaintiff and the class members performed the same or similar job duties as one another in that they produced asphalt and paving materials for Defendants.

45. Further, Plaintiff and the class members were subjected to the same pay provisions in that Defendants manually manipulated and reduced Plaintiff's actual work hours to avoid their obligation to pay overtime at a rate of time and one-half for all hours worked over forty (40) in a given workweek.

46. Thus, the class members are owed overtime wages for the same reasons as Plaintiff.

47. Defendants' failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that laborers are paid for overtime hours.

48. These policies or practices were applicable to both Plaintiff and the class members.

49. Application of these policies or practices does not depend on the personal circumstances of Plaintiff or those joining this lawsuit.

50. Rather, the same policies or practices that resulted in the non-payment of overtime to Plaintiff applies to all class members.

51. Accordingly, the class members are properly defined as:

All laborers who worked for Defendants within the last three (3) years who were not compensated at a rate of at least time-and-one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

52. Defendants knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the class members.

53. During the relevant period, Defendants violated § 7(a)(1) and § 15(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for one or more workweeks without compensating such employees for their work at a rate of at least the time-and-one-half for all hours worked in excess of forty (40) hours in a work week.

54. Defendant has acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

**COUNT I - RECOVERY OF OVERTIME COMPENSATION AGAINST
DEFENDANTS, MISSISSIPPI LIMESTONE CORPORATION AND
CLIFTON DAVIS, INDIVIDUALLY**

55. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-54 above.

56. Plaintiff is entitled to be paid time and one-half her regular rate of pay for each hour worked in excess of forty (40) per workweek.

57. During her employment with all named Defendants, Plaintiff regularly worked overtime hours but was not paid time and one half compensation for same.

58. Specifically, all of the named Defendants manually manipulated and reduced Plaintiff's actual work hours to avoid their obligation to pay overtime at a rate of time and one-half for all hours worked over forty (40) in a given workweek.

59. In addition, all of the named Defendants did not maintain and keep accurate time records as required by the FLSA for Plaintiff.

60. Each of the Defendants acted with direct control over the work, pay, and job duties of Plaintiff.

61. All of the Defendants supervised and controlled Plaintiff's work schedule and/or conditions of employment.

62. Each of the Defendants determined Plaintiff's rate and method of payment.

63. Also, all of the Defendants failed to post required FLSA informational listings as required by the FLSA for Plaintiff.

64. As a result each of the named Defendants' intentional, willful, and unlawful acts in refusing to pay Plaintiff time and one half her regular rate of pay for each hour worked in excess of forty (40) per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

65. As a result of each of the Defendants' willful violation of the FLSA, Plaintiff is entitled to liquidated damages.

66. Plaintiff demands judgment against each of the Defendants for the payment of all overtime hours at one and one-half times the regular rate of pay for the hours worked by her for which each of the Defendants did not properly compensate her, liquidated damages, or if liquidated damages are not awarded then pre-judgment and post-judgment interest at the highest allowable rate, reasonable attorneys' fees and costs incurred in this action, and any and all further relief that this Court determines to be just and appropriate.

67. Plaintiff demands a trial by jury.

**COUNT II - DECLARATORY RELIEF AGAINST DEFENDANTS,
MISSISSIPPI LIMESTONE CORPORATION AND
CLIFTON DAVIS, INDIVIDUALLY**

68. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-54 above.

69. Plaintiff and Defendants have a Fair Labor Standards Act dispute pending, which the Court has jurisdiction to hear pursuant to 28 U.S.C. §1331, as a federal question exists.

70. The Court also has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201-2202

71. Plaintiff may obtain declaratory relief.

72. Defendants jointly employed Plaintiff.

73. Defendant, Clifton Davis, is an individual employer as defined by 29 U.S.C. § 201, *et seq.*

74. Plaintiff was individually covered by the FLSA.

75. Defendants failed to pay Plaintiff for all the hours worked.

76. Plaintiff is entitled to overtime pursuant to 29 U.S.C. §207(a)(1).

77. Defendants did not keep accurate time records pursuant to 29 U.S.C. §211(c) and 29 C.F.R. Part 516.

78. Defendants did not rely on a good faith defense.

79. Plaintiff is entitled to an equal amount of liquidated damages.

80. It is in the public interest to have these declarations of rights recorded.

81. Plaintiff's declaratory judgment action serves the useful purpose of clarifying and settling the legal relations in issue.

82. The declaratory judgment action terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

83. Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that judgment be entered in her favor against each named Defendant:

a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;

b. Awarding Plaintiff overtime compensation in the amount due to her for Plaintiff's time worked in excess of forty (40) hours per workweek;

c. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;

d. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);

e. Awarding Plaintiff pre-judgment interest;

f. Ordering any other further relief the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED, this the 30th day of November, 2016.

Respectfully Submitted,

ELSIE WILLIAMS, on behalf of herself
and those similarly situated

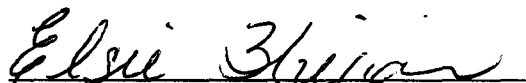
/s/ Christopher W. Espy
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ATTORNEY FOR PLAINTIFF

I, Elsie Williams, declare under penalty of perjury, pursuant to 29 U.S.C. § 1746 that the factual allegations in this Complaint are true and correct based on my personal knowledge.

Date: 11-15-16


Elsie Williams, Plaintiff

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

ELSIE WILLIAMS

(b) County of Residence of First Listed Plaintiff TIPTON COUNTY, TN (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) CHRISTOPHER W. ESPY, ESQ.; MORGAN & MORGAN 4450 OLD CANTON ROAD, SUITE 200 JACKSON, MISSISSIPPI 39211

DEFENDANTS

MISSISSIPPI LIMESTONE CORPORATION and CLIFTON DAVIS, INDIVIDUALLY

County of Residence of First Listed Defendant COAHOMA COUNTY, MS (IN U.S. PLAINTIFF CASES ONLY)

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, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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, Motor Vehicle, Personal Injury, 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

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. 206. Brief description of cause: Unpaid Overtime Compensation

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: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/30/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Christopher W. Espy

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Mississippi Limestone Corp. Facing Suit Over Alleged FLSA Violations](#)
