

TJS

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

EUGENE SCALIA,  
SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

HENKELS & MCCOY, INC.,

Defendant.

20 1309

Civil Action No. \_\_\_\_\_

FILED

MAR 06 2020

KATE BARKMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

COMPLAINT

Plaintiff, Eugene Scalia, Secretary of Labor, United States Department of Labor ("Plaintiff") brings this action to enjoin Henkels & McCoy, Inc., ("Defendant"), from violating the provisions of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* ("the Act"), and for a judgment against Defendant in the total amount of back wage compensation found by the Court to be due to any of the employees of Defendant pursuant to the Act and an equal amount due to the employees of Defendant in liquidated damages.

1. Jurisdiction of this action is conferred upon the Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. §§ 1331 and 1345.

2. Defendant Henkels & McCoy, Inc. is a corporation duly incorporated under the laws of the Commonwealth of Pennsylvania, with its headquarters and principal place of business located at 985 Jolly Road, Blue Bell, PA, in Montgomery County within the jurisdiction of this court. Defendant is a national infrastructure design, engineering, and construction firm. Defendant is engaged in the construction of interstate natural gas pipelines and other natural gas

facilities in the Commonwealth of Pennsylvania, Connecticut, Georgia, New York, and West Virginia.

3. The business activities of Defendant, as described herein, are and were related and performed through unified operation or common control for a common business purpose and constitute an enterprise within the meaning of Section 3(r) of the Act.

4. Defendant has employed and is employing employees in and about its place of business in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Defendant's employees construct natural gas pipelines to facilitate the interstate transportation and sale of natural gas. Defendant's employees handle materials, tools, and equipment shipped in interstate commerce. The enterprise has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, Defendant's employees are employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the Act.

5. Defendant willfully violated the provisions of Sections 7 and 15(a)(2) of the Act by employing its employees in an enterprise engaged in commerce or in the production of goods for commerce for workweeks longer than those prescribed in Section 7 of the Act without compensating said employees for employment in excess of the prescribed hours at rates not less than one and one-half times their regular rates. Therefore, Defendant is liable for the payment of unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act.

6. During the time period from at least February 14, 2017, through at least February 13, 2019, Defendant failed to compensate certain of its employees employed as Operators and Laborers who worked over 40 hours in a workweek at rates not less than one and one-half times their regular rates. These employees worked, on average, approximately 60 hours per workweek during the relevant time period.

7. Defendant failed to include daily lump sum payments to Operators and Laborers that Defendant labeled as “per diems” as part of these employees’ regular rates when calculating overtime premium pay. These payments ranged between approximately \$20 to \$45 per day, depending on the job site.

8. These payments were not related to any travel or work-related expenses Operators and Laborers actually incurred in furtherance of Defendant’s interests as their employer and properly reimbursable by Defendant. Rather, the lump sum payments labeled as “per diems” were simply additional remuneration that Defendant failed to include in Operators’ and Laborers’ regular rates for purposes of calculating overtime premium pay when they worked in excess of forty hours per workweek.

9. During the time period from at least February 14, 2017, through at least February 13, 2019, Defendant also failed to include daily lump sum payments of approximately \$45 to \$65 to Operators labeled as “truck rental pay” or “Personal Owned Vehicle (POV) Allowance” as part of Operators’ regular rates when calculating overtime premium pay. Operators worked, on average, approximately 60 hours per workweek during the relevant time period.

10. Defendant paid these lump sums to Operators for each day worked, regardless of whether Operators actually used their personally owned vehicles for any work-related purposes.

Defendant paid Operators these lump sums even when Operators did not use their personally owned vehicles.

11. Therefore, despite Defendant's labeling of the payments as "rental" payments, Defendant was not actually renting Operators' personally owned vehicles. These payments had no relation to any work-related travel expenses the employees actually incurred in furtherance of Defendant's interests as their employer and properly reimbursable by Defendant. Rather, these payments were additional remuneration and compensation for services that Defendant failed to include in employees' regular rates for purposes of calculating overtime premium pay when these employees worked in excess of forty hours per workweek.

12. Defendant knew it was obligated to pay its employees one and one-half times their regular rates for hours worked in excess of forty per workweek, and knew it was obligated to include all remuneration in their employees' regular rates of pay when calculating overtime premium pay. Defendants disguised as "per diems" and "trunk rental pay" lump sum payments that in reality had no relation to any work-related expenses, and were therefore additional wages rather than reimbursements. Defendant did not require any receipts or documentation of expenses incurred as a prerequisite to payment. The lump sum payments corresponded only to employees' days worked and job classification. Therefore, at a minimum, Defendant showed reckless disregard toward whether its conduct was prohibited by the Act.

13. Defendant violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that Defendant failed to make, keep, and preserve adequate and accurate records of its employees, which they maintained as prescribed by the regulations issued and found at 29 C.F.R. Part 516.

14. For example, Defendant failed to keep records of the occurrence, amount, and nature of any actual travel or work-related expenses for which it was purportedly reimbursing

employees via the “per diems” and “truck rental pay.” Defendant failed to keep records of when Operators actually used their personally owned vehicles for any work-related purposes.

Defendant failed to keep accurate records of employees’ regular rates of pay for purposes of calculating overtime premium pay by excluding from their regular rates additional compensation labeled as “per diems” and “truck rental pay” or “Personally Owned Vehicle (POV) Allowance” that had no relation to any travel or work-related expenses. Defendant failed to keep accurate records of employees’ overtime premium pay due for workweeks in which employees worked over forty hours by excluding this additional lump sum remuneration from employees’ regular rates that had no relation to any travel or work-related expenses.

WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendant providing the following relief:

(1) For an injunction issued pursuant to Section 17 of the Act permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with Defendant who receive actual notice of any such judgment, from violating the provisions of Sections 6, 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

(2) For judgment pursuant to Section 16(c) of the Act finding Defendant liable for unpaid overtime compensation due to certain of Defendant’s current and former employees listed in the attached Schedule A for the period of at least March 13, 2016, through at least October 28, 2018, and for an equal amount due to certain of Defendant’s current and former employees in liquidated damages. Additional amounts of back wages and liquidated damages may also be owed to certain current and former employees of Defendant listed in the attached Schedule A for violations prior to March 13, 2016, and continuing after October 28, 2018, and may be owed to

certain current and former employees presently unknown to the Secretary for the period covered by this Complaint; or

(3) In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining Defendant, its officers, agents, employees, and those persons in active concert or participation with Defendant, from withholding the amount of unpaid minimum wages and overtime compensation found due to Defendant's employees and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

FURTHER, Plaintiff prays that this Honorable Court award costs in his favor, and an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

Mailing Address:

U.S. Department of Labor  
Office of the Regional Solicitor  
170 S. Independence Mall West  
Suite 630E, The Curtis Center  
Philadelphia, PA 19106

(215) 861-5141 (voice)  
(215) 861-5162 (fax)

[krier.brian@dol.gov](mailto:krier.brian@dol.gov)

**UNITED STATES DEPARTMENT OF LABOR**

Kate S. O'Scannlain  
Solicitor of Labor

Oscar L. Hampton III  
Regional Solicitor

*/s/ Brian P. Krier*   
Brian P. Krier  
Senior Trial Attorney  
PA ID # 313826

Attorneys for Plaintiff