

Eagle Managed Subcontractors, Inc. d/b/a
Eagle Managed Subcontractors, Inc.
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Case #2000-111-00209
Fed. I.D. # Ex. 4

FLSA NARRATIVE

INTRODUCTION:

Legal Identity: Eagle Managed Subcontractors, Inc.
3781 Presidential Parkway, Suite 109
Atlanta, Georgia 30340

Prior to becoming Eagle Management Subcontractors they were operation as L.A. Contractors of Georgia that is not longer in existence in Georgia.

This case was assigned based on

Ex. 7(E)

L.A. Contractors, Inc. was established in 1997, in Charlotte, NC, located at 1421 E. Orchard Lake Dr., Charlotte, North Carolina 28270. Later L.A. Contractors, Inc. opened a branch in Atlanta, Georgia.

On October 1, 1999, the Division was bought with a purchase agreement from one of the officer George Gorman who worked for L.A. Contractors of Georgia, Inc. in Atlanta, Georgia. At that time, the company name changed to Eagle Managed Subcontractors, Inc. Both companies provides temporary laborers services in Georgia and United States (U.S.)

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COVERAGE

The named company, Eagle Managed Subcontractors, Inc., is in the business of providing laborers (i.e. General Labors, Framers, Drywall Hangers, and Finishers) to General Construction Companies for a fee. The company operates and markets the business throughout the U.S. as Eagle Managed Subcontractors, Inc. Officers are George Gorman, President, and Thomas P. DeBerry, Secretary. DeBerry is also the attorney representing the firm. Employees are individually covered since they are handling construction materials, and working with materials that have moved or are produced for interstate commerce (i.e. Florida, North Carolina, etc.). The company's ADV for the calendar year 1999, and 2000 exceeds Ex. 4 per year. All employees are covered on an Enterprise basis under Section 3(s)(1) of the FLSA. This investigation covered from October 01, 1999 through June 15, 2001. (See Exhibit C-1)

Prior history: IRS investigated LA Contracting, Inc in NC according to the attorney in the past. They were found in violation of not reporting the 1099 from the workers to the IRS (See Exhibit F-1). L.A. Contractors Inc. is located at 1421 E. Orchard Lake Dr., Charlotte, NC, 28270, Telephone (704) 846-2915. A MODO was E-mailed, and Fax-Mailed to the NC District office on September 11, 2000, and the information was limited as to if they had previous history (See Exhibit D-1 through D-4). There is no history in the Atlanta Office DO on Eagle Managed Subcontractors, Inc. or L.A. Contractors of Georgia, Inc.

EXEMPTION

Section 13(a)(1) – Applicable

George Gorman, President, Ex. 7(C), Payroll Manager, and Ex. 7(C) Recruiter/Supervisor are paid in excess of \$250/wk. They supervise more than two full-time employees; they can hire, fire, and use discretionary judgments in the job. They are exempted as defined in Regulation 541.

STATUS OF COMPLIANCE

This investigation was limited to Eagle Managed Subcontractors for the period they have been operating 10-01-99 through 6-15-01.

An initial conference was held on August 31, 2000 with Thomas P. DeBerry, Attorney at Law. His office location is 3781 Presidential Parkway, Suite 103, Atlanta, Georgia, 30340.

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Status of Compliance continues:

During the IC DeBerry explained how Eagle Managed Subcontractors, Inc. started operations. He mentioned that prior to October of 1999, they operated under the name LA Contractor of Georgia, Inc. with the home office located in Charlotte, NC. On October 1, 1999, the manager of L.A. Contractors of Georgia, Inc. (George Gorman) drew a purchase agreement with L.A. Contractors, Inc. and Incorporated under Eagle Managed Subcontractors, Inc. It is to my recollection that DeBerry mentioned that George Gorman was also President of the L.A. Contractors, Inc. prior to moving to Atlanta, Georgia.

These two organizations operate primarily in the United States, as well as overseas. At the conference, I requested to see the employers records, a list of the names, and address of the current and past employees, copies of the 1099's list of contractors the employer subcontracted too. The attorney DeBerry mentioned that this request would take some time since all the records were kept in Charlotte, NC at the accountant's office located at Ed Lloyd Associates PLLC, 7701 Sharon Lakes Rd., Suite Y, Charlotte, North Carolina, 28210.

Based on the attorney's busy schedule several weeks passed and finally he provided me with a list of names. Most of these names were Hispanic workers and could not be reached; others did not want to talk (See Exhibit D-5). Attorney also provided a list of all the subcontractors' names (See Exhibit D-6). Later the attorney provided a list of some of the General Contractors to whom they supply laborers too (See Exhibit D-7). It was discovered during the investigation that the ER does not pay overtime. He also deducts Workman Compensation from the subcontractors if they do not have any Workman Compensation Insurance and is required by the job (See Exhibit B-4). However, records showed that some of the workers are paid overtime only when they work on government contracts. All employees are paid on a weekly basis. The attorney for the employer agrees that the non-exempt office staffs are subject to overtime and computations was done on them (See Exhibit A-1). But the attorney flatly disagreed that the laborers (Subcontractors) are subject to Section 7 (overtime) of the FLSA.

Violation:

Section 7 - Many employees are due additional halftime for hours worked over 40 in a workweek. A face of the record estimated amount of \$1,048,413.00+- is believed to be due for a 20 months period. This is based on copies of four weeks time record on November 1999 and December 1999. Additional half time was applied on any employee working in excess of 40 hours in a workweek. Records clearly showed ER only paid straight time for hours worked. (See Exhibit A-2 through...).

Page 3 addendum

The overtime computations for the hourly laborers who perform construction work area from the home office can be found in exhibit A-2.

The method of computation is as follow:

First, the WHI obtain time records for up to 4 weeks for about 30 different jobs. Back wages were computed for these jobs from the firm's time sheets, not actual payroll. This amount was multiplied by 20 months to represent the investigation period.

Note that at the time of the investigation, the firm was not in business for a full two years (104 weeks). However, during litigation, back wages should be updated to reflect the entire two year period which has now elapsed.

It was estimated that 250 employees are due \$1,048,413 using this method. This figure is not totally accurate since the computations were an estimation. During discovery, accurate computations can be made from the firm's actual payroll.

Note that the firm would not produce the actual payroll for the WHI. It would only produce weekly time sheets. As one can see from exhibit A-2, actual two year computations would be very time consuming using this method.

*Appears to be out
of order*

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Status of Compliance continues:

These records were copies provided by the employer from the actual time records on different jobs. Some of the time sheets did not have the rate of pay. Therefore, no computation was made. ER could not or would not provide a computerized master name listing of the weekly time ledger or check register on each job. Interviews state that they received computerized check stubs with the hours recorded.

The two non-exempt salary office employees were due additional half time for hours worked over forty. ER computed and estimated amount of \$984.60 (See Exhibit A-1 for method of computations).

Due to the aged of the investigation, and the attorney not wanting to comply with the Act, the case does not warrant to be kept open any longer by the WHI.

DISPOSITION

Prior to the final conference numerous discussions took place with the DD and ADD as to the best way to handle the computations based on the employers record. Once management made the decision the mission was carried out.

A final conference took place on May 9, 2001 with Thomas P. DeBerry, Attorney at Law at 3781 Presidential Parkway, Suite 103, Atlanta, Georgia, 30340. I discussed with the attorney Section 11(c) of the Act and requested for his employer to do all the BW calculations in order to finalize the case. I also discussed Joint Employment. DeBerry stated that he was not going to make his client waste any time because he believed that the clients workers work under the same interpretation as the opinion of the Eleventh Circuit Court on the RN's (See Exhibit F-2). The attorney was informed that each case is different, and the RN case did not have anything to do with laborers of a temporary service provider therefore, they are not define as 541 exempt. DeBerry mentioned that his client subcontractors meet all of the 21 points of the IRS for qualifying the laborer's employees as subcontractors. I discussed with DeBerry that his client is not only violating Wage & Hours laws, but also others laws as well (i.e. IRS on taxes, State Taxes, Work Mans Compensation, and INS). I mentioned to him that perhaps IRS and other agencies should look into the situation. DeBerry stated that he was taking that as threat.

Attorney DeBerry, clearly stated that he is willing to pay the office employees for the amount of \$984.60. But will not pay any of the temporary service employees' additional halftime for hours worked over 40 in a workweek. He will be willing to challenge DOL Solicitors on the subcontractors matter before he makes his client do any work. Therefore, he is not going to ask his client to comply until challenged.

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Disposition continues:

During the payroll record computations, it appear that LA Constructions works directly or indirectly together with Eagle Managed Subcontractors, Inc., because there are some time sheets with the name of LA Contracting. Also note that all the list of subcontractors the majority of them only have the name and Social Security Numbers, as an EIN number.

Publications provided: HRG, FLSA, Overtime, Regulation 516, 541, and 785.

I recommend for the case to be JRC'd and for INS be notify since employer is utilizing undocumented workers on the construction jobs, and to notify Office of Workers Compensation since they are making illegal deductions on the employee's checks. I also recommend notifying IRS and the State Department of Revenue of Georgia for not withholding any taxes and using 1099's (See Form WH-124).

Addendum to Narrative

Eagle Management Subcontractors, Inc.

During June, 2001 JRC panel hearing it was determined that more information was need. This needed information was to determine joint employment. The list Eagle Management Subcontractors provided on general contractors was small. This list was compared to the general contractors named located on top of the payroll time sheets. One of the most common names was The Circle Group. The Circle Group works in conjunction with Eagle Management they both can hire and fire on the jobs (See Exhibit B-12, 13, & 14). Neither Eagle Management Subcontractors, Inc. nor The Circle Group, LLC has no written contracts in respect to the laborers or workers. This is clear indication that there is joint employment with Eagle Management and The Circle Group. On the other had, Hardin Construction Company did have a sign contract on every job they use laborers from Eagle Management or The Circle Group (See Exhibit F-3) for context on the contract.

Case file #2 of 4 is a case investigated by EX. 7(C), WHI, in Jacksonville, Florida. The case was part of a Florida Paint Company who was not paying the additional half time for hours worked over 40 in a week. The workers contracted by this company were hired, and paid by Eagle Management (See Cover letter of the WHI, and Exhibit B-3). In addition computations were made on those EE's. *THIS FILE RETURNED TO JFL 11/1/01*

Although, the estimated figure of \$1, 049,397.60 is part of the Form WH-51, and WH-56 should remain the same since the ER have not complied. This figure was use by taking a representative samples of case file # 3 of 4 (Employers time records) and computed for one month. Case file # 4 of 4 has additional time records that were provided by the ER. ER could not or would not provide a payroll check register that would give an accurate amount of hours due on overtime.

Ex. 7(C)

Ex. 7(C), WHI
October 29, 2001