

## Old Dominion To Pay \$3.4M To Settle Drivers' Wage Claims

By **Vin Gurrieri**

Law360, New York (September 2, 2014, 4:14 PM EDT) -- Shipping company Old Dominion Freight Line Inc. reached an agreement Friday to pay \$3.4 million to a putative class of more than 500 truck drivers to end a California federal court suit accusing the company of implementing overtime pay and meal break policies that violated state laws.

Plaintiffs Marco Rodriguez and Allan Turnage urged U.S. District Judge Dale S. Fischer to preliminarily approve the deal, which would end claims that Old Dominion failed to provide proper overtime compensation for truck drivers working more than 40 hours per week and failed to provide drivers with required duty-free meal breaks and rest periods, among other claims.

"In light of the substantial risks of continued litigation in this case, weighed against the maximum potential damages, the settlement is fair, reasonable and adequate," the motion said. "The settlement results in a substantial benefit to all class members."

The motion seeks provisional certification for a settlement class that includes at least 576 non-exempt current and former Old Dominion employees in the state of California that worked as pick-up and delivery drivers from Jan. 7, 2009, until the date the deal receives preliminary court approval, according to the settlement.

Under the proposed agreement, each class member would receive an average of \$4,232 once attorneys' fees and court costs are deducted. Class counsel for the plaintiffs said they will be requesting about \$935,000 in attorneys' fees, or about 27.5 percent of the overall settlement, according to court documents.

The deal also includes \$30,000 in court costs, a total of \$10,000 to the two named plaintiffs and \$10,000 to the California Labor and Workforce Development Agency under the Private Attorney General Act, according to court documents.

The plaintiffs noted that the total settlement amount may increase if the total workweeks in the class period exceed a projected threshold amount and that each class member's individual payout could increase if the total claims fall below 50 percent of the net settlement fund, according to settlement.

The initial suit was filed by Rodriguez in February 2013 in California state court with Turnage filing his own suit a month later. The cases were subsequently consolidated, according to court filings.

Turnage, an Old Dominion employee from 2009 until 2011, claimed Old Dominion denied him duty-free meal and rest periods and required him to monitor his truck, which often contained hazardous materials, while eating, among other claims.

Rodriguez alleged that Old Dominion improperly listed him as a "part-time" worker even though he regular worked 50 or 60 hours per week. The company failed to pay any of its drivers, whether part-time or full-time, the proper overtime rate and also failed to provide uninterrupted meal breaks and rest periods, according to the complaint.

Employed by the company from March 2010 until January 2012, Rodriguez alleged the company implemented a policy of only paying drivers overtime for shifts of 13 hours or more, which violated state wage laws.

Additionally, Rodriguez lodged individual wrongful termination claims, saying he was fired for "poor performance" after calling out sick due to an illness even though he had never been disciplined or given negative evaluations. Rodriguez alleged that his firing for poor performance was pretextual and occurred in retaliation for several complaints he lodged to his supervisor about the company's wage policies, complaints that were largely ignored, according to court documents.

In a February motion to dismiss the case, Old Dominion had argued that the consolidated complaint was "devoid of any factual allegation of a willful failure to pay all wages due." The company had also argued that certain meal break and rest period claims were preempted by the Federal Aviation Administration Authorization Act, according to court documents.

Graham Hollis, an attorney representing Turnage, told Law360 Tuesday that it was a good settlement and that he was very happy with the outcome.

"It's a good example of how two plaintiffs firms can work together to achieve a good result on behalf of a class," Hollis said.

Representatives for Rodriguez and Old Dominion were not immediately available for comment Tuesday.

Turnage is represented by Brian R. Short and Graham S.P. Hollis of GrahamHollis APC. Rodriguez is represented by Gary R. Carlin, Brent S. Buchsbaum, Sang J. Park and Laurel N. Haag of Law Offices of Carlin & Buchsbaum LLP.

Old Dominion is represented by Matthew C. Kane, Sabrina A. Beldner, Bethany A. Pelliconi and Sylvia J. Kim of McGuireWoods LLC.

The case is Marco Rodriguez et al. v. Old Dominion Freight Line Inc. et al., case number 2:13-cv-00891, in the U.S. District Court for the Central District of California.

--Editing by Kelly Duncan.