HENRY & MCCORD

CLIENT ALERT

Henry, McCord, Bean, Miller, Gabriel & LaBar, P.L.L.C.

U.S. SUPREME COURT RULES [REINSTATES] THAT CAR DEALERSHIP SERVICE ADVISORS ARE EXEMPT FROM OVERTIME-PAY REQUIREMENTS

April 3, 2018

By: John R. LaBar

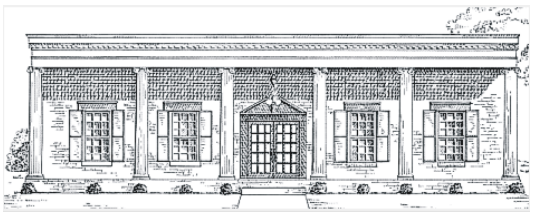
On April 2, the U.S. Supreme Court, in a 5-4 decision delivered by Justice Thomas (in which Justices Roberts, Kennedy, Alito and Gorsuch joined), held in *Encino Motorcars, LLC v. Navarro* that car dealership service advisors are exempt from the overtime-pay requirements under the Fair Labor Standards Act (FLSA).[1,2]

Encino Motorcars involves an exception to the FLSA (which requires employers to pay overtime to covered employees who work more than 40 hours in a week) involving employees at car dealerships.[3] Congress initially exempted all employees at car dealerships from the overtime-pay requirement of the FLSA, but subsequently narrowed that exemption to cover "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft."[4] The exact wording of the exception provides that:

> "(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers."[5]

The case was filed by current and former service advisors of Encino Motorcars, LLC, alleging that they were owed backpay by reason of Encino Motorcars violating the FLSA by failing to pay them overtime. Encino Motorcars moved to dismiss the case arguing that service advisors are exempt from the FLSA's overtime-pay requirement under 29 U.S.C. § 213(b)(10)(A), which applies to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements." The District Court agreed and dismissed the suit. However, on appeal, the Court of Appeals for the Ninth Circuit reversed. In its ruling, the Ninth Circuit found the at issue section of the FLSA ambiguous and the legislative history inconclusive, and as a result, the Court deferred to a 2011 Department of Labor rule that interpreted "salesman" to exclude service advisors.

In this cases' first appearance before the U.S. Supreme Court, the Court vacated the Ninth Circuit's judgment, holding that courts could not defer to the procedurally defective 2011 rule.[6] However, the Court in its ruling did not decide whether the at issue FLSA exemption covers service advisors.[7]



On remand, the Ninth Circuit again held that the exemption does not include service advisors. In reaching its decision, the labor oriented Ninth Circuit:

> "(c) … invoked the distributive canon—matching "salesman" with "selling" and "partsman [and] mechanic" with "[servicing]"—to conclude that the exemption simply does not apply to "salesm[e]n ... primarily engaged in ... servicing automobiles."[8]

The Supreme Court in its decision disagreed with the Ninth Circuit in that it stated that:

> "But the word "or," which connects all of the exemption's nouns and gerunds, is "almost always disjunctive." *United States v. Woods,* 571 U.S. 31, 45, 134 S.Ct. 557, 187 L.Ed.2d 472. Using "or" to join "selling" and "servicing" thus suggests that the exemption covers a salesman primarily engaged in either activity."[9]

In explaining its reasoning, the Supreme Court, in a discussion sure to give some readers a flashback to the chalkboard nightmares of diagramming sentences, stated that:[10]

> "Statutory context supports this reading. First, the distributive canon has the most force when one-to-one matching is present, but here, the statute would require matching some of three nouns with one of two gerunds. Second, the distributive canon has the most force when an ordinary, disjunctive reading is linguistically impossible. But here, "salesman ... primarily engaged in ... servicing automobiles" is an apt description of a service advisor. Third, a narrow distributive phrasing is an unnatural fit here because the entire exemption bespeaks breadth, starting with "any" and using the disjunctive "or" three times. Pp. 1140 – 1142."

For these reasons, the Court found that the language should be read to include an "and" and therefore salesman are included in the exemption.

The Court also addressed the Ninth Circuit's opinion with respect to the principle that exemptions to the FLSA should be construed narrowly. The Court rejected this principle as a guide to interpreting the FLSA. The Court held that "We thus have no license to give the exemption anything but a fair reading."[11]

Encino Motors cars can be considered a "win" for all employers, and not just car dealerships. The broader interpretation of the FLSA which should stem from this case may result in fewer conditional certifications of FLSA class actions.

It will remain to be seen if this case is but one in a line of cases which will limit the broad interpretations put forward by the previous administration by way of administrative interpretations.

John R. LaBar is a named member at Henry, McCord, Bean, Miller, Gabriel & LaBar, P.L.L.C. in its Tullahoma, Tennessee office, where he represents employers and management throughout the Southeast on labor and employment law related matters. He is a frequent speaker at legal and human resource seminars on labor and employment law topics and has served as an Adjunct Professor at the Univ. of Tennessee College of Law. He received his J.D. from the Univ. of Tennessee College of Law and an LL.M. from the Univ. of Miami School of Law. He can be reached at jlabar@henry-mccord.com or (931) 455-9301.

[1] *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134 (2018), 27 Wage & Hour Cas.2d (BNA) 1141.

[2] The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et. seq.*

[3] 29 U.S.C. § 213.

[4] *See* Fair Labor Standards Amendments of 1961, § 9, 75 Stat. 73.

[5] 29 U.S.C. § 213(b)(10)(A).

[6] *Encino Motorcars, LLC v. Navarro,* 136 S.Ct. 2117, 2125–2127, 195 L.Ed.2d 382 (*Encino I*).

[7] *id.*, 136 S.Ct., at 2127.

[8] *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134, 1137 (2018).

[9] *id.*

[10] In a clear case of diction discrimination, the Supreme Court fails to include nary a mention of the poor verbal.

[11] *id.*