LAWYER

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FLSA EXEMPTIONS MUST BE INTERPRETED FAIRLY — NOT NARROWLY

Labor & Employment Law Section

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On April 2, 2018, the U.S. Supreme Court decided *Encino Motorcars, LLC v. Navarro*, holding that service advisors at car dealerships are exempt from the overtime-pay requirement under the Fair Labor Standards Act (FLSA). 138 S. Ct. 1134, 1143 (2018). Chief Justice Roberts and Justices Kennedy, Alito, and Gorsuch joined in the majority opinion by Justice Thomas.

The "service advisors" in *Encino Motorcars* were responsible for meeting with customers about car issues and selling them accessories, parts, and maintenance and repair work. From 1978 through 2011, the Department of Labor took the position that service advisors met the FLSA's exemption of "any salesman, partsman, or mechanic primarily engaged in selling or servicing auto - mobiles" at covered dealerships. But in 2011, the DOL issued a rule that interpreted the exemption to exclude service advisors.

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The employer in *Encino Motorcars* appealed a Ninth Circuit ruling reversing the district court's dismissal of an

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overtime claim based on the FLSA's exemption of "salesman … primarily engaged in … servicing automobiles." In reversing the Ninth Circuit, the Supreme Court held that service advisors are exempt, interpreting "salesman" and "servicing" to have their ordinary meanings and the use of "or" to have a disjunctive meaning. The employees argued for a distributive interpretation that would apply the exemption to salesmen engaged only in selling, not servicing. The Court, however, found such an interpretation unnatural based on the discrepancy between the exemption's use of three nouns — salesman, partsman, or mechanic — but only two gerunds — selling or servicing.

The decision in *Encino Motorcars* applies to a narrow group (of car dealership employees), but it could easily become a seminal case under the FLSA because its analysis could be applied to other FLSA exemptions that were not at issue in the case. In interpreting the exemption at issue, the Court rejected "the principle that exemptions to the FLSA should be construed narrowly." Citing a treatise by the late Justice Scalia and Bryan Garner, the Court reasoned that "the FLSA gives no 'textual indication' that its exemptions should be construed narrowly," so "there is no reason to give them anything other than a fair (rather than a 'narrow') interpretation." Thus, courts interpreting an FLSA exemption "have no license to give the exemption anything but a fair reading."

Justices Breyer, Sotomayor, and Kagan joined the dissenting opinion by Justice Ginsburg, who wrote that the majority opinion "unsettles more than half a century of our precedent." Objecting to the majority's overruling of cases that required FLSA exemptions "to be narrowly construed against the employers seeking to assert them," the dissenting opinion cited the general rule that exceptions to a statutory provision should be read narrowly "to preserve the primary operation of the provision." Rejecting this reasoning, Justice Thomas explained in the majority opinion that the dozens of exemptions from the FLSA "are as much a part of the FLSA's purpose as the overtime-pay requirement."

This shift from construing exemptions narrowly against employers to requiring a "fair reading" will likely apply to other exemptions under the FLSA and could extend the reach of this decision far beyond car dealerships.

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