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Second Circuit, Relying on SCOTUS Instruction, Rejects "Narrow Construction" Principle for FLSA Exemptions

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In two decisions issued on September 19, the Second Circuit relied on the Supreme Court's instructionin *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1140 (April 2, 2018) that FLSA exemptions are *not* to be construed narrowly, but fairly.

In *Munoz-Gonzalez v. D.C. Limousine Service, Inc.*, analyzing the taxicab exemption in Section 13(b)(17) of the FLSA, the Court of Appeals noted:

> [O]ur Circuit has traditionally construed FLSA exemptions narrowly and against the employers asserting them, and Munoz-Gonzalez urges us to do the same today. See, e.g., *Fernandez v. Zoni Language Ctrs., Inc*., 858 F.3d 45, 48 (2d Cir. 2017). We cannot do so. In *Encino Motorcars*, the Supreme Court made clear that we must give FLSA exemptions "a fair (rather than a 'narrow') interpretation." 138 S. Ct. at 1142 (quoting Scalia & Garner, supra, at 363). Because "the limitations expressed in statutory terms [are] often the price of passage," *id.* at 9 (quoting *Henson v. Santander Consumer USA, Inc*., 137 S. Ct. 1718, 1725 (2017)), we must interpret each FLSA exemption the same way we would any other statutory provision—with full attention to its text.

And in *Flood v. Just Energy Marketing Corp.*, analyzing the outside sales exemption in Section 13(a)(1) of the FLSA, the Court of Appeals noted:

> Until recently, it was a rule of statutory interpretation that a court should narrowly construe an exemption to the FLSA in order to effectuate the statute's remedial purpose. *See, e.g., Reiseck v. Universal Commc'ns of Miami, Inc.*, 591 F.3d 6 101, 104 (2d Cir. 2010); A.*H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945). But that is not the rule anymore. The Supreme Court has now "reject[ed] this principle as a useful guidepost for interpreting the FLSA." *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018). According to the Supreme Court, "[t]he narrow-construction principle relies on the flawed premise that the FLSA pursues its remedial purpose at all costs." *Id*. (internal quotation marks omitted). Because exemptions under the FLSA are "as much a part of the FLSA's purpose as the overtime-pay requirement," the Supreme Court now instructs that courts "have no license to give the exemption anything but a fair reading." *Id.; see also Carley v. Crest Pumping Techs., L.L.C.*, 890 F.3d 575, 579 (5th Cir. 2018).

In both cases, the Court of Appeals affirmed district court grants of summary judgment to the employer on the ground that the plaintiffs qualified for the exemption at issue.

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