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Edwards v. Audubon Insurance Group: A Case of First Impression Holding an Insurance Underwriter to Be an Exempt Administrative Employee Under the FLSA

By James Oh

Those on the front lines of the battles over who is or is not an exempt administrative employee under the Fair Labor Standards Act (FLSA) or various state wage and hour laws are well aware of the deluge of cases in the past five years — many of them collective and class actions — about whether claims adjusters at insurance and other companies are exempt from overtime requirements of federal or state law. The case that has received the most attention has been, of course, *Bell v. Farmers Insurance Group*, where, with all appeals now exhausted, the class of California claims adjusters will recover over \$200 million under California wage and hour laws. Indeed, the initial *Bell* jury verdict, rendered in 2001, was a catalyst, if not primary cause, for the claims adjuster class action pandemic.

On the other hand, insurance company underwriters have not been on the plaintiffs' bar radar screen. Indeed, there has been no reported case on whether an insurance underwriter qualifies under the administrative exemption of the FLSA — until now. In *Edwards v. Audubon Insurance Group*, 10 Wage Hour Cas. (BNA) 2d 327 (S.D. Miss. 2004), the court held that the plaintiff, a commercial lines insurance underwriter, was an exempt administrative employee under the FLSA.

In granting summary judgment to Audubon, the court concluded that Audubon had met its burden of proving Edwards was an exempt administrative employee. Specifically, the court squarely rejected Edwards' argument that he was a "production" employee, finding that the "administrative-production dichotomy" (which doomed Farmers Insurance in the *Bell* case), was merely illustrative, not a rule of law. Instead, the court found that

Edwards performed work of "substantial importance" to the Company, since his independent decision-making exposed the Company to "millions in exposure to losses and, conversely, provid[ed] millions in insurance coverage to accounts." Further, since he possessed substantial autonomy, negotiated for and represented his company, his duties were "directly related to general business operations."

On the second part of the administrative exemption test, the court had little trouble concluding that Edwards' job included the exercise of discretion and independent judgment. After all, Edwards admitted at his deposition that he possessed independent authority to negotiate such items as coverages, premiums and exclusions to policies, and that he utilized his authority to make binding financial commitments on behalf of his Company.

Finally, the United States Department of Labor new regulations on the white collar exemptions became effective in August 2004 as the parties in Edwards were briefing summary judgment. Significantly, the court concluded after reviewing the new regulations and comparing them to the old that Edwards was exempt under both sets of regulations.

With Edwards deciding not to pursue an appeal of the court's grant of summary judgment, the *Edwards* decision is the leading decision — indeed, the only reported case thus far — holding an insurance underwriter to be an exempt administrative employee. Each exemption case, however, is fact specific. Companies that employ underwriters should compare the job duties of their underwriters to those that Edward

performed to see how well their underwriters “fit” into the *Edwards* decision. The bottom line from the decision in *Edwards*: autonomy is good. The more an underwriter possesses in underwriting authority and the greater independent decision-making authority he/she has to negotiate and issue binding quotes, the more likely that the underwriter will qualify for the administrative exemption under the FLSA.

James J. Oh is a shareholder in Littler Mendelson's Chicago office. Mr. Oh has extensive experience representing companies across the country in lawsuits claiming violations of the FLSA and state wage and hour laws. Mr. Oh was the lead attorney in Edwards v. Audubon Insurance Group as well as in McQuay, et al. v. AIG Claim Services, Inc., Case No. 4-01-CV-00661 WRW (E. D. Ark. 2004) (granting summary judgment), one of the few decisions concluding that claims adjusters are exempt administrative employees under the FLSA. Mr. Oh can be reached at joh@littler.com.