BOND INFORMATION MEMO

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Second Circuit Court of Appeals Holds That CEO Can Be Held Personally Liable for FLSA Violations

The Second Circuit Court of Appeals recently ruled that the Chairman and CEO of a corporate supermarket chain – Gristede's Foods, Inc. ("Gristede's") – could be held personally liable for damages arising from Fair Labor Standards Act ("FLSA") claims brought by employees of the supermarkets. Specifically, the Second Circuit ruled that the Chairman and CEO – John Catsimatidis – was an "employer" within the meaning of the FLSA, and could therefore be held jointly and severally liable along with Gristede's for such damages.

At the time of the case, Gristede's operated between thirty and thirty-five supermarket stores in the New York City area, and employed approximately 1,700 workers. In 2004, a group of Gristede's employees filed a class/collective action lawsuit for unpaid overtime under the FLSA and New York Labor Law ("NYLL"). The employees prevailed on their claims filed in federal district court, and the parties subsequently entered into a settlement agreement. However, Gristede's defaulted on its payment obligations under the agreement, and the plaintiff employees then moved to hold Catsimatidis personally liable for the FLSA damages in question. The federal district court granted the motion, finding Catsimatidis could be held personally liable, which then prompted an appeal to the Second Circuit.

The Second Circuit affirmed the district court's decision, holding that, in certain circumstances, an individual may be considered an "employer" under the FLSA and, consequently, held personally liable for violations of the statute. Further, the court found those circumstances existed with respect to Catsimatidis because, among other things: (a) he "was active in running Gristede's, including contact with individual stores, employees, vendors, and customers"; (b) he was ultimately responsible for the employees' wages and signed their paychecks; and (c) he supervised other managerial personnel, such as the CFO and COO of Gristede's.

As one might expect in a large corporation employing nearly 2,000 workers, Catsimatidis maintained oversight of Gristede's business at a high level and was not typically involved in day-to-day operations at the supermarkets. For example, Catsimatidis did not hire or fire rank-in-file employees, did not fix their specific wages or schedules, and had only limited interaction with his subordinate managers who handled such matters. Nevertheless, Catsimatidis's limited, high level activity was sufficient to find him liable. The court also alluded that Catsimatidis's unexercised authority, as Chairman and CEO, to decide these types of issues may also be an "important and telling factor" in whether he could be held personally liable as an "employer" under the FLSA.

Further, the Second Circuit found that it was irrelevant that Catsimatidis was not alleged to have been personally complicit in the FLSA violations at issue and that the FLSA would carry an "empty guarantee" to remediate employees for violations if it did not hold an employer's controlling individuals accountable to the law. Notably, the Second Circuit did not decide whether Catsimatidis could also be held personally liable under the NYLL, and instead remanded the case to the original federal district court to decide that issue.

Startling in its potential implications, the Second Circuit's decision emphasizes the importance of maintaining compliance with the FLSA's minimum wage and overtime requirements and the risks associated with violations of the statute.

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