
Hughes Hubbard & Reed

Renal Advantage Appeal Win in Overtime Case

News & Events | Deals & Matters

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notice-methodologies>.

Hughes Hubbard & Reed clinched another victory for Fresenius Medical Care subsidiary Renal Advantage when a federal appeals court upheld a lower court's dismissal of an ex-employee's proposed class-action suit that claimed she was misclassified as exempt from overtime under California laws.

On May 10, 2016, in a 3-0 decision, the San Francisco-based U.S. Court of Appeals for the Ninth Circuit also affirmed U.S. District Judge Gonzalo Curiel's refusal to certify a class of registered dietitians as plaintiff Tanya Rosenberg proposed.

Tennessee-based Renal Advantage provides dialysis services to more than 12,000 patients with chronic kidney failure in 150 dialysis centers in 19 states.

Rosenberg sued her former employer in August 2011, nearly a year after she left a Renal Advantage clinic in San Diego to relocate to Texas. In her first amended complaint, filed in November 2011, she claimed Renal Advantage violated California overtime laws by intentionally misclassifying registered dietitians (RD) as "exempt" to avoid paying overtime for any hours worked over eight hours in a day and 40 hours per week. Rosenberg alleged that the RD's duties were "routine production work" outside the scope of the professional, administrative or executive exemptions defined by federal and state laws, and they worked between two to five hours in overtime each week without compensation, meal or rest breaks.

Rosenberg moved for class certification in November 2012, but seven months later Judge Curiel rejected her argument, ruling that she failed to show all members of the proposed class suffered the same injury or shared similar experiences.

In April 2014, Judge Curiel granted Renal Advantage summary judgment after accepting all of Hughes Hubbard's arguments, including that Rosenberg was qualified for the professional exemption because she regularly exercised discretion and independent judgment in the course of her duties.

The Ninth Circuit held that Judge Curiel did not abuse his discretion when he denied class certification and that he properly granted summary judgment, noting that whether a person is a professional employee exempt from overtime requirements is a mixed question of law and fact.

“What a person did as an employee is a question of fact, while the precise scope of the exemption is a question of law,” the Court wrote. “Thus, if there is no dispute as to job duties, we can hold as a matter of law that the person either does or does not fall into the professional exemption.”

The Court relied on Rosenberg’s deposition testimony to show that she exercised considerable discretion and independent judgment in the realm of nutrition.

David Stern argued the appeal on April 7. Carolin Sahimi was the primary drafter of the brief. Sahimi and Alex Spjute assisted in preparing for argument. Andrew Schwenk provided comments on the brief.

Related Areas of Focus

[Class Actions](#)

[Appellate](#)

[Litigation](#)

[Employment & Unfair Competition](#)

[Life Sciences](#)