



OSHA 30/30®

A thirty minute update
on OSHA law every thirty days

with
Manesh Rath

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Judge Evaluated Employer's EAJA Application for Attorney's Fees in OSHA Citation Contest

October 14, 2026

Manesh Rath

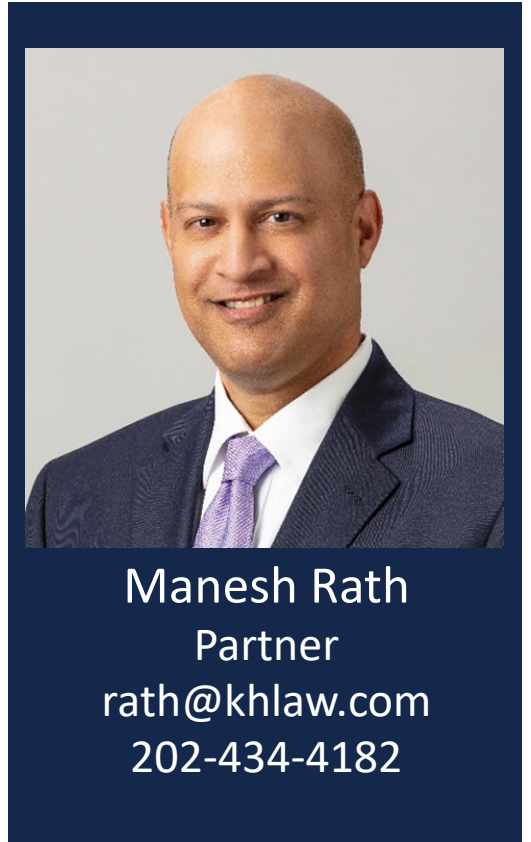


Manesh Rath is a partner in Keller and Heckman's litigation and OSHA practice groups. He has been the lead amicus counsel on several cases before the U.S. Supreme Court. He has been called to testify before Congress in several hearings relating to OSHA law.

Mr. Rath is a co-author of three books in the fields of wage/hour law, labor and employment law, and OSHA law. He has been interviewed in The Wall Street Journal, Bloomberg, Smart Money, Entrepreneur, on PBS's Nightly Business Report, and C-SPAN.

Mr. Rath served on the Board of Advisors for the National Federation of Independent Business (NFIB) Small Business Legal Center and on the Society For Human Resources (SHRM) Special Expertise Panel for Safety and Health law for several years.

He was voted by fellow members to The Best Lawyers in America 2016-2025 (in 2023, was voted as Lawyer of the Year); selected by Super Lawyers 2016 – 2023; and by corporate counsel as the 2017 Lexology winner of the Client Choice Award.



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Victoria Tinker



Victoria Tinker advises clients on litigation matters in multiple areas, including false claims, product liability, and regulatory compliance. She represents clients, from emerging start-ups to Fortune 500 companies, before state and federal courts.

Victoria is adept at identifying pathways to resolve client disputes before the need for litigation; however, if litigation is unavoidable, her extensive experience proves invaluable to clients. She handles all aspects of litigation, including pre-trial dispositive and procedural motions, extensive discovery processes, expert witnesses - in addition to having first chair trial experience - all while collaborating with partners and key stakeholders to develop the most compelling litigation case.

Prior to joining Keller and Heckman, Victoria was a commercial litigation associate in private practice where she focused on a broad array of corporate matters, including contract, partnership, and real property disputes. During law school, Victoria served as a student attorney for the Washington College of Law Civil Advocacy Clinic.



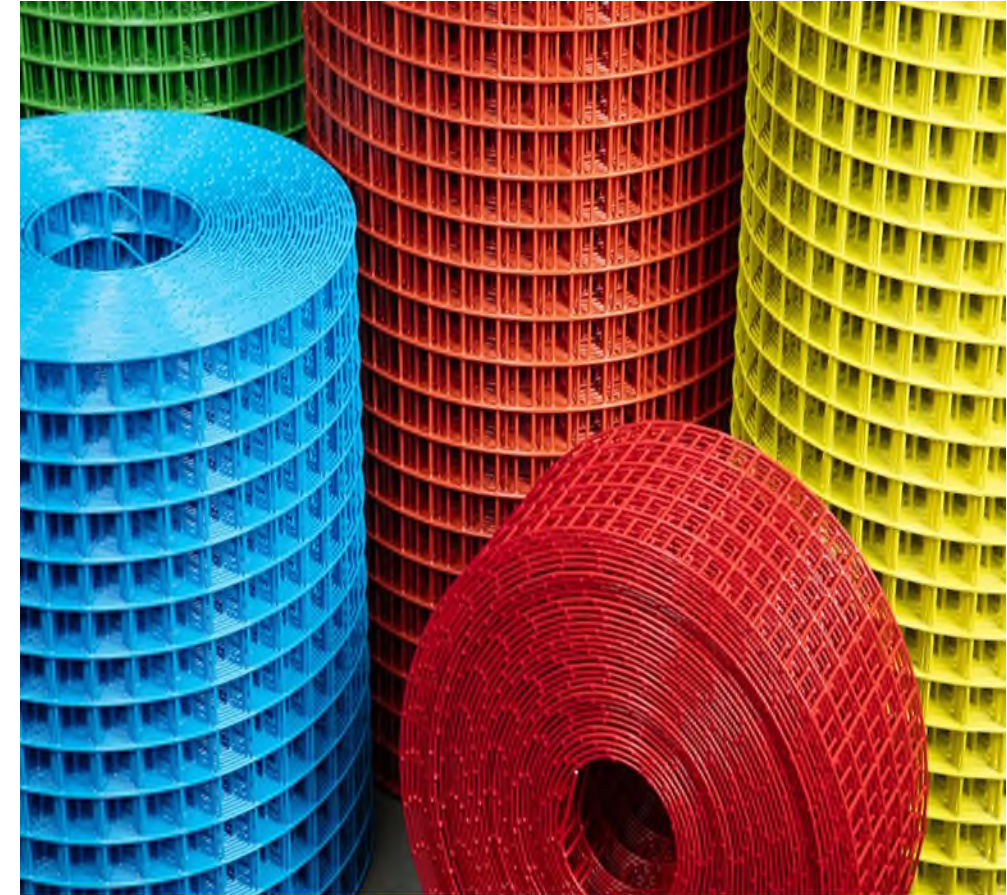
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Topics to Be Discussed

- ◆ Facts of the case, *Secretary of Labor v. Riverdale Mills Corp.*
- ◆ OSHA's Citations
- ◆ Background on the Equal Access to Justice Act (EAJA)
- ◆ *Riverdale's* Application for Attorney's Fees
- ◆ The Administrative Law Judge's Decision
- ◆ What Employers Should Do

Facts of the Case – *Secretary v. Riverdale Mills Corp.*

- ◆ Riverdale manufactures wire mesh in Northbridge, Massachusetts
 - ◇ The wire mesh is run through a coating line machine
 - ◇ The mesh is then collected on a collection spindle
- ◆ On April 3, 2019 an employee suffered a severe arm injury while attempting to adjust misaligned wire mesh near the rollers.



OSHA Citations

- ◆ OSHA issued Safety Citation containing eight items
 - ◇ Alleging lock out/tag out and machine guarding violations
- ◆ OSHA issued two Health Citations
 - ◇ Alleged a total of four HAZCOM standard violations
- ◆ Riverdale contested the citations
- ◆ OSHA later withdrew
 - ◇ Four out of eight safety items
 - ◇ Two out of four health items



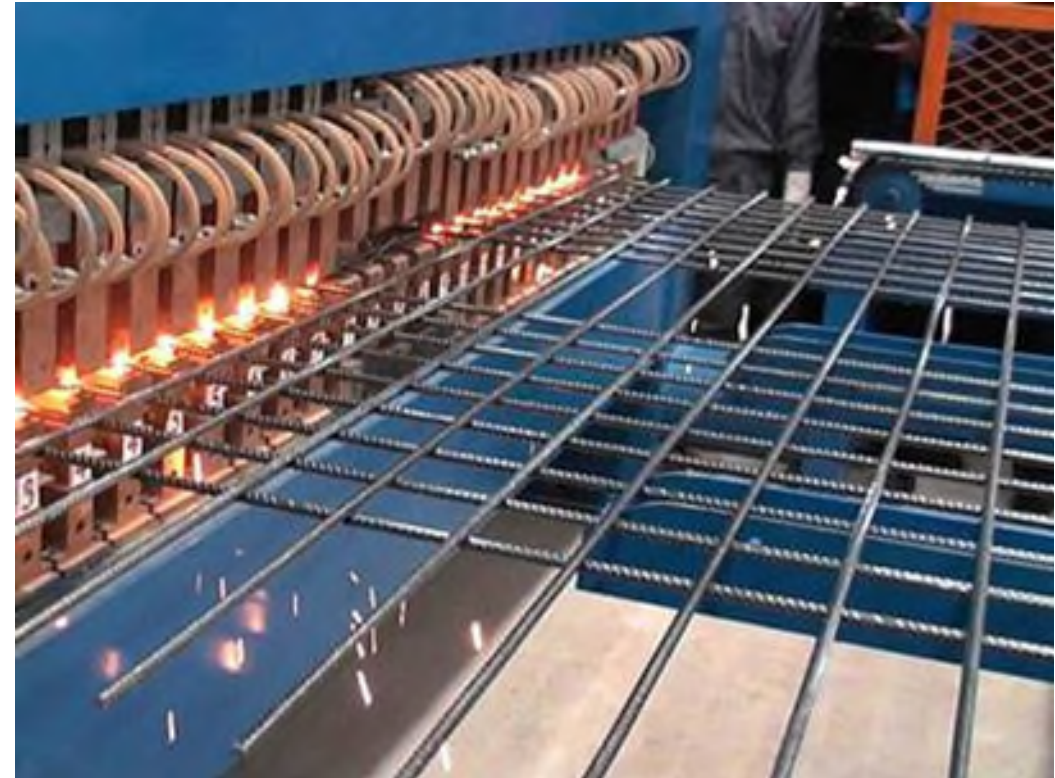
Procedural History

- ◆ Eight-day hearing, during which:
 - ◇ Judge affirmed one safety item and affirmed both health items
 - ◇ Judge vacated three safety items
- ◆ Riverdale appealed to D.C. Circuit on affirmations
 - ◇ D.C. Circuit upheld judge's decision
- ◆ Riverdale appealed to Supreme Court which denied writ



Background on the Equal Access to Justice Act (EAJA) (1)

- ◆ EAJA: An agency shall award **to a prevailing party** fees and expenses incurred by that party in connection with the proceeding
- ◆ ...unless the adjudicator finds that:
 - ◇ the agency took a **substantially justified position**, or
 - ◇ that special circumstances make the **award unjust**
- ◆ Purpose: to help small businesses seeking to vindicate their rights in administrative proceedings



Background on the Equal Access to Justice Act (EAJA) (2)

- ◆ Eligible parties are corporations that, at the time action is initiated, have:
 - ◆ Net worth not in excess of \$7M
 - ◆ Not more than 500 employees
 - ◆ Employer has burden of showing eligibility
 - ◆ Net worth documentation must be adequate, detailed exhibits, **full disclosure of assets and liabilities** sufficient to determine eligibility



Riverdale's Application for Attorney's Fees

- ◆ Riverdale filed for attorneys' fees under EAJA
- ◆ Submitted an affidavit by a valuation consultant, affirming a conclusion that Riverdale's net worth did not exceed \$7M, and that it had less than 500 employees
- ◆ Declaration set out an "assets minus liabilities analysis"



The Judge's Decision on Eligibility (1)

- ◆ Relevant time period: when OSHA issued a citation
- ◆ Court Examined
 - ◇ Whether at the time of the adversary adjudication Riverdale had a net worth of less than \$7,000,000.
 - ◇ Whether at the time of the adversary adjudication Riverdale had fewer than 500 employees.



The Judge's Decision on Eligibility (2)

- ◆ Court: Riverdale's exhibits for net worth were insufficient
 - ◆ The affidavit was originally meant to be accompanied by a Comparative Balance Sheet, filed under seal
 - ◆ Judge denied an order placing the data under seal
 - ◆ Consequently, Riverdale just entered the affidavit by itself
 - ◆ However, the affidavit alone did not constitute "adequate, detailed exhibits, full disclosure of assets and liabilities sufficient to determine eligibility"



Judge's Decision on Elements of EAJA (1)

- ◆ Was Riverdale the Prevailing Party?
 - ◇ Judge: a respondent is a prevailing party only for items vacated by judge
 - ◇ Riverdale: Riverdale's work to compel OSHA to withdraw citation items should be compensable because it was based on the same legal theories as those in which it prevailed
 - ◇ Judge: OSHA has unreviewable discretion to withdraw a claim.
 - Thus, when OSHA voluntarily withdrew items, that did not make Riverdale a prevailing party



Judge's Decision on Elements of EAJA (2)

- ◆ Was OSHA Substantially Justified?
 - ◇ Judge: Even though Riverdale prevailed on certain items, OSHA was substantially justified in bringing them
 - ◇ Judge found that LOTO standard was inapplicable because adjusting the mesh met the minor servicing exception
 - Though it did not win, judge found it had substantial justification for claim
 - LOTO does not clearly state that servicing must be done directly on a component to meet the exception
 - Likewise, whether machine guarding results in exposure, must be determined on a case-by-case basis

Judge's Decision on Elements of EAJA (3)

- ◆ Would an Award be Unjust?
 - ◇ OSHA argued that Riverdale filed eight motions that unreasonably protracted the final resolution of the case
 - ◇ Court: if Riverdale was eligible, Court would have substantial discretion to reduce an award for unreasonably protracting the case



What Employers Should Do

- ◆ Employers should itemize time spent in defense, categorized by citation item
- ◆ Balance keeping confidential business information private and strengthening your position to pursue an EAJA award
- ◆ Treat EAJA as a strategic consideration when deciding whether to pursue a challenge to OSHA citations
- ◆ Work towards withdrawal, consolidation, and settlement even if it does not form a predicate for “prevailing” under EAJA
- ◆ Expect the EAJA analysis to consider the litigation methodology, not just the final outcome





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October 21, 2026
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Please join us at 1:00 PM Eastern U.S.
November 4, 2026
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Manesh Rath

www.khlaw.com/osha3030

at 1:00 p.m., Eastern Time

November 18, 2026

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Thank You

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