

Another EAJA Case: Judge Vacated Citation, Awarded Attorney Fees to Employer

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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 v. Finley Farmers Grain & Elevator*
- OSHA's Citation
- Procedural History
- Finley Farmers' Application for Attorney's Fees
- Equal Access to Justice Act (EAJA)
- OSHA's Opposition to Attorney's Fees
- Judge's Decision on Elements of EAJA
- Administrative Law Judge's Decision
- What Employers Should Do

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Facts of the Case – *Secretary v. Finley Farmers Grain & Elevator*

- Finley Farmers is a North Dakota grain storage and distribution company that ships grain via railcar
- In December 2023, an employee fell from the top of a railcar and was seriously injured while preparing the railcar to be loaded with grain
- Finley Farmers had fall protection systems installed at its loadout facility
- The accident occurred 300 yards from the loadout facility, so the employee was not wearing the fall protection system that is normally worn inside the facility



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OSHA Citations

- OSHA's Bismark Office conducted an inspection of the worksite and issued 2 citations to Finley Farmers
  - Citation 1, Item 1: Serious Violation (proposed penalty: $8,067) for failing to provide adequate fall protection
  - Citation 2, Item 1: Willful Violation (proposed penalty: $112,929) for violating section 5(a)(1) General Duty Clause



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Procedural History (1)

- The Occupational Safety and Health Review Commission (OSHRC) ALJ granted a motion for partial summary judgement, vacating the Willful Violation (Citation 2)
- The ALJ found that the Fall Protection standard (§ 1910.132) did apply in this case
- The LOI (*Miles* Memo) the Secretary relied on to make the citation against Finley explicitly stated that a General Duty Clause can only be used when the Secretary is seeking administrative measures "clearly distinct from fall protection methods."



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Procedural History (2)

- The Serious Violation (Citation 1) for fall protection survived the motion for summary judgment because it hinged on whether it was “feasible” for Finley to implement fall protection for railcars that were not in or adjacent to the loadout facility.
- In 2025 the parties reached a settlement on Citation 1
- Finley filed an EAJA application in November 2025 seeking attorneys’ fees and costs for litigating the OSHA Citations



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Finley's Equal Access to Justice Act (EAJA) Application

- The ALJ evaluated:
  - Whether Finley demonstrated it was entitled to an award to recover its reasonable expenses related to the OSHA proceeding where it prevailed on the merits under the EAJA.
  - Whether the Secretary was substantially justified with regard to the citation for which Finley was a prevailing party.
  - Whether there were special circumstances that would make an award unjustified.
  - Whether the attorneys for Finley reasonably billed hours for the work done.



Finley's EAJA Arguments

- Burden is on the Secretary to show they were "substantially justified" in issuing the citation
- In this case there was no dispute the cited hazard (i.e. fall protection) in the General Duty Clause citation was specifically addressed by § 1910.132(a) and there was no novel legal theory



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OSHA'S Opposition

- The alternative citation under the General Duty Clause was in good faith to advance the objective of workplace safety and health, and
- Contended that many of the hours claimed were spent on unnecessary motions and discovery disputes
  - Also contended the rates for paralegals being too high



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Judge's Decision on Elements of EAJA (1)

- ALJ ruling: ruled in favor of Finley and says there was no substantial justification for the Willful Citation
- The Court "may reduce the amount to be awarded, or deny any award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy."



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Judge's Decision on Elements of EAJA (2)

- After deciding that Finley met the elements for an EAJA award, the ALJ had to analyze whether Finley's fees were reasonable.
- Finley's counsel billed 349.1 hours for these citations, 95% of which related to the vacated Citation 2 or issues related to both citations
  - Finley therefore asked for the cost of 326.6 hours billed at rates from $240 to $259 per hour
  - Even though the EAJA caps the amount per hour at $125, the statute allows an agency to increase the cap based on the cost of living or a special factor.



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Judge's Decision on Elements of EAJA (3)

- ALJ agreed with Finley and said the Secretary failed to show the hours spent on the case were not unduly or unreasonable, not unjust.
- ALJ awarded Finley its fees after the depositions where it became apparent that OSHA's position was not substantially justified
- ALJ also reduced the reward by 5% to account for the settled Citation 1. Finley is entitled to attorneys' fees totaling $77,684.



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What Employers Should Do

- An employer's defense does not necessarily end when a citation is vacated or a case settles; fee recovery may follow.
- EAJA fee recovery is not all-or-nothing, and it is an ongoing analysis.
- Strategic litigation may call for different approaches to different citation items.
- Make the strongest record possible during litigation.
  - Reasonableness of OSHA's position
  - Time spent on a per citation basis while writing time

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at 1:00 p.m., Eastern Time

December 16, 2026

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Thank You

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