

# Polsinelli Secures Win at the Fifth Circuit Court of Appeals in Employment Discrimination Lawsuit

**(Dec. 2, 2024)** Shareholder Harold D. Jones and Associate Derek A. McKee of Polsinelli's Dallas Labor and Employment team recently secured an appellate victory for Mario Sinacola & Sons Excavating (Sinacola), in the Fifth Circuit Court of Appeals in *Lutz v. Mario Sinacola & Sons Excavating, Inc. and Grimm* (Case No. 24-1035).

After winning in the Northern District of Texas earlier this year, Plaintiff Debbie Lutz appealed Judge Ada Brown's 16-page opinion granting full summary judgment for Sinacola on her claims of disability discrimination, FMLA Interference and FMLA Retaliation. Judge Brown found that Lutz's speculation that her inclusion in a Covid-19 Reduction in Force (Covid-19 RIF) while she was on FMLA leave for a hip surgery was insufficient to establish pretext. Instead, Lutz's position as an administrative assistant was eliminated because it was no longer needed to sustain Sinacola's business operations.

Supported by Jones' deep experience in oral advocacy, McKee crafted a persuasive argument before Fifth Circuit that Lutz's position was eliminated in the Covid-19 RIF because it was unnecessary. In its opinion, the Fifth Circuit fully affirmed the decision of Judge Brown at the District Court level.

This victory adds to Jones and McKee's impressive record in defending employers in employment discrimination litigation. The key takeaways for employers after this ruling include: (1) mere speculation from a plaintiff that they were terminated for discriminatory reasons without more evidence, is insufficient to withstand summary judgment under the ADA or the FMLA in the Fifth Circuit; (2) aggressive motion practice during litigation can be advisable to refute Plaintiff's esoteric arguments and theories; and (3) employers need to remain consistent for the reasons supporting an employee's termination to prevent a plaintiff from harnessing any inconsistencies to avoid dismissal of their claims before trial.

Firm client Sinacola is thrilled with the result achieved by the Polsinelli team in this lengthy and contentious litigation.

## About Polsinelli

Polsinelli is an Am Law 100 firm with more than 1,000 attorneys in over 20 offices nationwide. Recognized as one of the top firms for excellent client service and client relationships, Polsinelli is committed to meeting our clients' expectations of what a law firm should be. Our attorneys provide value through practical legal counsel infused with business insight, offering comprehensive corporate, transactional, litigation and regulatory services with a focus on health care, real estate, finance, technology, private equity and life sciences. Polsinelli PC, Polsinelli LLP in California, Polsinelli PC (Inc) in Florida.