Special Report

Has *Lynn's Food* Grown Stale? Courts Increasingly Question Obligation to Review FLSA Settlements

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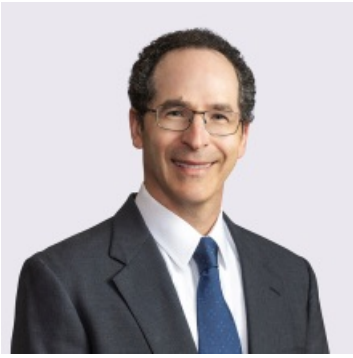

For 40 years, the majority of federal courts have followed the holding of *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350 (11th Cir. 1982), that FLSA claims may be settled only through approval by the U.S. Department of Labor (DOL) or through a lawsuit filed by the individual, in which a court of competent jurisdiction enters a stipulated judgment, after reviewing the proposed settlement for fairness. Some other courts of appeals, either directly or indirectly, have reached the same conclusion. Increasingly, however, courts are questioning whether these holdings are sound law.

Applicable FLSA Provisions

The FLSA contains two applicable provisions that come into play when an employee asserts a claim for unpaid minimum or overtime wages against their employer. Under 29 U.S.C. § 216(b), the employee may bring a private lawsuit in an appropriate state or federal court, either on an individual or collective (class) basis, and may recover both actual and liquidated damages. The law states, "The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

Alternatively, under Section 216(c), "[t]he [DOL] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees ... and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under [Section 216(b)] of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages." If the DOL and the employer are unable to reach a compromise, the DOL may bring a lawsuit on behalf of the affected employee (or employees) to recover the alleged sums due to them, in which case, the employee's right to institute a private lawsuit terminates.

Lynn's Food

In *Lynn's Food*, the Wage and Hour Division (WHD) of the DOL investigated the employer's pay practices and determined that the employer had not properly paid its employees. After efforts between the WHD and the employer to negotiate a settlement failed, the employer went directly to the involved employees and secured a settlement of $1,000, to be paid on a *pro rata* basis. After the WHD refused to accept the settlement, the employer filed an action in district court to enforce the settlement. Citing 29 U.S.C. § 216(b), the district court dismissed the action, holding that it lacked authority to review or approve an FLSA settlement outside of a lawsuit filed by a plaintiff seeking wages under the law.

The employer appealed and the Eleventh Circuit affirmed the dismissal. It concluded that to allow a compromise settlement of FLSA claims absent either DOL approval or review and approval by a court within the "adversarial context of a lawsuit brought by the

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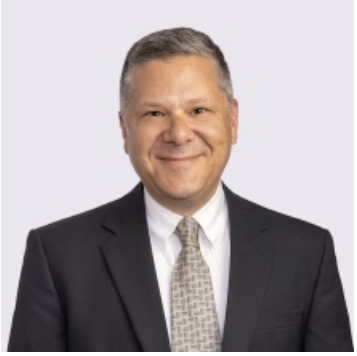

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employees would be in clear derogation of the letter and spirit of the FLSA." In support of this conclusion, the Eleventh Circuit noted that the employees, some of whom did not speak English and none of whom had consulted an attorney, were unaware that the DOL had determined that the employer collectively owed them back wages in an amount 10 times greater than what they had agreed to receive under the settlement, or even that they had rights under the FLSA.

Additional Appellate Court Holdings

Just a few years ago, the U.S. Court of Appeals for the Second Circuit agreed with the Eleventh Circuit, concluding that parties cannot settle FLSA claims and (in the case of lawsuits) dismiss them – with or without prejudice – without either DOL or court approval. *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), *cert. denied*, 577 U.S. 1067 (2016); *Samake v. Thunder Lube, Inc.*, 24 F.4th 804 (2d Cir. 2022). Similarly, the Fourth, Seventh, and Ninth Circuits have noted, either in *dicta* or without substantive discussion, that the FLSA prohibits unsupervised waiver or settlement of claims. *Whiting v. The Johns Hopkins Hosp.,* 416 Fed. Appx. 312, 314 (4th Cir. 2011); *Seminiano v. Xyris Enterprise, Inc.,* 602 Fed. Appx. 682, 683 (9th Cir. 2015); *Walton v. United Consumers Club, Inc.,* 786 F.2d 303, 308 (7th Cir. 1986).

The Eleventh Circuit's recent holding, in *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020), *reh'g en banc denied*, 2022 U.S. App. LEXIS 21455 (11th Cir. Aug. 3, 2022), that the named plaintiff or plaintiffs in a Rule 23 class action may not receive incentive payments for acting as class representatives, may have made settlement of FLSA claims even more difficult, should *Johnson* be extended to FLSA collective actions under Rule 216(b). Two subsequent district court opinions appear to show a divide on whether the holding of *Johnson* extends to incentive awards in FLSA cases. *Compare Easterwood v. Sedgwick Claims Mgmt. Servs.*, 2021 U.S. Dist. LEXIS 102696 (M.D. Fla. June 1, 2021), *adopted*, 2021 U.S. Dist. LEXIS 255184 (M.D. Fla. June 8, 2021) (allowing incentive awards to the named plaintiffs) *with Poblano v. Russell Cellular Inc.*, 543 F. Supp. 3d 1293, 1295 n.1 (M.D. Fla. June 10, 2021) (noting that while "[d]istinctions certainly exist" between Rule 23 class actions and Rule 216(b) collective actions, "[t]he reasoning in [*Johnson v.*] *NPAS Solutions* is equally, if not more, compelling for the Court to conclude that it applies to collective actions brought under the FLSA").

The Developing Counterview

Since *Lynn's Food* was decided, the vast majority of federal district courts have applied its holding, requiring review and approval of FLSA settlements by either the DOL or the court. But increasingly, cracks have begun to appear in the armor of the conclusion reached in *Lynn's Food* and *Cheeks*, and a number of courts have decided that such DOL or court approval is not always required. As one district court noted, "The potential problem with *Lynn's Food* is that nothing in the text of the FLSA expressly requires court review and approval of settlements." *Martinez v. Back Bone Bullies Ltd.*, 2022 U.S. Dist. LEXIS 45870, at *20 (D. Col. Mar. 15, 2022) (citation omitted).

In 2005, the court in *Martinez v. Bohls Bearing Equipment Co.*, 361 F. Supp. 2d 608 (W.D. Tex. 2005), held that, because there was a bona fide dispute, court approval of the agreement was unnecessary. "[E]xamin[ing] the legislative history of the FLSA and its amendments and evaluat[ing] them in light of the judicial interpretations of enforcing FLSA settlements," the court concluded:

> Judicial caseloads, as well as the workload of the Wage and Hour Administration, would likely be swamped with unnecessary disputes, many dubious and with little evidence, that could not be finally settled without approval from either a court or the Secretary of Labor. This surely cannot be what was intended by Congress when the FLSA was passed. In fact, less than ten years after the passage of the FLSA, Congress amended the statute to provide for compromises of then-existing claims involving bona fide disputes. Though Congress could have made the express availability of such compromises prospective, rather than purely retrospective, it did not prohibit such compromises .... No court other than the Eleventh Circuit has expressly held that such a settlement is prohibited .... Therefore, the Court holds that, according to the language of the FLSA, its amendment by the Portal-to-Portal Act of 1947 and the Fair Labor Standards Amendments of 1949, and its interpretation in the case law, parties may reach private compromises as to FLSA claims where there is a bona fide dispute as to the amount of hours worked or compensation due. A release of a party's rights under the FLSA is enforceable under such circumstances.

Martinez, 361 F. Supp. 2d at 630-31.

The Fifth Circuit subsequently adopted this rationale in *Martin v. Spring Break '83 Prods., LLC*, 688 F.3d 247 (5th Cir. 2012), where the employer and the employees' union settled a wage dispute in which the union's investigator concluded that it would be impossible to prove that the employees worked on the days for which they alleged non-payment. The employees later sued, claiming that their settlement was invalid because it was not approved by the DOL or a court. Rejecting this assertion and citing *Martinez*, the Fifth Circuit held that the private settlement agreement of a dispute was binding and enforceable without court approval, when "predicated on a bona fide dispute about time worked and not as a compromise of guaranteed FLSA substantive rights themselves." *Id.* at 255.

In addition to the fact that the FLSA itself contains no provision requiring court approval of FLSA settlements, "in judicially creating a requirement for approval of FLSA settlements, courts are impliedly and improperly giving the impression that somehow the policy considerations and rights protected by the FLSA are more important than other federal statutes." *Back Bone Bullies*, 2022 U.S. Dist. LEXIS 45870, at *30 (*citing Cheeks*). In this respect, as one district court questioning *Cheeks* noted:

> The [FLSA] was enacted to protect against "the evil of overwork" without statutorily required compensation. But surely, that evil is no greater than a case where a police officer gratuitously beats a suspect (42 U.S.C. § 1983), or a debt collector threatens children that their father will be imprisoned if he does not pay his bill (Fair Debt Collection Practices Act), or a consumer's credit is ruined because of a falsely reported debt (Fair Credit Reporting Act), or an employee is forced to submit to unwanted sexual advances or face termination (Title VII). These, and many others, are federal cases for a reason. They are all important, and the statutes and constitutional provisions under which they arise all protect unique interests based on unique policy considerations. For the courts to begin ranking the wrongs addressed by Congress where Congress has not would be to assume a legislative role.

Barnhill v. Stark Estate, 2015 U.S. Dist. LEXIS 125115, at *4-*5 (E.D.N.Y. Sept. 24, 2015).

Interestingly, post-*Cheeks*, the Second Circuit itself has made clear that court review and approval of FLSA settlements is not an absolute requirement, but instead is limited to settlements of lawsuits where the parties seek voluntary dismissal through Federal Rule of Civil Procedure 41. By contrast, parties may settle an FLSA case through a Rule 68(a) offer of judgment and obtain dismissal of the case through the court clerk, and the court itself has no authority to require the parties to submit the settlement agreement for review on these occasions. *Mei Xing Yu v. Hasaki Rest., Inc*., 944 F.3d 395 (2d Cir. 2019). Moreover, if the parties negotiate the plaintiff's attorney's fees separately from the compensation received by the plaintiff, the court need not review the attorney's fee portion of the settlement. *See, e.g. Beard v. Suwannee Valley Grassing, Inc*., 2022 U.S. Dist. LEXIS 106792, at *4 (M.D. Fla. June 15, 2022).

These circumstances have compelled more courts to conclude in recent years that *Martinez* and *Martin*, and not *Lynn's Food* and *Cheeks*, are the better-reasoned view and that settlement of bona fide FLSA disputes do not require court approval. *E.g.*, *Alcantara v. Duran Landscaping, Inc*., 2022 U.S. Dist. LEXIS 122552 (E.D. Pa. July 12, 2022);*Saari v. Subzero Eng'g*, 2021 U.S. Dist. LEXIS 179054 (D. Utah Sept. 17, 2021);*Hawthorn v. Fiesta Flooring, LLC*, 2020 U.S. Dist. LEXIS 102505 (D.N.M. June 10, 2020);*Lawson v. Procare CRS, Inc.*, 2019 U.S. Dist. LEXIS 1695 (N.D. Okla. Jan. 4, 2019). The lack of obligation to review settlements is particularly true – even in courts that continue to abide by *Lynn's Food* – where the parties agree that the plaintiff in question is receiving all of the compensation to which they are entitled. *See, e.g. Beard*, 2022 U.S. Dist. LEXIS 106792, at *3 ("However, where an employer offers a plaintiff full compensation on his FLSA claim, there is no compromise and judicial approval is not needed."); *Friedly v. Union Bank & Trust Co*., 2022 U.S. Dist. LEXIS 131712, at *2 (D. Neb. July 25, 2022) ("[W]here the terms of the settlement provide the full measure of FLSA damages, ... there has been no compromise of workers' rights requiring court approval. Therefore, 'settlement of the dispute is solely in the hands of the parties.'") (*quoting Barbee v. Big River Steel, LLC,* 927 F.3d 1024, 1027 (8th Cir. 2019)).

The Takeaway

For decades, employers and employees in most jurisdictions have been obligated to obtain either DOL or court approval to settle FLSA disputes for those settlements to be binding without question. However, more courts are beginning to challenge that obligation. Unless and until the U.S. Supreme Court weighs in, the conflict likely will remain but, at least in some jurisdictions, the parties no longer must undertake the expense of a lawsuit, and the court does not have to burden itself with an ever-growing backlog of litigation, to resolve bona fide FLSA disputes.

If you have any questions about FLSA settlements or any other wage and hour issue, please consult the Jackson Lewis attorney(s) with whom you regularly work.