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Judicial Approval No More? The Days Of Judicially Scrutinized FLSA Settlements May Be Drawing To A Close

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The fact that the settlement of FLSA claims must be pre-approved by a federal court or the DOL has long been greeted by employers with the gnashing of teeth and wringing of hands: nothing is worse than steering a hard-fought case to a resolution that is acceptable to both sides only to have the deal potentially torpedoed by a procedural hurdle at the last minute. Nevertheless, that has long been the rule. Best articulated by the seminal case of *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350 (11th Cir. 1982), FLSA settlements traditionally are not enforceable unless they first are determined to be fair and reasonable to the employee and do not frustrate implementation of the FLSA. *Lynn's* involved a declaratory judgment action in which the employer tried to enforce a settlement deal with employees who had no counsel representing their interests and which sought to bind not only the employees but also the DOL. While *Lynn's* presented a somewhat extreme example, no federal circuit over the last 30 years has staked out a contrary position to its procedural requirements.

Some recent decisions, however, suggest that the procedural tide on this issue may be turning. Last year, the Fifth Circuit in *Martin v. Spring Break '83 Productions LLC*, 688 F.3d 247 (5th Cir. 2012) enforced a non-court approved settlement of an FLSA overtime claim. Drawing a distinction with *Lynn's,* the Fifth Circuit enforced the privately negotiated settlement because, among other things, the plaintiffs had been represented by counsel and there was a *bona fide* dispute over the amount of time the plaintiffs allegedly worked.

A few weeks ago, the Eastern District of New York in *Picerni v. Blungual Seit & Preschool, Inc.,* Case No. 12 Civ. 4938 (E.D.N.Y. Feb. 22, 2013) weighed in on the side of reversing the long-standing trend. In a well-reasoned opinion that thoroughly traced the history of the issue, the court concluded that nothing in the FLSA expressly barred litigants from dismissing cases without prior approval. In the court's view, "[r]atcheting up the legal process to achieve some Platonic form of the ideal of judicial vindication did not seem necessary to accomplish any purpose under the FLSA." As a result, the court held that (1) private settlements did not need prior approval and (2) the parties similarly could dismiss an FLSA case without prior approval.

The New York decision is the latest in a growing number of federal courts which are pushing back on the well-traveled procedural approval requirement. This is good news for employers as it enhances their abilities to quickly and efficiently resolve FLSA suits. Aside from the uncertainties in having a court look over the employer's shoulder with respect to the dollar amount of such

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claims, dispensing with approval will enable employers to keep the terms of their settlements confidential – something they typically are unable to do when judicial approval is required because the terms become a matter of public record. Ensuring confidentially reduces the chances of copycat claims by other disgruntled employees and should encourage more expedient settlements of claims.

The tide seems to be turning – that is for sure. However, until some more circuits definitively establish that approval is *not required*, litigants should assess how courts in their respective jurisdiction have addressed the approval issue before settling an FLSA claim and pronouncing it finished in the absence of input from either the court or the DOL.