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## Robert Sheeder Examines Fifth Circuit Ruling and the Enforceability of Private, Unsupervised FLSA Settlements



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**BLOOMBERG BNA:** [Editor's note: In *Martin v. Spring Break '83 Productions LLC*, 688 F.3d 247, 19 WH Cases2d 670, 2012 BL 185004 (5th Cir. 2012), the U.S. Court of Appeals for the Fifth Circuit affirmed the U.S. District Court for the Eastern District of Louisiana's decision that a private, union-negotiated settlement, which resolved the FLSA overtime claims of lighting and rigging technicians, was binding, even though it had not received DOL or court approval. Plaintiffs petitioned to the U.S. Supreme Court for a writ of certiorari, claiming the Fifth Circuit's decision conflicted with the Eleventh Circuit's decision in *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 25 WH Cases 772 (11th Cir. 1982). The Supreme Court declined review on Dec.

10, 2012.] How did the Fifth Circuit distinguish *Martin* from

*Lynn's Food Stores*? **Sheeder:** In *Martin*, the Fifth Circuit Court of Appeals distinguished *Lynn's Food Stores* on the facts, noting that the unpaid wages dispute arose outside of the litigation context in the course of a Department of Labor

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investigation. In addition, it noted that the employees seemed to be unaware that the Department of Labor had determined that *Lynn's Food Stores* owed them back wages under the FLSA or that they had any FLSA rights. Finally, there was no indication that any of the *Lynn's Food Stores* employees had consulted an attorney before signing the settlement agreements. In contrast, the *Martin* employees clearly knew their rights under the FLSA since they had retained attorneys at least four months before executing the settlement agreement.

**BLOOMBERG BNA:** Why did the Fifth Circuit conclude that the concerns the Eleventh Circuit expressed in *Lynn's Food Stores* were not implicated under the facts present in *Martin*? **Sheeder:** In *Lynn's Food Stores*, the Eleventh Circuit noted that the FLSA was enacted for the purpose of protecting workers from substandard wages and oppressive working hours, and because there are often great inequalities in bargaining power between employers and employees, it concluded that "supervision" of FLSA settlements was mandated. In *Martin*, the Fifth Circuit reasoned that these concerns were not implicated because the settlement was not technically outside of the context of a lawsuit. The employees were already benefiting from legal counsel before the settlement agreement was signed and were well aware of their rights.

**BLOOMBERG BNA:** In light of the Supreme Court's denial of review, how does the Fifth Circuit's ruling affect employers in Texas, Louisiana, and Mississippi? Under what circumstances are private settlements of FLSA claims valid and enforceable? **Sheeder:** Following the issuance of the *Martin* decision, it would appear that private, unsupervised settlements of wage and hour claims will be enforceable in the Fifth Circuit. However, such settlements are likely only valid when (i) predicated on a bona fide dispute about time worked or money owed rather than a promise of guaranteed FLSA substantive rights and (ii) when the employees have retained legal counsel. A narrow reading of *Martin* would limit it to situations where these two elements are present and litigation is pending. However, the court's reliance upon, and approval of, *Martinez v. Bohls Bearing Equipment Co.*, 361 F. Supp. 2d 608, 10 WH Cases2d 1367 (W.D. Tex. 2005), may indicate that the court will not require the initiation

of a lawsuit or retention of legal counsel as the *Bohls* case did not occur in the context of litigation, and the employee had not retained or conferred with any attorney. Accordingly, it remains somewhat unresolved how far the Fifth Circuit will go based upon its reliance on *Bohls*.

**BLOOMBERG BNA:** Do you think the *Martin* decision will influence the views of other courts that have required DOL or court approval of FLSA settlements and/or refused to seal settlement agreements? **Sheeder:** Clearly the *Martin* case will impact other circuits. For many years, *Lynn's Food Stores* has been the sole decision to squarely decide this issue and has been cited and relied upon by many lower courts. The

*Martin* decision will provide an alternative position that may be adopted by other circuits.

**BLOOMBERG BNA:** How do you expect *Martin* will affect your practice? **Sheeder:** This case will have a direct major impact by facilitating earlier and more effective settlement agreements of FLSA claims. No longer will the parties be required to invite the Department of Labor to participate in the proceedings or require that they get the express approval of a court of law that has reviewed the facts. Indeed, it will allow the settlement of litigation almost immediately after the filing of a lawsuit in a federal or state court.