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LABOR & EMPLOYMENT LAW SECTION E - U P D A T E S

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ELEVENTH CIRCUIT HOLDS LIQUIDATED DAMAGES ARE NOT MANDATORY IN FLSA RETALIATION CASES

On February 13, 2013, in a matter of first impression, the Eleventh Circuit held that the district court had the discretion to deny a liquidated damages award on the prevailing plaintiffs' retaliation claims in a Fair Labor Standards Act ("FLSA") action. The Court's decision in *Moore v. Appliance Direct, Inc.*, No. 11-15227 (11th Cir. 2013), aligned it with the Sixth and Eighth Circuits on the issue.

With respect to retaliation claims raised under section 215(a)(3) of the FLSA, the *Moore* court explained that liquidated damages awards are not mandatory in actions brought pursuant to 29 U.S.C. § 216(b) because the second sentence of section 216(b) states only that an employer "shall be liable for such legal or equitable relief *as may be appropriate* to effectuate the purposes of section 215(a)(3) of this title."¹ Therefore, the court reasoned that the phrase "as may be appropriate" creates a "separate, discretionary" standard for retaliation damages awards, although the relief afforded for retaliation claims is "more extensive" than relief for violations of the overtime and minimum wage provisions (sections 207 and 206, respectively).²

In arriving at its conclusion, the court distinguished its earlier decisions in *EEOC v. White & Son Enters.*, 881 F.2d 1006 (11th Cir. 1989), and *Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928 (11th Cir. 2000), since the *Moore* plaintiffs contended that those two cases would be irreconcilable with a holding that liquidated damages awards are discretionary.³ In *White & Son*, the court affirmed the imposition of liquidated damages against the defendant, but the issue of whether the damages were discretionary was not directly presented to the court for review. In *Snapp*, the issue was the unavailability of punitive damages in section 216(b) actions. The court noted that its decision in *Moore* would not overrule those two prior panel decisions and that those cases in fact highlighted the need for a clear ruling on the issue presented by *Moore*. Thus, the judgment of the district court was affirmed in favor of the defendant.

~ J. Evan Gibbs of Constangy, Brooks & Smith, LLP.

Endnotes

1. *Moore*, No. 11-15227 at 16 (citing 29 U.S.C. § 216(b) (emphasis in original)).
2. *Id.* at 16-17, 20.
3. *Id.* at 18-20.

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