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### ***ELEVENTH CIRCUIT FURTHER UNDERMINES DEFENSE STRATEGY OF AVOIDING ATTORNEYS' FEES IN FLSA CASES BY TENDERING FULL RELIEF***

In *Dionne v. Floormasters Enters., Inc.*, the Eleventh Circuit held that an employer who denied liability for nonpayment of overtime did not need to pay attorneys' fees and costs under the FLSA if the employer tendered full relief and the employee conceded that "the claim for overtime should be dismissed as moot." 667 F.3d 1199, 1200 (11th Cir. 2012). The court left open the question of whether fees and costs would be available if the employer tendered full relief but the employee did not concede the case should be dismissed as moot. That is, until *Wolff v. Royal Am. Mgmt.*, 2013 U.S. App. LEXIS 20030 (11th Cir. Oct. 1, 2013). In *Wolff*, the employer tendered \$3600 to plaintiff for unpaid overtime and liquidated damages. The employee accepted the \$3600 and signed a settlement agreement and general release in which she "acknowledge[d] receipt of [the \$3600] check as full and complete satisfaction of any monies owed to [her] from Royal American." The district court approved the settlement but held that it had not mooted the lawsuit and subsequently awarded the employee's counsel \$61,810.44 in fees and costs.

On appeal, the Eleventh Circuit affirmed. The court concluded that the settlement offer, without an accompanying offer of judgment, did not offer full relief and, therefore, did not render the plaintiff's claim moot. In rejecting the employer's argument that the employee was not a prevailing party for purposes of obtaining FLSA attorneys' fees, the Eleventh Circuit noted that the district court, by approving the settlement, entered a judgment in the employee's favor. The court found that "so long as a settlement agreement does not include an offer of judgment against a defendant (and it did not in this case), whether a plaintiff accepted the settlement makes no difference." Because the settlement offer did not moot the case, the employee "was entitled to seek attorneys' fees and costs from [the employer]."

The court further observed that it was unclear whether the employee had, in fact, received full relief under the FLSA at the time the agreement was reached because, although the settlement agreement clearly did not provide for attorneys' fees, the district court found that the parties did not intend the settlement agreement to preclude attorneys' fees. In fact, noted the Eleventh Circuit, a settlement agreement purporting to preclude any award for attorneys' fees "would not be reasonable."

*By Jay Lechner, Jackson Lewis LLP*

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