

Publications

Third Circuit's *Lundeen* Decision Opens Up New Wage and Hour Settlement Possibilities

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In wage-hour lawsuits, plaintiffs commonly assert claims under both the federal Fair Labor Standards Act (FLSA) and state wage-hour law. The United States Court of Appeals for the Third Circuit recently issued a significant decision discussing the relationship between claims under the FLSA and state law class actions proceeding under Rule 23 of the Federal Rules of Civil Procedure. Analyzing the FLSA provision that governs opt-in collective actions, the Court held that plaintiffs in a class action can include potential class members' unasserted FLSA claims in an opt-out class settlement. The decision is a first-of-its-kind expansion of the ability of defendants in FLSA cases to secure FLSA releases from all members of a putative Rule 23 class who do not affirmatively opt out of the settlement.

What Are Hybrid Class/Collective Actions?

Under the FLSA, claims brought on behalf of large groups of plaintiffs operate as "opt-in" collective actions under 29 U.S.C. § 216(b), meaning potential collective members have to choose to be part of the lawsuit or settlement. Rule 23 class actions, in contrast, usually work under an "opt-out" structure, where potential class members must choose to exclude themselves. Hybrid class/collective actions are lawsuits where both FLSA and Rule 23 claims have been brought simultaneously for the same violations.

The *Lundeen* Decision

Lundeen v. 10 W. Ferry St. Operations LLC involved an employer's alleged inclusion of managerial employees in a tip pool. The case was filed under both the FLSA and Pennsylvania Minimum Wage Act (PMWA). After the district court conditionally certified an FLSA collective, the parties reached a settlement on the PMWA claims.

The release that accompanied the class settlement included FLSA claims, and the proposed notice submitted to the district court informed class members that failure to opt out would result in waiving their right to recover wages and liquidated damages under the FLSA.

The district court rejected the settlement based on its reading of Section 216(b), and the parties appealed.

The Third Circuit reversed the district court and noted that, while Section 216(b) requires written consent to litigate an FLSA claim, it does not address the release of claims that have not been asserted. The Court emphasized that Rule 23 settlements releasing FLSA claims still need to be analyzed under Rule 23's settlement approval procedures to ensure they are "fair, reasonable, and adequate."

Potential Impact on Wage and Hour Litigation

For now, this decision is limited to the Third Circuit (covering Delaware, New Jersey, Pennsylvania, and the Virgin Islands). Even in the Third Circuit, the possibility remains that district court judges may find hybrid settlements fail to satisfy the requirements under Rule 23. It will remain crucial for litigants to ensure their notice is clearly drafted and that class members have a meaningful opportunity to opt out. Nonetheless, *Lundeen* provides an opening for employers to attempt to expand the scope of releases in hybrid wage-hour litigation to minimize follow-on litigation. Additionally, *Lundeen* offers greater potential for finality in wage and hour settlements, allowing employers to focus on remedial measures and putting issues behind them. Employers should take note of this important tool for shaping wage-hour settlements and monitor future developments that may build on or attempt to curb this development.