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Labor Law

by Stephen W. Mooney*
and
Leigh Lawson Reeves**

I. INTRODUCTION

This Article surveys the 1995 decisions of the United States Court of Appeals for the Eleventh Circuit that addressed issues in the areas of traditional labor law. This Article specifically discusses decisions by the Eleventh Circuit under the National Labor Relations Act ("NLRA"),1 the Labor Management Relations Act ("LMRA"), 2 the Fair Labor Standards Act of 1938 ("FLSA"), 3 and the Employee Retirement Income Security Act of 1974 ("ERISA"). 4

Unlike the past few years, this survey year the Eleventh Circuit did not decide many cases which involved labor law issues. There were numerous unpublished opinions by the Eleventh Circuit dealing with the activities of various labor unions, their elections, and the interpretation of certain collective bargaining agreements. These unpublished opinions, however, are not considered binding precedent. This year, the Eleventh Circuit’s published opinions appear to have focused more on the interpretation of certain guidelines in the FLSA, as well as the ERISA statute. This Article does not attempt to address all the cases decided by the Eleventh Circuit that touched upon these traditional areas of

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2. Id. §§ 141-187.
3. Id. §§ 209-219.
4. Id. §§ 1001-1461.
labor law. Instead, the Article addresses some of the more noteworthy decisions by the Eleventh Circuit in 1995 and attempts to provide practical guidance to the practitioner for these types of claims.

II. THE NATIONAL LABOR RELATIONS ACT AND THE LABOR MANAGEMENT RELATIONS ACT

In the case of Lightning v. Roadway Express, Inc., the Eleventh Circuit addressed the issue of whether the Georgia state law claim for intentional infliction of emotional distress was pre-empted by section 301 of the LMRA. Interestingly enough, the court made the determination that the LMRA did not pre-empt the Georgia state law claim, and therefore, the plaintiff was allowed to proceed with his state law claim against his employer. Specifically, the plaintiff, Lightning, worked as a janitor for Roadway Trucking Company from February 1988 until his discharge in August 1990. Lightning initially served as an on-call employee but eventually received regular employee status. As a regular employee, the International Brotherhood of Teamsters, Local Union No. 728 ("Union") represented his interests at the Roadway terminal in which he worked. The collective bargaining agreement between Roadway and the Union allowed for "progressive discipline," but it also granted employees the right to file a grievance against the employer regarding any discipline imposed upon them.

It was undisputed that Lightning's job performance had been less than marginal during the years he had worked for Roadway. Specifically, Roadway management had discussed with him several times about violating certain collective bargaining agreement company rules, such as wasting time, failing to follow instructions, and failing to wear steel-toed shoes. Due to these numerous work rule violations, Roadway dismissed Lightning several times during his work history with them. Roadway always reinstated Lightning, however, until his final discharge in August 1990.

The record showed that Roadway supervisors had verbally abused Lightning on numerous occasions. The verbal abuse usually included profanity and encouragement by Roadway supervisors for Lightning to
leave the company. Moreover, Lightning received several telephone calls at home telling him to resign his position.\textsuperscript{10}

The court found two particular encounters between Roadway supervisors and Lightning to be especially egregious. The first incident commenced when a supervisor complained about how Lightning was sweeping his area and actually spit in Lightning's face and told him, "Who do you think you are?" and "You ain't no better than a janitor."

The second incident occurred when Lightning commented that a certain supervisor, Mark Keahon, was the only individual who treated him with decency. When Keahon heard of this comment, he called Lightning into his office and criticized him about his work performance. The conversation became very hostile, and Lightning requested the presence of a union steward. Keahon responded, "Fuck the union steward" and "Get your sorry ass out of here." Lightning returned with the union steward, and during the heated conversation that ensued, Keahon actually tried to hit Lightning.\textsuperscript{11}

Eventually, Lightning began to suffer from psychotic episodes, which included manifestations of paranoid delusions. He was later admitted into Georgia Mental Health Institute, where the physicians diagnosed his problems as being "work related." Shortly thereafter, Lightning resigned his position in August 1990.\textsuperscript{12}

A few months thereafter, Lightning brought suit against Roadway in state court alleging that Roadway had breached his contract by committing violations of the collective bargaining agreement, engaging in intentional infliction of emotional distress, as well as assault. Roadway removed the case to the United States District Court for the Northern District of Georgia and moved for summary judgment on the following grounds: (1) federal law pre-empted Lightning's breach of contract claim; (2) federal law pre-empted Lightning's intentional infliction of emotional distress claim; (3) Roadway's alleged conduct did not constitute intentional infliction of emotional distress as a matter of law; and (4) the Georgia Workers' Compensation Act provided the exclusive remedy for Lightning's assault claim. The district court granted Roadway's motion in part, finding that the federal labor law did pre-empt Lightning's contract claim, but otherwise, the district court denied Roadway's motions. After conducting a nonjury trial, the court entered judgment for Lightning and awarded him approximately

\begin{footnotes}
10. \textit{Id.}
11. \textit{Id.}
12. \textit{Id.}
\end{footnotes}
$150,000 in damages. Shortly thereafter, Roadway filed their appeal to the court of appeals.\textsuperscript{13}

Among other arguments, Roadway contended that the resolution of Lightning's intentional infliction of emotional distress claim depended upon the interpretation of the collective bargaining agreement, and therefore, section 301 of the Labor Management Relations Act would pre-empt his claim. The Eleventh Circuit noted that whether section 301 of the Labor Management Relations Act pre-empted a state law claim was necessarily a question of law and, therefore, subject to \textit{de novo} review.\textsuperscript{14}

Section 301(a) of the LMRA provides:

\begin{quote}
Suits for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.\textsuperscript{15}
\end{quote}

Consequently, section 301 not only grants federal courts jurisdiction over employment disputes involving collective bargaining agreements, it also expresses a federal policy that federal substantive law should apply under section 301(a), rather than any type of state substantive law.\textsuperscript{16}

The Eleventh Circuit then cited the case of \textit{Lingle v. Norge, Inc.}\textsuperscript{17}, in which the Supreme Court of the United States outlined the principles behind section 301 and the pre-emption doctrine:

\begin{quote}
[If] the resolution of a state law claim depends upon the meaning of a collective bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state law principles as there are states) is pre-empted and federal labor law principles—necessarily uniform throughout the nation—must be employed to resolve the dispute.\textsuperscript{18}
\end{quote}

In other words, if the only way Lightning's state law claim could be resolved, was if there was some type of interpretation of the collective bargaining agreement, then that particular state law would be pre-empted. The Eleventh Circuit, however, found that Lightning's intentional infliction of emotional distress claim did not require

\begin{itemize}
\item \textsuperscript{13} \textit{Id.} at 1555-56.
\item \textsuperscript{14} \textit{Id.}
\item \textsuperscript{15} \textit{Id.} at 1556 (citing 29 U.S.C. § 185(a)).
\item \textsuperscript{16} \textit{Id.} (citations omitted).
\item \textsuperscript{17} 486 U.S. 399 (1988).
\item \textsuperscript{18} 60 F.3d at 1556 (citations omitted).
\end{itemize}
interpretation of the collective bargaining agreement and, therefore, he was free to go forward with the claim.\textsuperscript{19}

Specifically, the Eleventh Circuit noted that Lightning's intentional infliction of emotional distress claim required scrutiny of the actual treatment he received by his employers while working at Roadway. There was no dispute concerning the terms and conditions of his employment; rather, it was simply "severe abuse [that] he endured from Roadway supervisors."\textsuperscript{20} The fact that Roadway management verbally abused Lightning on several occasions and actually spat on him on one occasion, demonstrated that the facts in his claim were not in any way "arguably sanctioned by the labor contract."\textsuperscript{21} Accordingly, section 301 was found not to pre-empt Lightning's intentional infliction of emotional distress claim.\textsuperscript{22}

A careful review of Lightning demonstrates that even if an employee is part of a labor union and is governed by a collective bargaining agreement, a lawsuit he wishes to bring against his employer will not always be scrutinized under the federal labor laws. Instead, the Eleventh Circuit has now specifically given an example of certain actions, on the part of an employer, that would be found to be well outside of the terms and/or understandings of any collective bargaining agreement. Thus, if an employer engages in such egregious conduct as noted above, they may well not only be liable under the National Labor Relations Act or the Labor Management Relations Act, but also under state law tort claims as well.

\section*{III. The Fair Labor Standards Act}

This past survey year, the Eleventh Circuit decided several Fair Labor Standards Act cases. This survey year is unique, however, in that they specifically address a somewhat obscure exception to the FLSA requirements involving amusement or recreational establishments. In addition, the court specifically discussed a retaliation provision under the FLSA and the burden of proof that the moving party must be able to carry when alleging their termination was in direct response to a claim under the FLSA.

\begin{itemize}
\item[19.] \textit{Id.} at 1556-57.
\item[20.] \textit{Id.} at 1557.
\item[21.] \textit{Id.} (citing Keehr v. Consolidated Freightways, Inc., 825 F.2d 133, 138 n.6 (7th Cir. 1987)).
\item[22.] \textit{Id.}
\end{itemize}
A. Exceptions

In Jeffery v. Sarasota White Sox, Inc.,\textsuperscript{23} the Eleventh Circuit further delineated the exception to FLSA requirements provided to "recreational establishments." Specifically, in Jeffery, a grounds keeper brought an action against his employer, which operated major league spring training and minor league baseball games, alleging that they had violated the Fair Labor Standards Act by failing to pay him for overtime. The facts reveal that as grounds keeper, the plaintiff received the same salary each week regardless of the number of hours he worked. The defendant moved for summary judgment, arguing that pursuant to 29 U.S.C. § 213(a)(2), the overtime provisions of the FLSA would not apply to employees such as the plaintiff because he was employed by an "amusement or recreational establishment" and, as such, the defendant's average receipts in any six month period did not exceed one-third of the receipts from the other six months of the year. After reviewing all of the evidence, the Eleventh Circuit agreed with the defendants and found that the plaintiff had failed to state a claim as a matter of law.\textsuperscript{24}

Specifically, the court noted that 29 U.S.C. § 213(a)(3), stated:

\begin{quote}
(a) The provisions of Section 206 . . . and Section 207 of this title [overtime provisions] shall not apply with respect to—

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or nonprofit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year . . . .
\end{quote}

The court further stated, however, that exceptions such as this are always construed narrowly against the employer who asserts them.\textsuperscript{25} Moreover, in these circumstances, the employer has the burden of proving that it is entitled to the exemption, and in this particular case, the critical question to be determined was whether the defendant's business was both a recreational, as well as seasonal, type of business.\textsuperscript{26}

In defining what type of establishment qualified as an amusement or recreational establishment, the court noted that "sports events" are

\textsuperscript{23} 64 F.3d 590 (11th Cir. 1995).
\textsuperscript{24} Id. at 591.
\textsuperscript{25} Id. at 594 (quoting 29 U.S.C. § 213(a)(3)).
\textsuperscript{26} Id. (citations omitted).
\textsuperscript{27} Id.
among those types of recreational activities specifically considered by Congress to be covered under this exemption. The mere fact that the defendant did not own the sports complex in which it operated was not a determining factor. Since sports events were held in this area on a regular basis, the court found that the establishment was “frequented by the public for its amusement or recreation” and, thus, was legally considered an amusement or recreational establishment.

The next inquiry, whether the defendant’s business was seasonal, was determined by the amount of money the business received, as well as the time in which the business received the most money. Specifically, the court stated the test was whether the defendant’s average receipts for any six months were never more than one-third of the average receipts for the other six months. The defendant established that during its six months of off-season, from September through April, they clearly made less than one-third of the receipts they received in the other six months, beginning in March and ending in August. Virtually all of the defendant’s receipts were derived from spring training games played at the complex in March and minor league games played at the complex from April to August. Based upon the documentation the defendant presented concerning their yearly receipts, the court found that they were entitled to this exemption, and thus, the plaintiff did not have grounds to continue to pursue his claim for overtime pay pursuant to the FLSA.

B. Anti-Retaliation Provision of the FLSA

In the seminal case of Reich v. Davis, the Eleventh Circuit fully delineated what the “motivating factor” test required in relation to the anti-retaliation provisions of the FLSA. In Reich, two employees, Darlene Smiley and Cynthia Fellows, worked for John Davis, a certified public accountant. Davis properly paid his employees overtime during the tax season, which lasted from roughly January to April, but for the rest of the year, he did not pay his workers extra wages for working overtime. Instead, during that period of time, he would allow his employees “compensatory leave.” In the fall of 1996, Smiley asked Davis to pay her the extra wages to which she was entitled, but Davis refused. Smiley filed a written complaint against Davis with the Wage and Hour Division of the Department of Labor, and after an investigation, they

28. Id. at 595 (citations omitted).
29. Id.
30. Id.
31. Id. at 596-97.
32. 50 F.3d 962 (11th Cir. 1995).
informed Davis that his system of using compensatory leave in lieu of extra wages for overtime was unlawful. Consequently, Davis computed the unpaid overtime wages he owed each of his five employees, and on September 20, 1988, he mailed back wage checks to three of his employees. Three days later, however, he called Smiley and Fellows into his office, handed them their back wage checks, and fired them.\textsuperscript{33}

Following their discharge, Smiley and Fellows both filed successful state unemployment compensation claims against Davis. In contesting their claims, Davis listed on an unemployment compensation form several reasons why he discharged them. One of the reasons he listed was his belief that both Smiley and Fellows had conspired together to file a "false claim" with the Federal Wage and Hour Board.\textsuperscript{34}

The Secretary of Labor then brought this lawsuit to permanently enjoin Davis from violating section 15(a)(3) of the FLSA, which prohibits an employer from discharging an employee in retaliation against the employee's filing of a claim or testifying in an investigation lead by the Wage and Hour Division. The Secretary of Labor was also requesting that both Smiley and Fellows be reinstated and receive the backpay that they were entitled to. After a hearing before the district court, the district court entered judgment in favor of Davis, the defendant.\textsuperscript{35}

The plaintiffs appealed, and at issue on appeal was the proper interpretation of section 15(a)(3) of the FLSA which states:

\[\text{To discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee...}\]

The defendant argued that he did not violate the anti-retaliation provisions of the FLSA because the filing of the claim was not the reason he fired Smiley and Fellows. The record established without dispute, however, that Davis did list the filing of said claim as one of the reasons he fired the two employees.\textsuperscript{37}

While the district court agreed with this argument of the defendant, the court of appeals stated that this finding by the district court was truly "clearly erroneous." The Eleventh Circuit noted that although there was substantial deference to be given to a trial court's findings of fact, when the testimony of the witness that the trial court believes to

\begin{footnotes}
\begin{enumerate}
\item Id. at 963.
\item Id.
\item Id. at 964.
\item Id. (citing 29 U.S.C.A. § 215(a)(3) (West 1965)).
\item Id.
\end{enumerate}
\end{footnotes}
be credible, is totally contradicted by documentary evidence, then the finding would be erroneous.38 Thus, the Eleventh Circuit found that no matter what the defendant was saying at this point, one of the reasons he did fire Smiley and Fellows was because of their establishment of the wage and hour complaint.39

The defendant then argued that even if their establishment of the wage and hour complaint was a determining factor in their termination, it was not the sole determining factor and, thus, he had not violated the retaliation provisions of the FLSA. Based upon the interpretation of the anti-retaliation provision in other jurisdictions, the court agreed with the defendant and found that the retaliation must be the “but for” reason for termination before any terminated employee would be entitled to relief under section 15(a)(3) of the FLSA.40 In other words, even if there were other legitimate business reasons for discharging Smiley and Fellows, if their filing of the wage complaint was the “immediate cause or motivating” factor for the termination, then the discharge violated section 15(a)(3).

After reviewing the factual record in more detail, the court found that a remand was needed in this case and instructed the district court to take as fact that both Smiley and Fellows’ termination had something to do with their wage and hour claim and then proceed to make a factual determination of whether Smiley and Fellows would have been fired anyway.41

This “but for” test can also be categorized as the “last straw that broke the camel’s back” test. Thus, only if an employer can prove that the employee would have been fired anyway, can they successfully defend a retaliation claim under the FLSA.

IV. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

As in years past, the Employee Retirement Income Security Act ("ERISA") was the subject of several Eleventh Circuit decisions this past survey year. The litigation in this area is becoming more prevalent, and in fact, a survey article addressing solely ERISA issues could be of benefit in the future. Due to space limitations, this Article will only address a few of the cases decided this past survey year.

39. 50 F.3d at 985.
40. Id.
41. Id. at 966.
A. Standard of Review for District Court

In *Florence Nightingale Nursing Service, Inc. v. Blue Cross/Blue Shield*, the healthcare provider ("Nightingale") brought suit against the claims administrator ("Blue Cross") after they denied its claim under the employer's self-funded benefit plan. The facts revealed that Nightingale provided skilled home nursing care to Mr. Frank Lungarella ("Lungarella"), who was in the later stages of the AIDS virus. Prior to the onset of his illness, Lungarella had worked as an employee for Intergraph Corporation and was covered by their medical benefits plan ("the Plan"). This plan was governed by ERISA, and Blue Cross was the claims administrator.

The Plan provided that private-duty skilled nursing care was a covered benefit to the extent that such care was considered "medically necessary." The Plan did not cover "custodial care" because the Plan did not deem skilled nursing in a private home environment "medically necessary." Nightingale billed Blue Cross for the services they rendered to Lungarella during the period of time that Lungarella underwent intravenous treatment at his home. Blue Cross paid for this in-home care, but after the IV was discontinued, Blue Cross took the position that the in-home care was no longer "medically necessary," and since Lungarella was under "custodial care," the skilled nursing would no longer be covered. Essentially, Blue Cross maintained that Lungarella's family was capable of providing all of the care he needed after the IV was removed.

In addition to denying the care after the IV was removed, Blue Cross also significantly reduced Nightingale's bills and, in fact, agreed to pay Nightingale only one-third of what their actual hourly rate was. It was later uncovered that prior to Nightingale even providing these services, the owner of Nightingale had spoken over the telephone with a representative from Blue Cross, who assured them that their services would be covered and that they would be reimbursed one hundred percent for the private-duty nursing. In fact, Nightingale wrote a letter to Blue Cross confirming this conversation, but at trial, Blue Cross was unable to produce this letter.

Lungarella died on September 5, 1987, and shortly thereafter, Nightingale filed suit in the Superior Court of the State of California. Blue Cross removed the case to the United States District Court for the

42. 41 F.3d 1476 (11th Cir. 1995).
43. Id. at 1478-79.
44. Id. at 1479-80.
45. Id. at 1479.
Central Division of California. The court subsequently transferred the case to the Northern District of Alabama. One of Blue Cross's first defenses was that Nightingale had failed to exhaust all internal administrative remedies available under their benefit plan. Thus, the district court dismissed the action without prejudice and ordered that Nightingale pursue the internal administrative remedies available to them.46

Under the Plan, the parties were to submit their contentions to one of the claims administrators within the Blue Cross organization. Dr. Renee Holloway, as the Blue Cross assistant medical director and chief claims examiner, was given the authority to review the facts and evaluate the validity of Nightingale's allegations. Holloway did not conduct an oral argument hearing and, instead, relied solely on written documentation. She also considered Blue Cross's internal guidelines and materials regarding nursing rates obtained ex parte by certain Blue Cross investigators. In fact, before Holloway even released her findings, Blue Cross's in-house counsel, the same individuals who were opposing Nightingale's request, actually edited Holloway's opinion. Except for ordering additional reimbursement for a few hours of what she found to be "medically necessary" private-duty nursing following the extraction of the IV, Holloway completely agreed with Blue Cross's initial evaluation of the case.47

After Holloway made her findings, Nightingale again filed suit in the district court. After conducting a bench trial, the district court entered findings in favor of Nightingale. Specifically, the court ordered full reimbursement for Nightingale's services, along with substantial pre-judgment interest. Blue Cross then filed an appeal to the Eleventh Circuit, and Nightingale filed a petition for attorney's fees and expenses pursuant to ERISA's section 502(g)(1).48

The issues presented to the court were as follows: (1) whether the district court applied the proper standard in reviewing Blue Cross's administrative decision; (2) whether the district court erred as a matter of law in ordering Blue Cross to pay Nightingale their original hourly rate; (3) whether the district court erred in holding that after the IV was removed, the in-home nursing care was still medically necessary; and (4) whether the court abused its discretion in applying Alabama's interest statute and awarding pre-judgment interest in this case.49

46. Id. at 1480.
47. Id.
49. 41 F.3d at 1480.
In relation to the first issue, Blue Cross argued that the district court should have applied the deferential "arbitrary and capricious" standard of review when deciding this case. The Eleventh Circuit noted that the United States Supreme Court had held that as a general rule, courts should review claims administrators' denials of ERISA benefits under a de novo standard. Specifically, in Firestone, the Supreme Court held that the arbitrary and capricious standard of review was often too lenient, in that it would "afford less protection to employees and their beneficiaries than they enjoyed before ERISA was enacted." Consequently, the decision in Firestone provided for the use of the arbitrary and capricious standard only in the specific case where the plan document explicitly vested the claims administration with discretion to "construe disputed or doubtful terms." Even if the plan granted this discretion to the claims administrator, the Supreme Court stated that deference in such situations was greatly diminished when the claims administrator was acting under a conflict of interest. Thus, if a conflict of interest was established, the burden shifted to the administrator to prove that his or her interpretation of the plan was not tainted by self-interest.

In analyzing the present case, the Eleventh Circuit recited the facts of the case and found that there was ample evidence to show that the administrator was laboring under a conflict of interest when she made her findings. Since Blue Cross was unable to carry their burden of showing that their decision was not tainted by self-interest, the Eleventh Circuit found that the administrator's award was not entitled to the deferential arbitrary and capricious standard of review, and instead, the more stringent de novo review was correctly used by the district court.

In finding that the district court utilized the correct standard of review, the court went on to find that the district court's decision concerning the correct charges to be paid, which services were "medically necessary," as well as awarding prejudgment interest against Blue Cross, were all correct findings, and as such, the Eleventh Circuit affirmed the judgment of the district court in its entirety.

50. Id. at 1480-81 (citing Firestone v. Bruch, 489 U.S. 101 (1989)).
51. Id. at 1481 (citations omitted).
52. Id. (citations omitted).
53. Id.
54. Id.; see also Lee v. Blue Cross/Blue Shield, 10 F.3d 1547, 1549-52 (11th Cir. 1994).
55. 41 F.3d at 1481-82.
B. Pre-emption

In Variety Children's Hospital, Inc. v. Century Medical Health Plan, Inc., Variety Children's Hospital, Inc. ("Variety") brought a four-count complaint against Century Medical Health Plan ("Century") seeking recovery of the cost of medical services they provided to a patient. In Count I, Variety alleged violations of ERISA, and in Counts II and III, they alleged fraud, misrepresentation, and unfair claims settlement practices, all of which were in violation of Florida statutes. Lastly, in Count IV, Variety alleged the claim of promissory estoppel. The district court dismissed Count I, without prejudice, holding that Variety did not exhaust their administrative remedies under ERISA prior to bringing this lawsuit. The court then dismissed Counts II, III, and IV as being pre-empted by the ERISA statute. Shortly thereafter, Variety filed its appeal to the Eleventh Circuit.

Juan Carlos Rios was a young child who suffered from acute lymphoblastic leukemia. Over a period of two and a half years, he was admitted to Variety Children's Hospital on at least twenty occasions, including his final admission on December 3, 1992. The Rios were a member of the health maintenance organization plan issued by Century. Each time Juan Carlos was admitted for treatment, Century certified him for such care. On his final admission, however, the doctors at Variety decided to treat Juan Carlos with bone marrow transplants and initiated high doses of precursor chemotherapy. Century determined that this treatment was "experimental" and, therefore, was not covered by their policy. The doctors at Variety went ahead and treated Juan Carlos despite the denial of medical coverage. Unfortunately, Juan Carlos died shortly thereafter, and Variety obtained an assignment of claims from Juan Carlos' parents and sued Century in the four-count complaint cited above. After reviewing all of the evidence in this case, and the legal standards to be applied, the Eleventh Circuit upheld the district court's decision in its entirety.

First, the Eleventh Circuit noted that they had repeatedly held that plaintiffs must exhaust their administrative remedies under a covered benefit plan prior to bringing an ERISA claim in federal court. Thus, the district court's dismissal of Count I, without prejudice, was affirmed.

56. 57 F.3d 1040 (11th Cir. 1995).
57. Id. at 1041.
58. Id. at 1041-42.
59. Id. at 1042 (citing Byrd v. MacPapers, Inc., 961 F.2d 157 (11th Cir. 1992); Springer v. Wal-Mart Assoc's. Group Health Plan, 908 F.2d 897 (11th Cir. 1990); Mason v. Continental Group, Inc., 763 F.2d 1219 (11th Cir. 1985), cert. denied, 474 U.S. 1087 (1986)).
In relation to Counts II and III alleging fraud, misrepresentation, and unfair claim settlement practices in violation of the Florida state laws, Century maintained that these claims were pre-empted by the ERISA claim in Count I. The Eleventh Circuit stated that the pre-emption provisions of ERISA provided that ERISA "shall supersede any and all state laws insofar as they many now or hereafter relate to the employment plan." Thus, if the state law claim has any type of "connection with or reference to" the plan, then that state law claim would be pre-empted by the ERISA statute.

Since all the claims alleged in plaintiff's Counts II and III centered on the issue of coverage under the plan, and if the treatment given the child was determined to be "experimental" and there excluded from coverage, the court found there was definitely a link between the state law claims and the ERISA plan. Thus, Counts II and III were correctly dismissed as pre-empted.

In relation to Variety's promissory estoppel claim, the court found that although Variety was alleging they had relied on Century's promise in the past to pay for Juan Carlos' medical bills, in actuality, the issue to be determined was truly whether the treatment rendered was "experimental." As such, the promissory estoppel claim was, in fact, related to the benefits of the plan and, thus, was also pre-empted by ERISA.

C. Prejudgment Interest Under ERISA

Another interesting ERISA case addressed by the Eleventh Circuit this survey year was that of Smith v. American International Life Assurance Co. In Smith, after the death of her husband, the plaintiff submitted a claim to American International Life Assurance Company of New York ("AILACNY") to recover benefits under an accidental death insurance policy provided by her employer and governed by ERISA. After AILACNY denied Smith's claim, Smith filed suit seeking to recover the accidental benefits. After a bench trial, the district court awarded the plaintiff judgment for the benefits and also provided her with prejudgment interest at 12 percent per annum and postjudgment interest at 3.54 percent per annum. AILACNY then appealed the district court's finding to the Eleventh Circuit, but the only issue addressed by the Eleventh Circuit on appeal was whether the district

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60. Id. (citing 29 U.S.C. § 1144(a) (1988)).
61. Id. (citations omitted).
62. Id.
63. 50 F.3d 956 (11th Cir. 1995).
court erred in utilizing certain rates for prejudgment and postjudgment interest.64

The Eleventh Circuit started out their opinion by noting that their standard of review in questions of prejudgment interest under ERISA was limited to abuse of discretion.65 A review of the district court award showed that the judge had actually utilized local state law prejudgment and postjudgment interest rates in the determining the interest to be paid by AILACNY. AILACNY contended, however, that in the absence of evidence pointing to a different rate that more accurately compensated the plaintiff, the rate prescribed in 28 U.S.C. § 1961(a) for postjudgment interest on federal judgments should also be applied as the prejudgment interest rate under ERISA.66 Needless to say, if the district court had used the calculation as provided by section 1961, the interest rate charged to AILACNY would have been much less.

The Eleventh Circuit acknowledged that some other circuit courts had approved the use of section 1961(a)'s postjudgment rate to compute prejudgment rates.67 The court went on to state, however, that section 1961(a) only mandated the rate for postjudgment interest and did not speak directly to prejudgment rates. Furthermore, under the law of the Eleventh Circuit, the "award of any amount of pre-judgment interest in an ERISA case is a matter committed to the sound discretion of the trial court."68

Consequently, the Eleventh Circuit found that the district court should have discretion in determining prejudgment interest rates, as well as postjudgment interest rates, and that they would not require in this circuit that district courts utilize section 1961(a) in computing such interest. Furthermore, the Eleventh Circuit found that reliance on state law statutes in order to fill in "gaps in ERISA law," was perfectly within the district court's purview. Thus, the district court's findings concerning prejudgment and postjudgment interest to be awarded in this case were affirmed.

V. CONCLUSION

As can be seen by a review of the cases cited above, the Eleventh Circuit continues to be one of the leading circuits in understanding and developing the area of traditional labor law. The issues involved in the

64. Id. at 957.
65. Id.; see also Moon v. American Home Assurance Co., 888 F.2d 86 (11th Cir. 1989).
66. 50 F.3d at 957-58.
67. Id. at 958 (citations omitted).
68. Id. (citing Nightingale v. Blue Cross/Blue Shield, 41 F.3d 1476, 1484 (11th Cir. 1995) (citations omitted)).
cases this past survey year show how specialized this area of law is becoming. In order to be proficient, attorneys who practice in this area of law need to familiarize themselves in detail with the applicable statutes cited above and continue to stay abreast of the Eleventh Circuit's interpretation of these statutes.