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Labor Law

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I. INTRODUCTION

This Article surveys the 1996 decisions of the United States Court of Appeals for the Eleventh Circuit in which the court addressed issues in the areas of traditional labor law. This Article specifically discusses decisions by the Eleventh Circuit under the Labor Management Relations Act of 1947 ("LMRA"),[1] the Fair Labor Standards Act of 1938 ("FLSA"),[2] the Occupational Safety and Hazard Act of 1970 ("OSHA"),[3] and the Employee Retirement Income Security Act of 1974 ("ERISA").[4]

In this survey year, the Eleventh Circuit decided several cases involving these traditional areas of labor law. Due to the volume of cases, this Article does not attempt to address all the cases decided by the Eleventh Circuit on these issues; rather, this Article attempts to point out the more noteworthy decisions issued by the court in 1996 to assist the general practitioner in the handling of these types of claims.

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1. 29 U.S.C. §§ 141-187 (1994).
2. *Id.* §§ 209-219.
3. *Id.* §§ 651-678.
4. *Id.* §§ 1001-1461.

II. THE LABOR MANAGEMENT RELATIONS ACT

A. Jurisdiction

In *International Union of Electronics v. Statham*,[5] the Union filed suit against three former Union officers who sold a piece of land that was titled in their individual names. The Union alleged, among other things, that the land had originally been improperly titled in the officers' individual names and should have instead been titled in the Union's name. Specifically, the Union sued the former officers, their lawyer, real estate broker, and the buyer of the land, alleging that all parties had breached their fiduciary duties to the Union members and the Union itself. The Union filed suit in federal court on its own behalf asserting claims for breach of fiduciary duties under section 501 of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"),[6] as well as breach of contract claims, pursuant to section 301 of the LMRA.[7] The district court held that there was no jurisdiction under the LMRDA section 501 or the LMRA section 301 and thus dismissed the suit by the Union. The Union then appealed this decision to the Eleventh Circuit.[8]

1. LMRDA. The court began by interpreting sections 501(a) and (b) of the LMRDA, recognizing that "the procedural limits on an individual's right to enforce the subsection (a) [fiduciary] duties, [were] analogous to the demand prerequisites for bringing shareholder derivative suits."[9] Thus, for an individual to sue for breach of a union official's section 501(a) duty, he "must first request the union to proceed against the official. Only if the union fails to act within a reasonable time after the request may the individual proceed to federal court."[10] The court inferred that because the union was given the "right of first refusal" to a cause of action under section 501(b), Congress "preferred that the union, rather than individual members, sue on its own behalf."[11] Because this section contemplated a suit brought by the union, it must also contemplate federal jurisdiction.[12]

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5. 97 F.3d 1416 (11th Cir. 1996).
6. *See also* 29 U.S.C. § 501 (1994).
7. *See also id.* § 185(a).
8. 97 F.3d at 1417.
9. *Id.* at 1419.
10. *Id.*
11. *Id.*
12. *Id.*

The court next examined the legislative history behind the LMRDA and found that it indicated a belief by Congress that state remedies for union officials' breach of fiduciary duties were inadequate.[13] Thus, the court concluded that "Congress intended to supplement the remedies available to unions by creating new federal protection."[14] Specifically, the court stated "[i]t would make no sense to impose federal duties and simultaneously deny the unions the right to enforce those duties."[15]

Based on this analysis, the Eleventh Circuit held that section 501(a) "was intended to create a federal cause of action that can be asserted by the union on its own behalf."[16] Because the court determined that a federal cause of action existed in this case, it recognized federal jurisdiction over the claim under 28 U.S.C. § 1331.[17]

2. LMRA. The second issue addressed was the Union's contention that section 301 of the LMRA also provided jurisdiction for its suit against former Union officials.[18] Specifically, section 301(a) states that the LMRA provides jurisdiction over contract suits "'between any labor organization [representing employees in an industry affecting commerce].'"[19] Consequently, defendants argued that section 301(a) did not provide for contract suits between *individuals* within the labor organization.[20] The Eleventh Circuit did not agree with defendant's interpretation of section 301(a) and made special mention of several cases they had affirmed in which the district courts asserted section 301(a) jurisdiction over individual defendants.[21]

The Eleventh Circuit held, however, that section 301(a) would only allow for jurisdiction over individual defendants as long as they were seeking simply *equitable relief*.[22] In addition, the court stated there was no jurisdiction under section 301(a) for an action for damages.[23] In the present case, however, the Union had expressly limited its claim to seek only equitable relief. Therefore, the court found there was

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13. *Id.* at 1420.
14. *Id.*
15. *Id.*
16. *Id.* at 1421.
17. *Id.* (citing 28 U.S.C. § 1331 (1994)).
18. *Id.* (citing 29 U.S.C. § 185(a)).
19. *Id.* (quoting 29 U.S.C. § 185(a)).
20. *Id.*
21. 97 F.3d at 1421 (citing International Bhd. of Boilermakers v. Local Lodge D111, 681 F. Supp. 1570, 1572 (S.D. Ga. 1987), *aff'd*, 858 F.2d 1559, 1560 n.1 (11th Cir. 1988), *cert. denied*, 490 U.S. 1047 (1989)).
22. *Id.* at 1422.
23. *Id.* (citing Building Material & Dump Truck Drivers v. Traweek, 867 F.2d 500, 502 (9th Cir. 1988)).

federal jurisdiction over the Union's contract claim against its former officers under the LMRA.[24] Accordingly, the Eleventh Circuit reversed the district court's dismissal of this case and remanded the claim for further proceedings.[25]

B. *Statute of Limitations / Choice of Law*

In *International Union, United Plant Guard Worker's v. Johnson Controls World Services, Inc.*,[26] the Eleventh Circuit faced a statute of limitations issue. Because section 301 of the LMRA contained no statute of limitations, the court had to determine if it should borrow one from the law of the forum state or that of the state in which the claim arose.[27]

The Eleventh Circuit started by reiterating the long-standing rule that when Congress had not provided a limitations period for a federal claim, a "'court must borrow the applicable limitations period in tolling rules *from the state in which it sits*, unless those rules are inconsistent with federal policy.'"[28] The court went on to note that in the former Fifth Circuit, the case law sometimes borrowed the statute of limitations law of the forum state and sometimes borrowed the statute of limitations law of the state in which the cause of action arose.[29] Based on this conflict, the court attempted to clarify the rule.[30]

The Eleventh Circuit then turned to the United States Supreme Court case of *Northstar Steel Co. v. Thomas*.[31] In *Northstar*, the Supreme Court did not literally discuss which choice of law should be used but rather simply applied the law of the forum state.[32] However, the Supreme Court acknowledged that applying the law of the forum state could "lead to forum shopping."[33] Even so, relying on the reasoning in *Northstar*, the Eleventh Circuit concluded that the statute of limitations law in the forum state, Florida in the present case, must be applied to this claim.[34]

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24. *Id.*
25. *Id.*
26. 100 F.3d 903 (11th Cir. 1996).
27. *Id.* at 904.
28. *Id.* at 905 (citing Hawthorne v. Wells, 761 F.2d 1514, 1515 n.7 (11th Cir. 1985) (emphasis added)).
29. *Id.* (citing Vigman v. Community Nat'l Bank & Trust Co., 635 F.2d 455, 459 (5th Cir. 1981); Beard v. Stephens, 372 F.2d 685, 688 (5th Cir. 1967)).
30. *Id.* at 905-06.
31. 115 S. Ct. 1927 (1995).
32. *Id.* at 1930-31.
33. 100 F.3d at 906 (citing *Northstar*, 115 S. Ct. at 1931-32).
34. *Id.*

The court then turned to the decision of exactly which statute of limitations under current Florida law was most analogous to the present claim.[35] The court reasoned that the suit in the present case was most analogous to Florida's statute of limitations law for governing specific performance of contracts.[36] Consequently, under this one-year limitation period, the Union suit was timely and the Union could proceed.[37]

C. *Jury Trial Under LMRA*

In *Stewart v. KHD Deutz of America Corp.*,[38] the Eleventh Circuit addressed two issues:

> (1) whether [plaintiffs were] entitled to a jury trial on their breach of collective bargaining claim under section 301 of the LMRA; and (2) if so, whether [they] retain[ed] their Seventh Amendment right to a jury trial in a hybrid LMRA/ERISA action where the amount of monetary relief sought under LMRA and ERISA [was] identical.[39]

In this case, a class of retirees brought an action against their former employer for its unilateral modification of their retirement benefits.[40] The district court struck plaintiffs' demand for a jury trial, finding that section 301 of the LMRA did not provide for one.[41]

In reversing the lower court, the Eleventh Circuit held that because the LMRA did not provide a statutory right to a jury trial, its analysis needed to focus on the Seventh Amendment.[42] The Seventh Amendment right to a jury trial involves a two-part analysis. The first part requires a comparison of "the nature of the issues to be resolved to '[eighteenth century] actions brought in the courts of England prior to the merger of the courts of law and equity.'"[43] The second part determines "whether the remedy sought is legal or equitable in nature."[44]

Initially, the court noted that although plaintiffs' action for breach of the collective bargaining agreement did not exist at common law, it was similar to the common law action for breach of contract.[45] In fact,

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35. *Id.*
36. *Id.* (citing FLA. STAT. ch. 95.11(5)(a) (1982)).
37. *Id.*
38. 75 F.3d 1522 (11th Cir. 1996).
39. *Id.* at 1525.
40. *Id.* at 1524.
41. *Id.*
42. *Id.* at 1525.
43. *Id.* (quoting Tull v. United States, 481 U.S. 412, 417-18 (1987)).
44. *Id.* (quoting *Tull*, 481 U.S. at 418).
45. *Id.* at 1526.

section 301 of the LMRA provided a cause of action for violation of contract.[46] Thus, the claims to be "resolved under the section 301 claim, when viewed in isolation of the ERISA claims, [were found to be] legal in nature."[47] The court also found "no reason to depart from the general rule that monetary relief sought pursuant to section 301 of the LMRA [was] legal in nature."[48] Because both the issues involved and the remedy sought under the LMRA were legal in nature, the court held that plaintiffs had a Seventh Amendment right to a jury trial under section 301 of the LMRA.[49]

The court then had to determine whether the joinder of plaintiffs' ERISA claim destroyed their right to a jury trial. The Eleventh Circuit stated that for purposes of Seventh Amendment analysis, ERISA had been interpreted as an equitable statute.[50] Accordingly, no Seventh Amendment right to a jury trial would exist in actions brought pursuant to ERISA. The court went on to note, however, that "section 514(d) of ERISA explicitly save[d] federal causes of action, including section 301 of the LMRA."[51] Moreover, because there was a policy, both in the Federal Rules of Civil Procedure and in the spirit of the Seventh Amendment itself, in favor of preserving the right to a jury trial, the Eleventh Circuit held that the joining of plaintiffs' ERISA claim did not defeat their right to a jury trial.[52]

III. THE FAIR LABOR STANDARDS ACT

In *Atenor v. D & S Farms*,[53] the Eleventh Circuit went to great lengths to discuss exactly what factors determined a "joint employment" relationship and what guidance should be utilized in making such determinations. Specifically, in *Atenor*, farm workers filed suit under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA")[54] against the grower of certain farm products and the contractor who had placed them in their jobs. Their complaint alleged that the grower and the contractor failed to keep hourly records, pay unemployment compensation and social security taxes, and pay wages promptly when due. The farm workers also alleged that the growers

46. *Id.* (citing 29 U.S.C. § 185(a) (1994)).
47. *Id.*
48. *Id.* at 1527.
49. *Id.*
50. *Id.* (citing Chilton v. Savannah Foods & Indus., 814 F.2d 620, 623 (11th Cir. 1987); Blake v. Unionmutual Stock Life Ins. Co., 906 F.2d 1525, 1526 (11th Cir. 1990)).
51. *Id.* at 1528 (citing 29 U.S.C. § 1144(d) (1994)).
52. *Id.*
53. 88 F.3d 925 (11th Cir. 1996).
54. 29 U.S.C. §§ 1801-72 (1994).

"violated the AWPA by using labor contractors to recruit and transport them without reasonably ensuring that the contractors were registered and insured."[55] Moreover, the farm workers claimed that the grower and contractor "violated the FLSA by failing to keep hourly records and pay minimum wage."[56]

Following discovery, the parties filed cross-motions for summary judgment on the grower's liability under both the FLSA and AWPA. The farm workers argued that the growers were liable because they, along with the contractor, "were 'joint employers' of the farm workers."[57] The growers contended that they were not liable because the contractor "was the sole employer of the farm workers."[58] The district court granted summary judgment to the growers, finding that they were not employers under either the FLSA or the AWPA.[59]

The facts revealed that the grower actually hired the labor contracting business to provide pickers. While the contractor was responsible for "hiring, furnishing and paying the pickers," the grower still exerted some control.[60] For example, the pickers could not begin each morning until the grower determined the morning dew had lifted from the beans. Also, because the contractor could not afford to provide the pickers with workers' compensation insurance, the grower withheld eleven cents from the contractor's compensation for each box picked. This eleven cents was used to purchase insurance that named the growers as the employer. Finally, the grower determined the hours and availability of work for the pickers.[61]

In reversing the lower court's decision, the Eleventh Circuit held that both statutes recognized joint employment in an attempt to prevent an employer from getting workers through a contractor to avoid having to comply with the statutes.[62] The court listed several factors that could be used to determine joint employment status.[63] The factors to be considered are:

> (1) the nature and degree of the grower's control of the farmworkers; (2) the degree of the grower's supervision, direct or indirect, of the farmworkers' work; (3) the grower's right, directly or indirectly, to hire,

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55. 88 F.3d at 928.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at 927.
61. *Id.* at 927-28.
62. *Id.* at 929.
63. *Id.* at 932.

> fire, or modify the farmworkers' employment conditions; (4) the grower's power to determine the workers' pay rates or methods of payment; (5) the grower's preparation of payroll and payment of the workers' wages; (6) the grower's ownership of the facilities where the work occurred; (7) the farmworkers' performance of a line-job integral to the harvesting and production of salable vegetables; and (8) the grower's and labor contractor's relative investment in equipment and facilities.[64]

When applying these factors, the court noted that there were several principals that should guide their determination. This guidance included a warning that each employment relationship must be examined independently.[65] Also, "no one factor is determinative"; instead each factor must be used to determine if, on the whole, the employee is economically dependent on the purported employer.[66] Finally, the court warned that the determination of economic dependence should not turn on "common-law concepts of employment."[67]

In the present case, because the grower exerted control over the pickers with respect to supervision, the "right to hire, fire, or modify employment conditions" and the "preparation of payroll and payment of wages", the court held it was a joint employer under both the FLSA and the AWPA.[68] This holding was further supported by the fact that the grower owned the facilities where the work was performed and the pickers performed a "line-job integral to business."[69]

IV. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The Eleventh Circuit's decision in *Niemand Industries v. Reich*,[70] dealt with a dispute surrounding an industrial hygiene inspection performed by the Occupational Safety and Health Administration ("OSHA"). The issue was whether OSHA's evidence supported a conclusion "that an employee engaged in [the employer's] talc operation was exposed to talc in excess of the permissible exposure limit."[71]

The industrial hygienist sent to inspect the employer's facility measured the exposure to talc in a method that did not comport with the

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64. *Id.* (citing Aimable v. Long & Scott Farms, Inc., 20 F.3d 434, 440-46 (11th Cir.), *cert. denied*, 115 S. Ct. 351 (1994)).
65. *Id.*
66. *Id.*
67. *Id.* at 933.
68. *Id.* at 934-38.
69. *Id.* at 937.
70. 73 F.3d 1083 (11th Cir. 1986).
71. *Id.* at 1084.

one prescribed in 19 C.F.R. § 1910.1000(c).[72] The employer claimed the measurements could not form the basis of an alleged violation of talc exposure.[73] Specifically, the employer contended that because the method used by OSHA in measuring the amount of talc in the environment did not "comport with the method" prescribed in OSHA's own regulations, those measurements could not form the basis of the alleged violation.[74] The industrial hygienist for OSHA, however, testified that the technique he used was far superior to the old techniques outlined in OSHA's regulations and, in fact, that the OSHA manual recommended that his particular method be utilized in such calculations.[75]

Interestingly enough, however, the court held that even if the technique recommended by the regulations was no longer viable, OSHA *must*, pursuant to its rule-making authority, modify the regulations before a new technique could be utilized.[76] Furthermore, the court held that "absent substantial evidence that the results obtained exceed the OSHA [limit], OSHA may not prosecute a violation on the basis of a measurement technique not provided for in [their regulations]."[77]

V. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

As in years past, the Employee Retirement Income Security Act of 1974 ("ERISA") was the subject of several Eleventh Circuit decisions. Litigation in this area continues to be prevalent and as the following cases demonstrate, practitioners need to be well-aware of the standards and issues involved in ERISA claims to properly manage these type cases. Due to space limitations, this Article will only address a few cases decided by the Eleventh Circuit this past survey year.

A. Definition of Employer

In *Tampa Bay International Terminals, Inc. v. Tampa Maritime Ass'n*,[78] Tampa Bay International Terminals asserted in a letter to Tampa Maritime that it was liable for withdrawal liability under section 3(5) of ERISA and demanded payment for such withdrawal liability. Tampa Maritime then sought a declaratory judgment that it was not subject to withdrawal liability, arguing that it was not an "employer" within the meaning of ERISA, as amended by the Multiemployer

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72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.* at 1085.
77. *Id.*
78. 73 F.3d 339 (11th Cir. 1996).

Pension Plan Amendments Act of 1980 ("MPPAA").[79] At the district court level, both Tampa Bay and Tampa Maritime moved for summary judgment. The district court granted summary judgment in favor of Tampa Maritime finding that they were not an employer for purposes of ERISA.[80]

After the granting of summary judgment, Tampa Bay filed an appeal to the Eleventh Circuit. Specifically, the question to be addressed by the court was whether Tampa Maritime was an "employer" for purposes of ERISA, as amended by the MPPAA.[81] Tampa Bay argued on appeal that because Tampa Maritime had some qualities and characteristics of an employer as delineated under common law, they should be considered an "employer" under ERISA and MPPAA.[82] The Eleventh Circuit noted, however, that the definition of "employer" was a matter of federal law and had already been specifically outlined in *Carriers Containers Counsel v. Mobile S.S. Ass'n*.[83]

In *Carriers Containers*, the Eleventh Circuit adopted the "contributing obligator" test for determining whether an entity was an "employer" under ERISA.[84] Specifically, a "contributing obligator" is a party who is obligated to contribute to a plan for the benefit of a plan's participant.[85] In order to be obligated, the Eleventh Circuit held that a party must actually be contractually bound to make pension contributions to a plan.[86] In the present case, Tampa Maritime was in no way contractually bound to participate in the pension plan.[87] Thus, the Eleventh Circuit found Tampa Maritime was not an "employer" for purposes of the Act.[88]

B. Preemption

In *Morstein v. National Insurance Services*,[89] plaintiff Margery Morstein was the president, director, and sole shareholder of Graphic Promotions, Inc. She was also one of two employees of Graphic. In 1991, she met with Scott Hankins, an insurance broker and employee of

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79. 29 U.S.C. §§ 1381-1453 (Supp. 1995).
80. 73 F.3d at 340.
81. *Id.*
82. *Id.*
83. *Id.* (citing 896 F.2d 1330, 1343 (11th Cir. 1990)).
84. 896 F.2d at 1343.
85. 73 F.3d at 340.
86. *Id.* (citing Seaway Port Auth. v. Duluth-Superior ILA Marine Ass'n Restated Pension Plan, 920 F.2d 503, 509 (8th Cir. 1990)).
87. *Id.*
88. *Id.*
89. 74 F.3d 1135 (11th Cir. 1996), *vacated*, 81 F.3d 1031.

the Shaw Agency, for the purpose of obtaining a replacement policy of major medical insurance for herself and Graphic's other employee. She claimed that she told Hankins that any policy must not exclude from coverage medical treatment related to any pre-existing medical condition. Graphic purchased the policy proposed by Hankins. Over one year later, National Insurance Services, which administered the policy, refused to pay on a claim submitted by Morstein because it was for a pre-existing condition. Morstein claimed that because Hankins and the Shaw Agency fraudulently induced her to purchase a policy of major medical insurance, she allowed a separate full-coverage policy to lapse.[90]

Morstein then filed suit against National Insurance Services, Pan American Life Insurance Company (the underwriter), the Shaw Agency, and Scott Hankins in state court for negligence, malfeasance, misrepresentations, and breach of contract. Defendants removed the action to federal court on the basis that Morstein's claims constituted an ERISA action. Morstein moved to remand. The district court denied her motion and entered summary judgment in favor of defendants as to the state law claims against them. The district court concluded that Morstein's claims "clearly relate[d] to the employee benefit plan established by Graphic Promotions; therefore, those claims [were] preempted by ERISA."[91] Morstein appealed the district court's grant of summary judgment.[92]

On appeal, the Eleventh Circuit noted that section 514(a) of ERISA[93] provided that its provisions "shall supersede any and all state laws insofar as they may now or hereafter relate to an employee benefit plan described in section 1003(a) . . . ."[94] In addition, a state law claim was considered to "relate to" an employee benefit plan if the law had "a connection with or reference to such a plan."[95] The court then acknowledged that the United States Supreme Court had endorsed a very broad interpretation of the phrase "relate to" and had even extended preemption to certain state law tort claims, as well as contract claims brought by employees.[96]

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90. 74 F.3d at 1136.
91. *Id.*
92. *Id.*
93. 29 U.S.C. § 1144 (1994).
94. 74 F.3d at 1137 (citing 29 U.S.C. § 1144(a) (1994) (emphasis added)).
95. *Id.* (citing Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139 (1990) (citations omitted)).
96. *Id.* (citing Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987)).

The Eleventh Circuit then looked to its earlier decision of *Farlow v. Union Central Life Insurance Co.*,[97] and found that the current facts of this claim were quite similar to the *Farlow* case. Specifically, in *Farlow*, the plaintiff was a shareholder, president, and member of the board of directors and his wife was designated as a beneficiary under his company's benefit plan. The Farlows alleged that an insurance agent induced them to purchase a new group health life insurance plan and that the agent fraudulently misrepresented that the new policy would provide the same coverage as the company's old policy.[98] In reviewing the facts of that case, the Eleventh Circuit found that the conduct alleged by the Farlows was "intertwined" with the refusal to pay benefits.[99] Thus, the court in *Farlow* held that the plaintiffs' claims were preempted by ERISA.[100]

In the present case, the Eleventh Circuit found that, like *Farlow*, Morstein was claiming fraudulent misrepresentation by an insurance agent. Next, the Eleventh Circuit stated they were bound by the precedent set by the court in *Farlow*; thus, Morstein's state law claims were preempted by ERISA.[101] The court rejected Morstein's argument that Hankins was acting as her agent and that Hankins and the Shaw Agency were not each a "party in interest" and therefore not governed by ERISA.[102] The court stated that the important relationship was not the one between the parties, but rather the one between the alleged conduct and the refusal to pay benefits.[103] "If the actions of a party, regardless of his 'interest' in the plan, are intertwined with the refusal to pay benefits, then the action is related to the plan, and thus, it is preempted."[104]

At the end of the opinion, however, Circuit Judge Burch, who authored the opinion, expressed concern about Eleventh Circuit law on this point. Specifically, he stated "this case presents yet another example of an employee left without a remedy because of ERISA's broad preemption."[105]

In a special concurrence, Circuit Judge Goodwin also noted tension between the Eleventh Circuit's holding in *Farlow* and the Fifth Circuit's

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97. 874 F.2d 791 (11th Cir. 1989).
98. *Id.* at 794.
99. *Id.*
100. *Id.*
101. 74 F.3d at 1137-38.
102. *Id.*
103. *Id.* at 1138.
104. *Id.*
105. *Id.* at 1138 n.3.

holding in *Perkins v. Time Insurance Co.*,[106] and claimed that there was an intra-circuit conflict in Eleventh Circuit doctrine due to the Eleventh Circuit's affirmance without opinion of *Martin v. Pate*.[107] Judge Goodwin stated that "it may be timely and appropriate to suggest an en banc review of the preemption matter."[108]

Only a few months after this opinion, the Eleventh Circuit revisited this case and issued a new "en banc" opinion. In *Morstein v. National Insurance Services*,[109] the court reviewed ERISA legislative history and Supreme Court case law regarding ERISA preemption. The court focused on the Supreme Court's opinion in *New York Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*[110] and found that the broad guidance that the Court gave in analyzing state law was helpful to the Eleventh Circuit's analysis of Morstein's claims.[111]

In *New York Conference*, the Supreme Court specifically noted that there would be limitations on the ERISA preemption doctrine:

> The governing text of ERISA is clearly expansive . . . . If relate to were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes, preemption would never run its course, for "[r]eally, universally, relations stop nowhere . . . ." But that, of course, would be to read Congress' words of limitation as a mere sham, and to read the presumption against preemption out of the law whenever Congress speaks to the matter with generality. That said, we have to recognize that our prior attempt to construe the phrase relate to does not give us much help drawing the line here.[112]

The Supreme Court then cited the often quoted language in *Shaw v. Delta Airlines, Inc.*,[113] which defined a law "relating to" an employee benefit plan as one that "has a connection with or reference to such a plan."[114] Thus, because not every state law action had a true connection with such a plan, the Supreme Court found that several state law claims would not be subject to preemption.[115]

After reviewing this case law, the Eleventh Circuit went on to analyze the facts of *Morstein* in more detail and determined that Morstein's true

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106. 898 F.2d 470 (5th Cir. 1990).
107. 749 F. Supp. 242 (S.D. Ala. 1990), *aff'd*, 934 F.2d 1265 (11th Cir. 1991).
108. 74 F.3d at 1140.
109. 93 F.3d 715 (11th Cir. 1996).
110. 115 S. Ct. 1671 (1995).
111. 93 F.3d at 716.
112. 115 S. Ct. at 1677 (citations omitted).
113. 463 U.S. 85, 90 (1993).
114. 115 S. Ct. at 1677.
115. *Id.*

claim was being levied against the insurance agent and the insurance agency. The court then noted that the insurance agent and insurance agency whom Morstein was suing were not ERISA entities.[116] Specifically, ERISA entities are either the employer, the plan, the plan fiduciaries, and/or the beneficiaries under the plan.[117] Thus, the Eleventh Circuit concluded that Morstein's state law claims against an independent insurance agent and his agency for fraudulent inducement to purchase certain coverage were not preempted by section 514(a) of ERISA.[118] In other words, the court found that this type of state law claim did not have such a significant connection with the plan as to truly "relate to" the plan.[119] Thus, the Eleventh Circuit reversed its earlier decision and the district court's grant of summary judgment and specifically overruled any earlier decisions that were contradictory to this holding.[120]

C. *Statute of Limitations*

In *Musick v. Goodyear Tire & Rubber Co.*,[121] several employees filed suit claiming that their layoff by defendant Goodyear was motivated by its desire to deprive them of retirement benefits, in violation of ERISA. In 1994, almost four years after Goodyear had laid the employees off, plaintiffs first filed their suit alleging a wrongful motivation behind the lay offs. The employees were seeking back pay, benefits, as well as retirement eligibility credit, for the time they were laid off. The district court determined that a two-year statute of limitations was applicable to plaintiffs' lawsuit and dismissed their claim.[122]

Plaintiffs appealed to the Eleventh Circuit and while conceding they filed their lawsuit two years after the date of their lay offs, they contended that a six-year statute of limitation governed section 510 ERISA actions in Alabama. The Eleventh Circuit noted that ERISA did not contain a statute of limitations for section 510 actions and stated "because Congress has not established a time limitation for such actions 'the settled practice has been to adopt a state time limitation as federal

116. 93 F.2d at 722.

117. *Id.* (citing Travitz v. Northeast Apartment, ILGWU Health & Welfare Fund, 13 F.3d 704, 706 (3rd Cir.), *cert. denied*, 114 S. Ct. 2165 (1994); Sommers Drug Stores & Corrigan Enters., Inc., 793 F.2d 1456, 1467 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987)).

118. *Id.* (citing 29 U.S.C. § 1144).

119. *Id.*

120. *Id.*

121. 81 F.3d 136 (11th Cir.), *cert. denied*, 117 S. Ct. 389 (1996).

122. 81 F.3d at 137.

law.'"[123] The Eleventh Circuit explained that, when adopting a state statute of limitations, a court needs to first determine the essential nature of the claim and then focus on the period applicable to the claim under the most analogous state law.[124]

In determining the most analogous state law, the Eleventh Circuit stated that most federal courts try to look to the "character" of the case. The Eleventh Circuit specifically stated that "characterization of the essential nature of an ERISA action is a matter of federal law."[125] While the Eleventh Circuit had characterized an ERISA section 510 claim in both Georgia and Florida, the circuit had yet to make such a characterization under Alabama state law.[126]

After reviewing the Georgia and Florida cases already determined, the Eleventh Circuit found that there were two provisions in Alabama law that were closely analogous to section 510 actions: (1) the workers' compensation statute of limitations addressing retaliatory discharge; and (2) the statute of limitations governing recovery of wages.[127] In both circumstances, the statute of limitations was two years from the day the action accrued.[128] The court then found that Alabama's general six-year statute of limitations, governing "actions upon any simple contract or specialty not enumerated [specifically]," would not govern section 510 actions in Alabama because the two state law provisions involving wages and retaliatory discharge "more narrowly and specifically contemplated the [section 510] action" before the court.[129] Consequently, because the two-year statute of limitation applied to section 510 ERISA actions in Alabama, the Eleventh Circuit affirmed the district court's granting of summary judgment for defendants.[130]

VI. CONCLUSION

As can be seen by a review of the cases cited above, the issues decided by the Eleventh Circuit this past year demonstrate how specialized the area of traditional labor law is becoming. Attorneys who practice in this area of law need to familiarize themselves in detail with the applicable federal statutes and continue to stay abreast of the Eleventh Circuit's interpretation and rulings concerning these issues.

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123. *Id.* (citing Clark v. Coats & Clark, Inc., 865 F.2d 1237, 1241 (11th Cir. 1989)).
124. *Id.* at 138.
125. *Id.*
126. *Id.*
127. *Id.* at 139.
128. *Id.*
129. *Id.*
130. *Id.*