

Jani-King Can't Undo Franchisees' Class Cert. At 3rd Circ.

By **Dan Packel**

Law360, Philadelphia (September 21, 2016, 6:26 PM EDT) -- The Third Circuit on Wednesday said a lower court ruled correctly when it said that franchisees for the world's largest commercial cleaning franchisor could pursue claims that they had been denied wages via class action.

In a published decision, the panel denied Jani-King Inc.'s bid to have the class certification for approximately 300 Philadelphia-area franchisees reversed, finding all members of the class were subject to a shared set of documents.

"The Jani-King franchise agreement, policies manual and training manual are common to the class — they apply to the franchisee who has no employees and services a low-value contract and to the franchisee with dozens of employees and many cleaning contracts. These documents describe the level of Jani-King's right to control its franchisees," Judge D. Michael Fisher said in the opinion.

Two Jani-King franchisees sued the company in 2009, claiming they were miscategorized and should be treated as employees. The two assert that they rarely or never hired employees to help with cleaning work and are owed wages under the Pennsylvania Wage Payment and Collection Law. The law obligates employers to pay wages and agreed-upon benefits in a regular fashion and limits the deductions that can be made.

After the cleaners' claims were trimmed in 2012, U.S. District Court Judge R. Barclay Surrick ruled to certify the class in 2015.

Jani-King appealed the ruling, arguing the question of whether the cleaners were employees could not be resolved on a classwide basis.

The company also said that because the documents in question could not be used to determine the employment status of the plaintiffs under Pennsylvania law, they were inappropriately considered in the class certification ruling. The panel looked at case law to conclude that this was not accurate.

"Under certain circumstances ... an employment relationship — or the lack of one — can be determined by examining the documents alone," Judge Fisher said.

Jani-King also asked the judges to examine the documents to rule on the merits of the case, with reference to the state's multipart test for determining employment relationships. But the panel declined.

"Jani-King may ultimately be correct that the franchise agreement and manual do not contain sufficient controls over the day-to-day work of its franchisees to make them employees under Pennsylvania law, and we express no opinion on that matter here," Judge Fisher said. "If Jani-King is correct and the documents cannot, as a matter of fact, establish that the franchisees are employees, Jani-King will prevail classwide."

Judge Robert Cowen dissented from the ruling, calling franchising "a bedrock of the American economy" and saying that the majority opinion threatens its viability.

"We're very pleased with the decision. I've been litigating against these so-called 'cleaning franchise companies' for 10 years," said attorney Shannon Liss-Riordan, who represents the plaintiffs. "They're essentially selling jobs to immigrant workers who are willing to put their savings — thousands of dollars — into getting cleaning work."

She secured a **\$5.5 million settlement** in a similar case against Coverall North America Inc. in Massachusetts federal court in 2015.

Stephen Hagedorn, general counsel for Jani-King, highlighted the fact that the panel declined to rule on the merits of the case as well as Judge Cowen's favorable conclusions.

"We're disappointed in the decision, and we certainly believe that it will encourage more class actions against franchisors," he said.

Jani-King is represented by Kerry L. Bundy, Eileen M. Hunter and Aaron D. Van Oort of Faegre Baker Daniels LLP.

The plaintiffs are represented by Shannon Liss-Riordan and Adelaide Pagano of Lichten & Liss-Riordan PC and David J. Cohen.

The case is Williams et al. v. Jani-King of Philadelphia et al., case number 15-2049, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Matthew Bultman. Editing by Aaron Pelc.