

## Case to Watch: Cable workers' case raises classification questions

By [Carlyn Kolker](#)

(Reuters) - A case before the 11th Circuit Court of Appeals has important implications for the growing area of law surrounding the classification of independent contractors.

The case, *Scantland v. Knight*, concerns about 180 technicians in Florida who sued cable installer Knight Enterprises, saying they were illegally classified as independent contractors. The technicians claim they typically worked six days a week, sometimes up to 70 hours, with Knight controlling when and where they worked.

"The work performed by the technician is the 'backbone' of Knight's entire business," the plaintiffs wrote in a brief.

The 11th Circuit is considering the case as the U.S. Labor Department, various state labor departments and plaintiffs' lawyers have all taken a keen interest in the issue of misclassification of workers. They have all argued that systemic misclassification deprives state and federal tax authorities of payroll taxes and workers' compensation payments, as well as workers access to healthcare benefits and workplace protections.

In March 2012, U.S. District Judge Elizabeth Kovachevich granted a summary judgment motion for Knight, ruling that as a matter of law the workers were independent contractors.

The plaintiffs appealed, saying that Kovachevich relied on the wrong legal standard to even make a ruling at the summary judgment stage.

Moreover, the plaintiffs wrote, the judge did not properly apply the so-called "economic realities" test, a six-pronged test used to determine whether workers are independent contractors or employees. Kovachevich placed too much weight, for example, on agreements the workers signed with the company documenting their status, rather than on testimonial evidence about what they actually did, the plaintiffs argued.

"They were totally dependent on Knight for their economic livelihood," said Harold Lichten, who represented the plaintiffs in the appeal.

Luis Antonio Cabassa, who represented Knight, didn't return a call for comment.

#### CASES 'IN DISARRAY'

Employers are looking to the 11th Circuit for clarity on the breadth of the economic realities test and how much weight to put on each factor, said Guilene Theodore, an attorney at Ogletree, Deakins, Nash, Smoak & Stewart who represents employers and is not involved in the case.

"Employers need to have some finality on this issue, something beyond a vague assessment of all of these factors," she said.

Federal courts around the country have issued conflicting rulings on the issue of whether cable workers are employees or independent contractors, said Lichten, the plaintiffs' attorney.

"In this particular area, the cases are in complete disarray," he said, noting there are about 20 district and circuit court rulings on the issue, some dating back 20 years. "That's why I think this 11th Circuit case could help start some dispositive trends one way or another."

On appeal, the case has attracted attention from the Labor Department and public interest groups.

The National Employment Law Project, the Southern Poverty Law Center, the National Employment Lawyers Association and Interfaith Worker Justice filed an amicus brief siding with the plaintiffs, saying that a narrow reading of the Fair Labor Standards Act has a negative public policy implication for U.S. workers.

"The cumulative societal impact of employers' abuse of the independent contractor designation is substantial," the groups wrote. "Federal and state governments have lost billions of dollars in unpaid funds; law-abiding employers feel pressure to concoct similar schemes in order to stay competitive; and millions of workers lack vital protections to which they are otherwise entitled."

The Labor Department has asked the 11th Circuit to reverse the trial judge. In its amicus brief, the department focused on the definition of "employ" under the Fair Labor Standards Act, using the act's legislative history to argue for a broad reading.

At the March 12 argument before the 11th Circuit, which convened in Jacksonville, an attorney for the Labor Department presented an argument, along with the plaintiffs' and defense attorney. The 11th Circuit has not yet issued a ruling.

The case is Michael Scantland v. Jeffrey Knight, U.S. Court of Appeals for the 11th Circuit, No. 12-12614.

For plaintiffs: Harold Lichten and Shannon Liss-Riordan and Ian Russell of Pyle Rome Ehrenberg and James Staack and Gary Cors of Staack, Simms & Hernandez.

For Jeffrey Knight Inc: Luis Antonio Cabassa and Steven Wenzel of Wenzel Fenton Cabassa.