

III. Wage Law Not Supplanted By Federal Law, 3rd Circ. Says

By **Vin Gurrieri**

Law360 (September 27, 2018, 7:17 PM EDT) -- The Third Circuit ruled Thursday that a federal law limiting state regulation of the trucking industry doesn't supersede the Illinois Wage Payment and Collection Act, keeping alive claims lodged by delivery drivers that a motor carrier company illegally deducted money from paychecks.

In a precedential ruling, a three-judge panel ruled that U.S. District Judge William J. Martini correctly rejected a bid by New Jersey-based Joseph Cory Holdings LLC, which provides delivery services for retailers, to dismiss IWPCA claims brought by independent contractors as part of a class action against the company.

The panel said Judge Martini was right to hold that the state statute wasn't preempted by the Federal Aviation Administration Authorization Act, a federal law that preempts any state law "relating to a price, route or service of any motor carrier."

"The IWPCA claims here are too far removed from the [FAAAA's] purpose to warrant preemption," the panel said. "With no record to demonstrate otherwise, we hold that the impact of the IWPCA is too tenuous, remote and peripheral to fall within the scope of the FAAAA preemption clause."

The drivers initially filed suit in August 2016 alleging that they were misclassified as independent contractors and had wages illegally taken out of their checks as a result.

More specifically, the workers alleged that Joseph Cory violated a provision of the IWPCA that requires employers to get workers' written authorization to deduct wages from their checks at the time those deductions are made.

The suit, led by named plaintiff Alejandro Lupian, included claims under both the IWPCA and the Class Action Fairness Act as well as claims under New Jersey state law that have since been dismissed.

Judge Martini in 2017 subsequently rejected Joseph Cory's bid to toss the IWPCA claims, saying the state law's "effect on motor carriers does not warrant preemption."

The company subsequently filed an interlocutory appeal on the issue.

In agreeing with the trial court's reasoning, the Third Circuit said Thursday that it was persuaded by similar decisions doled out by the Seventh and Ninth circuits, and that cases cited by Joseph Cory from the First Circuit to back its argument that the Illinois law should be preempted by the FAAAA "are distinguishable because they involved state laws of a wholly different character than the IWPCA."

The Third Circuit also said that laws such as the IWPCA are "a prime example of an area of traditional state regulation" and are part of the legal landscape for all employers for business owners to deal with, noting that Illinois' law "does not single out trucking firms" and "only concerns the relationship between employers and employees."

"While the fact that the IWPCA does not regulate affairs between employers and customers is not dispositive, it does demonstrate that the operation of the IWPCA is steps away from the type of regulation the FAAAA's preemption clause sought to prohibit," the panel said. "We cannot say, particularly at this procedural juncture, that the IWPCA has a significant impact on carrier rates, routes or services of a motor carrier or that it frustrates the FAAAA's deregulatory objectives."

Harold L. Lichten of Lichten & Liss-Riordan PC, counsel for the plaintiffs, told Law360 on Thursday, "We are pleased that the Third Circuit joined the Seventh Circuit in holding that state laws that prohibit deductions from the wages of delivery drivers, and which use the strict ABC test to determine whether someone is an independent contractor or an employee, are not preempted by the FAAAA, which is the federal statute deregulating the trucking industry."

Lichten added, "Essentially, the Third Circuit held that state wage laws represent the traditional police powers of states, and the deregulation statute was not intended to preempt states from enacting generally applicable wage laws that would affect trucking companies as employers."

Counsel for Joseph Cory was not immediately available for comment.

Circuit Judges Michael A. Chagares, Anthony J. Scirica and Robert E. Cowen sat on the panel for the Third Circuit.

The plaintiffs were represented by Harold L. Lichten and Matthew Thomson of Lichten & Liss-Riordan PC and Shanon J. Carson, Camille Fundora, Alexandra K. Piazza and Sarah R. Schalman-Bergen of Berger Montague.

Joseph Cory Holdings LLC was represented by Adam C. Smedstad and Christopher J. Eckhart of Scopelitis Garvin Light Hanson & Feary PC.

The case is Alejandro Lupian et al. v. Joseph Cory Holdings LLC, case number 17-2346, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Jay Jackson Jr.