

11th Circ. Revives Cable Installers' Contractor Status Case

By Ben James

Law360, New York (July 16, 2013, 6:47 PM ET) -- The Eleventh Circuit revived an overtime collective action Tuesday against Internet and cable installer Jeffrey Knight Inc., holding that a lower court erred by finding that Knight technicians were independent contractors — not employees — who weren't covered by the Fair Labor Standards Act. A three-judge panel — which received input from amici including the [U.S. Department of Labor](#) and the [Southern Poverty Law Center](#) — said in a published opinion that a Florida district court dropped the ball when it decided that the current and former workers didn't fall within the scope of the FLSA's protections.

“Because there are genuine issues of material fact, and because plaintiffs were 'employees' if all reasonable factual inferences are found in plaintiffs' favor, the district court erred in granting summary judgment to Knight,” wrote Judge R. Lanier Anderson.

The lawsuit, originally filed by six former Knight technicians in September 2009, targeted both Knight and cable company [Bright House Networks LLC](#). Knight is an installation and repair service contractor for Bright House, Tuesday's opinion said. Bright House settled with the plaintiffs in 2011.

The plaintiffs said they were misclassified as independent contractors and therefore missed out on numerous benefits and protections they would have otherwise gotten, including overtime wages. The plaintiffs worked well over 40 hours per week without overtime pay, they alleged.

The lower court granted conditional collective action certification, and about 185 people opted into the case before Knight won summary judgment, the DOL noted in its September 2012 amicus brief, which urged reversal of the summary judgment ruling.

The appeals court applied a commonly used six-factor test in assessing whether the workers were FLSA-covered employees or exempt independent contractors, and concluded that four of the six factors weighed heavily in favor of employee status, while the other two weighed “very slightly” in the direction of independent contractor status.

The lower court applied the same “economic reality” factors, but did so in a way that lost sight of the key question of whether the workers were in business for themselves, or dependent on the employer, the DOL argued.

An October 2012 amicus brief in favor of reversal from the Southern Poverty Law

Center, Interfaith Worker Justice, [National Employment Law Project](#) and National Employment Lawyers Association made a similar point, saying that the lower court did a “mechanical reading” of the factors without weighing their importance relative to the question of whether the workers were running an independent business.

Knight kept a close eye on the workers' progress and location, set their schedules, determined their pay, specified the tools and equipment they needed to work and trained new hires, the DOL said.

“And tellingly, the installers perform the exact work that Knight is in business to provide — they are Knight's workforce (and wear its uniform),” the DOL said.

Tuesday's decision is significant because it marks the first circuit court ruling in many years to comprehensively tackle the question of when workers are independent contractors, as opposed to employees, under the FLSA in the cable installation industry, said [Lichten & Liss-Riordan PC](#)'s Harold Lichten, an attorney for the workers.

The use of so-called independent contractors to install and repair cable TV is at “epidemic proportions,” Lichten said, adding that the opinion would likely have an impact outside of the Eleventh Circuit, as similar lawsuits percolate up through the court system.

“This decision will be very helpful to the other circuits who will start wrestling with these issues as these cases come up,” he said.

An attorney for Knight declined to comment.

The plaintiffs are represented by Harold Lichten of Lichten & Liss-Riordan PC and James Staack of Staack & Simms PA.

Knight is represented by Luis Cabassa, Steven Wenzel and Donna Smith of Wenzel Fenton Cabassa PA.

Lichten argued for the plaintiffs, while Cabassa argued for Knight. The DOL's Dean Romhilt also took part in the March 12 oral argument.

Judges R. Lanier Anderson, Ed Carnes and Frank M. Hull sat on the panel.

The case is Michael Scantland et al. v. Jeffry Knight Inc. et a.l, case number 12-12614, at the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by John Quinn.