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Class Actions

Franchisees May Pursue Misclassification Claims Against Commercial Cleaning Franchisor on Class-wide Basis

The United States Court of Appeals for the Third Circuit recently held that a trial court did not abuse its discretion when it allowed an employment classification dispute between a group of franchisees and a franchisor to proceed on a class-wide basis. In *Williams v. Jani-King of Philadelphia Inc.*, 2016 WL 5111920 (3d Cir. Sept. 21, 2016), two franchisees sued Jani-King, the world's largest commercial cleaning franchisor, on behalf of a class of JaniKing franchisees in the Philadelphia area. The franchisees claimed that they were misclassified by Jani-King as independent contractors when they should have been classified as employees.

Under Pennsylvania law, the employment classification test involves a multifactor analysis, with the right to control the manner in which the work is accomplished being the primary factor. The specific issue on appeal was the preliminary question of whether the lawsuit involved common issues of law or fact among the class members that predominated over issues affecting individual class members. The Third Circuit held that the Jani-King franchise agreement, policies manual, and training manual were common to the class and described the level of JaniKing's right to control its franchisees. On that basis, the court held that the plaintiffs could proceed against Jani-King as a class. The court was careful to note, however, that 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 stated that it expressed no opinion on that matter.

Notably, among other arguments, Jani-King and the International Franchise Association (as an amicus) argued that franchises are inherently different from other types of business relationships and that franchise system controls should be categorically excluded from consideration when determining whether an employment relationship exists. The court disagreed, holding that under Pennsylvania law, no special treatment is accorded to the franchise relationship and that a franchisee may be an employee or an independent contractor depending on the nature of the franchise system controls. The dissent offered a harsh rebuke, theorizing that the court's decision could threaten the viability of franchising.

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