

# Suit Over Classification of Macy's Drivers Settles for \$2.8M

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*Macy's Herald Square -- NYLJ/Rick Kopstein*

A federal judge in Newark has approved a \$2.8 million settlement of a class action suit claiming that Macy's and HomeDeliveryLink Inc. wrongly designated drivers who deliver furniture to customers from the retailer's Edison warehouse as independent contractors.

In the Sept. 25 order, U.S. District Judge William Martini of the District of New Jersey also approved the deduction from the settlement fund of \$933,333 in fees to class counsel, and \$97,000 in incentive payments to class representatives.

The suit, *Badia v. HomeDeliveryLink*, claimed Macy's and HomeDeliveryLink violated New Jersey's Wage and Hour Law and Wage Payment Law. The suit said drivers were paid by HomeDeliveryLink but were subject to various Macy's rules and regulations, had costs for "dock fees" and other expenses deducted from their gross pay, and had pay deducted when a customer was not satisfied with a delivery.

The uniforms worn by delivery drivers have Macy's or Bloomingdales' logos on them. When drivers are making deliveries for both Macy's and Bloomingdales, they are required to change into a Macy's shirt when delivering a Macy's order and change into a Bloomingdales' shirt when delivering for that store, the suit claimed. The drivers also paid to lease trucks that had Macy's or Bloomingdales logos on the outside.

The settlement was reached in November 2014, following a full-day mediation with Hunter Hughes, a mediator with Rogers & Hardin in Atlanta, according to court documents.

Two plaintiffs lawyers in the case, Harold Lichten and Anthony Marchetti Jr., also represented the plaintiffs in *Hargrove v. Sleepy's*, the landmark case from 2012 in which the New Jersey Supreme Court set out the so-called "ABC" test that shifts the burden of proving contractor status in wage-and-hour cases from the employee to the employer. In that case, delivery drivers for a mattress company were found to be independent contractors. That decision and another in *In re FedEx Ground Package Sys. Inc. Employment Practices Litigation*, from the Northern District of Indiana in 2010, which also found drivers to be independent contractors, are "indicative of the uncertainty plaintiffs would face in establishing liability," Martini said.

In addition, the defendants in *Badia* suggested that an undecided issue remains as to whether the ABC test impermissibly impacts the routes, prices or services of HomeDeliveryLink and is preempted by federal law, Martini said.

As of August 2015, 332 class members filed claims, which used up approximately 76 percent of the settlement, Martini said.

Marchetti and Lichten did not respond to requests for comment about the settlement. A third lawyer for the plaintiffs, Ravi Sattiraju, who heads a Princeton firm, declined to comment. Peter Berk and James McGovern of Genova, Burns, Giantomasi & Webster in Newark, who represented HomeDeliveryLink, and Joseph Guarino of DLA Piper in Short Hills, representing Macy's, did not return calls.

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