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## 7th Circ. Upholds Ill. Labor Law In Delivery Co. Dispute

By **Jessica Corso**

Law360, New York (January 20, 2016, 3:00 PM ET) -- The Seventh Circuit on Tuesday gave new life to the putative class claims of BeavEx delivery drivers who say they were improperly classified as independent contractors, ruling that a federal law regulating the transportation industry did not preempt an Illinois labor law.

A three-judge panel upheld a district court's decision that the Federal Aviation Administration Authorization Act, which bars states from enacting laws related to "a price, route, or service of any motor carrier ... with respect to the transportation of property," does not override a state law restricting the use of independent contractors.

BeavEx Inc., a company that operates a same-day delivery service, argued that requiring it to comply with the wage deduction provision of the Illinois Wage Payment and Collection Act would drive up the cost of doing its business and jeopardize its ability to provide on-demand service, thereby violating the "price" and "service" portions of the FAAAA.

"We do not see, however, how the increased labor cost will have a significant impact on the prices that BeavEx offers to its customers," the Seventh Circuit panel wrote. "[W]e conclude that the IWPCA's effect on the cost of labor is too tenuous, remote, or peripheral to have a significant impact on BeavEx's setting of prices for its consumers."

The question of FAAAA preemption of state labor laws is being tried throughout the country, including in a **First Circuit case** challenging FedEx Ground Package System Inc.'s employment policies.

Harold Lichten, lawyer for the BeavEx couriers, told Law360 Wednesday that he believes the Seventh Circuit's "well-written, well-detailed" opinion "should have great effect on a number of cases that are pending around the country on the same issue."

"I don't think Congress ever meant for [the FAAAA] to prohibit trucking companies from applying state labor laws," Lichten said. He said that the law was passed in the 1990s to deregulate the trucking industry.

BeavEx attorneys responded for a request for comment Wednesday by saying the company was "obviously disappointed and, with all due respect to the court, disagrees with the decision."

The Seventh Circuit also all but certified the class of more than 800 BeavEx couriers that have worked in the state since 2002, overturning U.S. District Judge Virginia Kendall's ruling determining whether BeavEx drivers qualified as independent contractors would require individual analysis of at least one prong of that test.

Answering those individual questions could force a ruling on the merits, Kendall said when declining to certify the class.

"Plaintiffs have demonstrated that common questions predominate by making out a prima facie claim under the IWPCA based on evidence common to the class," the panel wrote. "That conclusion is not the same as saying, as the district court thought, that plaintiffs do win their case"

The case was sent back to Judge Kendall for another look at the certification issue. Lichten says he's "almost certain" the class will be certified given the Seventh Circuit's ruling.

The employees filed suit in 2012, asserting that they had been wrongly identified as independent contractors in violation of the IWPCA. The Seventh Circuit on Tuesday only addressed one of the three claims against the company, that it illegally withdrew fees from drivers' wages to pay for uniforms, accident insurance and "chargebacks" for unsatisfactory deliveries.

BeavEx had been seeking summary judgment on that count.

Judges Michael Kanne, William Bauer and Ilana Rovner sat on the panel for the circuit.

The putative class is represented by Harold Lichten of Lichten & Associates PC and Bradley Manewith of Siegel Law Group Ltd.

BeavEx is represented by Kevin M. Duddlesten and Brian Spang of McGuireWoods LLP.

The case is Thomas Costello et al. v. BeavEx Inc., case number 15-1109, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Adam Sege. Editing by Rebecca Flanagan.

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