

7th Circ. Boots Jones Motor Truckers' Misclassification Suit

By **Adam Lidgett**

Law360 (November 21, 2018, 5:09 PM EST) -- A Seventh Circuit panel has tossed a proposed class action that claimed Jones Motor Co. Inc. denied workers' compensation benefits to a group of truckers by misclassifying them as independent contractors, saying the case does not belong in federal court.

The panel ruled Tuesday that federal courts lacked subject matter jurisdiction over the suit, filed by trucker Michael Daley against Jones Motor and Zurich American Insurance Co. in Illinois federal court, because the proposed class had too few members.

A class must include at least 100 members to meet the Class Action Fairness Act's prerequisites for federal jurisdiction, according to the panel. The panel wrote that an affidavit from a Jones Motor employee said only 52 truckers did work for Jones Motor in Illinois during the proposed class period.

"Perhaps Jones Motor should have raised the jurisdictional question in the district court, but once we see evidence that we lack jurisdiction, we cannot simply ignore that evidence and pretend that Daley's unfounded assertion that there are at least 100 class members is true," the panel said.

Daley claimed in his lawsuit that drivers were misclassified as independent contractors and forced to buy their own insurance policies from Zurich, with the payments coming from weekly paycheck deductions.

The suit also said Jones Motor and Zurich tried to keep workers from making claims to the Illinois Workers Compensation Commission.

The lower court tossed the suit, finding that Daley would first have to obtain "a factual determination" that he was not an independent contractor, even if he might "theoretically" be able to pursue the case at the federal level, the panel said.

While the lower court dismissed the case for failure to state a claim, the panel on Tuesday altered that order to reflect that dismissal — without prejudice — was on jurisdictional grounds.

"Because we believe that Daley's proposed class cannot meet the requirements for establishing federal jurisdiction over his case, we must dismiss his appeal," the panel said.

Zurich declined to comment. Counsel for the other parties were not immediately available for comment Wednesday.

U.S. Circuit Judges Michael S. Kanne, David F. Hamilton and Amy J. St. Eve sat on the panel for the Seventh Circuit.

Daley is represented by Roy C. Dripps, Charles W. Armbruster and Michael T. Blotevogel of Armbruster Dripps Winterscheidt & Blotevogel LLC.

Jones Motor is represented by Joseph N. Gross, David M. Krueger and Emily C. Fess of Benesch Friedlander Coplan & Aronoff LLP. Zurich is represented by Beth Ann Berger Zerman of Lewis Brisbois

Bisgaard & Smith LLP.

The case is Michael Daley v. Jones Motor Company Inc. et al., case number 18-1924, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Peter Rozovsky.