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Fifth Third Strikes \$3M Deal In Worker Misclassification Case

By **Kurt Orzeck**

Law360, Los Angeles (February 19, 2015, 6:41 PM ET) -- Fifth Third Bank customer service managers alleging they were improperly classified as exempt from overtime asked a Pennsylvania federal judge on Wednesday to grant final approval of a settlement in which the bank would pay \$3.25 million to resolve the Fair Labor Standards Act collective action.

The plaintiffs, who accused the bank of failing to pay them overtime for hours worked in excess of 40 per workweek, said the deal is "ripe for final approval" after the court greenlighted the sending of settlement notices in November.

In December 2013, a judge conditionally certified a collective of people employed or formerly employed as CSMs for Fifth Third in the U.S. starting in August 2009. Ultimately, 541 individuals asked to join the action as opt-in plaintiffs, according to court documents.

The average gross settlement amount for each collective member would be more than \$6,000, Wednesday's memorandum says.

"The response of the settlement collective members has been extremely positive — not a single individual opted-out of the settlement, nor did a single individual object to any part of the settlement," the filing said. "To the contrary, the calls that plaintiffs' counsel has received from settlement collective members have been uniformly positive."

Fifth Third provides banking and related products and services to clients through its 1,322 full service banking centers, according to court papers. It allegedly employs CSMs at branch locations in Ohio, Kentucky, Indiana, Michigan, Illinois, Florida, Tennessee, West Virginia, Pennsylvania, Missouri, Georgia and North Carolina.

Amanda Stallard, who worked as a customer service manager at the bank and originally filed the collective action in August 2012, brought claims under the FLSA arising out of an alleged failure to appropriately compensate CSMs for all hours worked per workweek.

The plaintiffs claimed they mostly performed duties that are nonexempt in nature, including working on the teller line, greeting customers in the lobby, taking information for loan applications, and answering customer inquiries, as well as other customer service duties like selling banking products, opening and closing accounts, pulling daily reports, and counting and balancing cash drawers.

The bank replied that evidence submitted by members of the collective and other CSMs shows the full range of their managerial and supervisory duties, and that they were thus exempt from overtime.

The parties attended mediation in June of last year, and following "a full day of spirited

mediation," agreed to the deal currently before the court, according to court papers.

Fifth Third continues to dispute the validity of the claims, Wednesday's memorandum said. The bank has said it didn't willfully or knowingly violate the FLSA, and it has disputed the plaintiffs' computation of wages owed because they are not premised on a fluctuating workweek, among other arguments.

"Both sides recognize that these disputed issues could be subjected to extended litigation," if the settlement isn't approved, the filing says.

Also on Wednesday, the plaintiffs' attorneys asked a judge to approve their request for roughly \$1.1 million in attorneys' fees, about \$55,000 in costs, \$10,000 service payments to each of the named plaintiffs, and approximately \$33,000 in the claims administrator's estimated costs.

A spokesman for Fifth Third declined to comment Thursday. An attorney for Fifth Third declined immediate comment Thursday. Attorneys for the plaintiffs didn't immediately respond to requests for comment late Thursday.

The plaintiffs are represented by Seth R. Lesser and Fran L. Rudich of Klafter Olsen & Lesser LLP, Gregg I. Shavitz and Susan H. Stern of Shavitz Law Group PA, and Peter Winebrake, Andrew Santillo and Mark Gottesfeld of Winebrake & Santillo LLC.

The defendants are represented by Christopher Michalski and Morgan J. Matson of Littler Mendelson PC.

The case is Amanda Stallard et al. v. Fifth Third Bank et al., case number 2:12-cv-01092, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Jeremy Barker.

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