# Department Store Workers Score Cert. In Overtime Pay Suit

By **Matthew Guarnaccia**

Law360, New York (November 28, 2016, 7:24 PM EST) -- A Missouri federal judge on Monday granted conditional certification to a class of assistant managers at Midwest department store chain Gordmans Stores Inc. in a lawsuit accusing their employer of violating the Fair Labor Standards Act, ruling that the workers demonstrated the possibility of a companywide policy misclassifying them as overtime-exempt.

U.S. District Judge Ronnie L. White found that depositions by three assistant managers from different states all independently showed that the company denied them overtime compensation even though they did not perform managerial duties. Judge White ruled that this common thread demonstrated by the assistant managers was sufficient to label them as "similarly situated" for the purposes of a proposed class.

"All of the depositions indicate that the plaintiffs were paid on a salaried basis, despite performing extensive manual labor," Judge White said. "Likewise, all of the plaintiffs state that they were not properly compensated as a result of this company policy."

The case dates back to February when a former assistant store manager, or ASM, named Joshua Merchant sued the Omaha, Nebraska-based company, alleging that it failed to properly compensate him and a proposed class of current and former ASMs if they worked more than 40 hours per week. He said the ASMs, and similarly situated operations assistant store managers known as OPS employees, performed no managerial duties, such as hiring, firing, budgeting and scheduling, which are usually reserved for exempt employees. Additionally, Merchant said Gordmans failed to keep proper timekeeping records, in violation of the FLSA.

Merchant voluntarily removed himself from the case in July, but former ASMs Steve Cox and Samuel Mason then took up the mantle, filing an amended complaint.

Cox and Mason asked for conditional certification in August for a class of ASMs and OPS employees who worked for Gordmans from Feb. 18, 2013, to the present. The company fought back, saying that an ASM is not the same as an OPS employee, and therefore cannot be grouped in the same class.

Gordmans said ASMs managed individuals who performed merchandising and pricing functions to meet profit goals, while OPS employees managed the office, stockroom and guest services areas, including performing human resources tasks and completing paperwork.

In his ruling Monday, Judge White said that while discovery may prove otherwise, the proposed class met the low burden of proving that ASMs and OPS employees should be grouped in the same category. He pointed to the depositions, two of which were conducted by ASMs, while the other was conducted by an OPS employee.

Additionally, Judge White shot down a bid by Gordmans to limit the class notice date to July 24, 2016. The company had argued that this was the date that a Gordmans corporate restructuring became final, eliminating the ASM and OPS employee positions. But Judge White said it was unclear if the alleged exemption policy changed at that time, or what impact, if any, the restructuring had

on it.

Counsel for the assistant managers did not respond Monday to requests for comment.

Counsel for Gordmans declined to comment Monday.

The assistant managers are represented by George A. Hanson and Alexander T. Ricke of Stueve Siegel Hanson LLP, and Gregg I. Shavitz, Susan H. Stern and Camar Jones of Shavitz Law Group PA.

Gordmans is represented by Allison D. Balus, Christopher R. Hedican and Thomas E. Johnson of Baird Holm LLP, and Robert Kaiser and Williams Corrigan of Armstrong Teasdale LLP.

The case is Cox et al. v. Gordmans Stores Inc., case number 4:16-cv-00219, in the U.S. District Court for the Eastern District of Missouri.

--Editing by Breda Lund.