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Morgan Stanley Financial Advisers Get Class Cert. In OT Suit

By **Kelly Knaub**

Law360, New York (February 07, 2014, 3:35 PM ET) -- A federal judge in Florida on Friday granted conditional certification to a class of Morgan Stanley & Co. financial advisers who allege the bank withheld overtime compensation.

U.S. District Judge Kenneth A. Marra said in the 18-page opinion that the current and former financial adviser associates in training, or pre-production, who filed the case against Morgan Stanley had sufficiently demonstrated that they were subject to a common policy of being denied overtime by the bank and also met the burden of being similarly situated to one another.

"The court agrees with plaintiffs that conditional certification is warranted here," the judge said. "Plaintiffs have shown both a common policy and the requisite degree of commonality. Plaintiffs have demonstrated that they are similar not only in pay provisions and job duties, but also that they all were subjected to Morgan Stanley's requirements for pre-production FAAs to work off the clock."

According to the opinion, Fred Devries and Ruby Teich, along with opt-in plaintiffs Michael Aversano, Scott Belshaw, Kimberly Munsell and Kent Jasperse, filed suit against Morgan Stanley alleging that, despite the bank's written policy to pay overtime, the bank maintained a de facto "off-the-clock" policy in violation of the Fair Labor Standards Act.

Specifically, plaintiffs say that Morgan Stanley branch managers and supervisors instructed them not to accurately record their hours, changed or told them to change their timesheets to remove overtime hours or pressured them not to record the extra time even though they worked more than 40 hours per week during their four to six month training period.

After the suit was filed, five additional financial adviser associates — from Florida, Georgia, Wisconsin and Texas — additionally opted in and testified in depositions that other financial adviser associates in training at their branches or other locations worked overtime hours without actually being paid for the extra work, the opinion says.

"The court's ruling is not a decision on the merits of the plaintiffs' case," Mark Zelek, attorney for Morgan Stanley, told Law360 on Friday. "The court expressly states that it did not resolve factual disputes, decide substantive issues going to the ultimate merits, make credibility determinations, or otherwise weigh the merits of the underlying claims."

The class includes all current and former pre-production financial adviser associates who work or worked for Morgan Stanley in the three years preceding the judge's order.

Judge Marra said the parties were required to file a proposed notice to the collective class members within 20 days of the order.

Representatives for plaintiffs did not immediately return a request for comment.

Plaintiffs are represented by Gregg I. Shavitz, Susan H. Stern and Paolo C. Meireles of Shavitz Law Group PA and by Seth R. Lesser, Fran L. Rudich, Michael J. Palitz and Rachel Aghassi of Klafter Olsen & Lesser LLP.

Defendants are represented by Anne Marie Estevez, Annika E. Ashton, Mark E. Zelek, Thomas L. Linthorst and Michelle Seldin Silverman of Morgan Lewis & Bockius LLP.

The case is *Devries v. Morgan Stanley & Co. LLC et al.*, case number 12-81223, in the U.S. District Court for the Southern District of Florida.

-- Editing by Rebecca Flanagan.

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