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RadioShack Settles Manager OT Suits With \$41M Claim

By **Vince Sullivan**

Law360, New York (August 29, 2016, 9:31 PM ET) -- The liquidating trustee overseeing the bankruptcy estate of electronics retailer RadioShack received approval Monday from a Delaware bankruptcy judge to settle a pair of class action suits relating to overtime calculations for store managers dating back to 2012.

In an order issued by U.S. Bankruptcy Judge Brendan L. Shannon, the settlement between RS Legacy Corp. and the plaintiffs in a pair of Fair Labor Standards Act class actions was approved by allowing the class claimants to enter a \$41 million general unsecured claim against the estate. The suits arose from the company's use of the so-called fluctuating workweek to calculate overtime affecting annual performance bonuses for store-level managers whose stores made less than \$750,000 per year.

The claimants alleged that more than 7,500 employees were covered by the class period, which ran from May 2011 until the company filed for bankruptcy in February 2015. The total damages being sought by the class action suits was more than \$68 million, which the liquidating trustee, Peter Kravitz, disputed. Kravitz said he believed the class claims were baseless under applicable law, but proposed the settlement to avoid continuing the legal fight.

"Nevertheless, taking into account the uncertainty and risks inherent in litigation, the liquidating trustee has concluded that it is desirable and beneficial to fully and finally settle all claims related to the class actions," Kravitz said in a July motion seeking approval of the settlement.

The putative class actions, which are to be certified for purposes of the settlement only, were filed by Michael Sisson and Jamie Wills in federal courts in Ohio and New York, respectively. Both cases were appealed to their respective circuit courts after RadioShack filed motions to dismiss and those appeals were pending at the time of the company's bankruptcy filing. The automatic stay of litigation against the company put a hold on the cases.

The order approving the settlement also names class counsel for the suits.

Representatives for RadioShack and the class claimants could not be reached for comment Monday.

RadioShack Corp. filed for Chapter 11 protection in February 2015, listing \$1.4 billion in debt, and has since been through a series of bankruptcy sales to raise money to repay creditors.

The main event was a deal valued at \$160 million that preserved about 1,700 of the electronics retailer's stores as going concerns by selling them to creditor Standard General after a hotly contested auction and a four-day sale hearing in Delaware. Other asset sales have generated more than \$75 million for the estate.

Other employment issues have recently cropped up in the case. A putative class action was filed by California workers at RadioShack stores now operated by General Wireless, accusing the new owners of not honoring vested vacation. The suing employees say they earned time off while their stores were still owned by RadioShack and say General Wireless promised to pay out earned

vacation time. The suit claims that the new owner has now said it won't compensate employees in either time or money for their vacation.

California workers weren't covered by the Sisson or Wills class actions because the company did not use a fluctuating workweek schedule to calculate overtime for employees there.

The liquidating trustee is represented by Christopher M. Samis, L. Katherine Good and Chantelle D. McClamb of Whiteford Taylor & Preston LLP, and Jay R. Indyke, Cathy R. Hershcopf and Seth Van Aalten of Cooley LLP.

Class counsel is Jason R. Bristol of Cohen Rosenthal & Kramer LLP, Anthony J. Lazzaro of the Lazzaro Law Firm LLC and Thomas W. Coffey of Tucker Ellis LLP.

The case is In re: RS Legacy Corporation et al., case number 1:15-bk-10197, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Mark Lebetkin.

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