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AllianceBernstein Reaches \$3M Deal In OT Class Action

By **Dan Prochilo**

Law360, New York (August 12, 2013, 3:39 PM ET) -- AllianceBernstein has reached a \$2.98 million settlement of a four-year-old class action filed by employees accusing the investment management company of miscategorizing them as overtime-exempt even though they held clerical jobs, according to a filing in New York federal court Friday.

The memo from the employees' attorneys supporting the agreement asked the court to certify the settlement class, comprising anyone who worked as an associate portfolio manager or in a similar capacity in three of the company's divisions since June 2003, and said the lawyers could seek roughly \$993,000, or one third of the settlement fund, in fees.

The court should approve the settlement because it would resolve the case more quickly and cost efficiently than going to trial, and it would resolve the risks the employees would face by pressing on with the litigation, the filing said.

"Plaintiffs' counsel are experienced and realistic, and understand that the resolution of liability issues, the outcome of the trial and the inevitable appeals process are inherently uncertain," the memo said. "The proposed settlement alleviates these uncertainties."

Former associate portfolio manager Jason Silverstein sued AllianceBernstein, formerly known as Alliance Capital Management LP, in 2009 on behalf of himself and other similarly situated employees who were allegedly denied overtime in violation of the Fair Labor Standards Act and New York law.

In February 2006, Silverstein began as an entry-level associate portfolio manager, and he continued to work for the company and receive periodic raises until he was involuntarily terminated in April 2009, according to the complaint.

Silverstein claimed his employer misclassified him and other similar employees as overtime-exempt even though their primary job functions were to enter trade orders as recommended by AllianceBernstein's proprietary software application, the complaint said.

AllianceBernstein argued that the employees were subject to the FLSA's overtime exemption for administrative employees and that their jobs entailed the use of independent judgment. The employees said their duties were clerical in nature and did not involve using discretion.

Silverstein claimed he regularly worked more than 40 hours per week but that the company failed to pay him and similar employees overtime compensation at the rate of time and a half.

The class and collective action sought unpaid overtime wages plus prejudgment interest, an injunction against future violations, and fees and costs.

The suit, which was amended in July 2010 to add a new lead plaintiff, Jennifer Stamatelos, was filed on behalf of associate portfolio managers and similar employees with the private client, fixed income and institutional equity divisions of AllianceBernstein's Global Portfolio Management Group.

The parties **first tried settling** the litigation through mediation in June 2010, but after that effort failed, the court lifted a partial stay of the proceedings, and the discovery process continued.

The litigants had greater success with mediation when they gave it a second try in March and, after several days, reached the \$2.98 million agreement, calling for Silverstein and Stamatelos to receive \$25,000 enhancement awards for their roles in leading the suit while the eight other associate portfolio managers who opted in — after the class was conditionally certified by the court in August 2011 — would receive \$1,500 each.

If the court were to grant the settlement preliminary approval, notices would be distributed to the estimated 185 class members detailing the terms of the accord and giving them an opportunity to participate or to file an objection.

A representative for AllianceBernstein could not be immediately reached for comment Monday.

The company is represented by Lorie E. Almon, Robert S. Whitman and Mary E. Ahrens of Seyfarth Shaw LP.

The employees are represented by Adam T. Klein and Juno Turner of Outten & Golden LLP and Gregory Fidlon.

The case is Jason Silverstein et al. v. AllianceBernstein L.P., case number 1:09-cv-05904, in the U.S. District Court for the Southern District of New York.

--Additional reporting by James Armstrong. Editing by Melissa Tinklepaugh.

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