



## Conn. Case Spurs National Class Actions

AT&T charged with withholding millions of dollars in overtime pay

By **CHRISTIAN NOLAN**

**T**housands of “managers” for AT&T nationwide say their employer dialed the wrong number when it comes to paying them overtime.

A retired Wethersfield worker, Sharon Perkins, filed a lawsuit against the nation’s largest provider of phone and Internet services and the litigation floodgates opened after a federal judge in Connecticut granted class action certification.

When word got out, two more lawsuits were filed against AT&T in other parts of the country. In total, the cases allege AT&T and its subsidiaries have withheld as much as \$1 billion in overtime wages from more than 5,000 of the company’s “first-level managers.”

“The company knows all too well its ‘managers’ have that title in name only, and lack the typical managerial responsibilities you associate with a manager,” said one of the lead plaintiffs’ lawyers, Jeremy Heisler, of Sanford, Wittels & Heisler in New York City.

“Until the takeover by AT&T two years ago, BellSouth used to pay all its first levels overtime. What changed? Nothing, but the company’s desire to squeeze earned wages out of its employees’ paychecks,” said Heisler.

Lawyers for the AT&T employees claim that what AT&T calls first-level managers are nothing more than “ground troops” who perform clerical duties and relay information between real managers and technicians in the field for about 60 hours a week. The lawyers say they should be paid overtime for the extra hours above 40. AT&T says that, as



Law Tribune File Photo

**Kane Bennett**

managers, they are exempt from wage-and-hour laws requiring overtime pay.

Worldwide, AT&T employs 294,600 workers and has revenues over \$100 billion.

“The court’s decision in Connecticut opens the network for thousands of other AT&T level one managers all over the country to finally get paid for the endless hours a year the company expects them to work for free,” said another of the national lead lawyers.

AT&T’s Connecticut subsidiary, the Southern New England Telephone Co., or SNET, is represented by the New Haven of-

ice of Littler Mendelson. Attorney George O’Brien, of Littler Mendelson, a member of the team representing SNET, declined comment for this article.

AT&T spokesman Marty Richter said simply: “AT&T values its employees and complies with all federal and state wage and hour laws. We have no comment on these cases.”

### 200 Plaintiffs

The AT&T lawyers have argued that the case in Connecticut shouldn’t be granted class action status because employee claims under the federal Fair Labor Standards Act are “inherently fact specific,” thus not appropriate for trial as a collective action.

U.S. District Judge Janet C. Hall disagreed and notice has been sent to all Connecticut’s SNET first-level managers. Lawyers say there could be 200 plaintiffs in all who may be eligible for \$50 million in unpaid overtime and damages. Earlier in the year, Hall also denied a motion to dismiss the suit.

“This class certification battle was a big victory for the plaintiffs,” said attorney Kane Bennett of Raymond & Bennett in Glastonbury. “The original strategy for the employers was to defeat the class. Can you imagine how difficult that case becomes [for the defense] when you have to individually argue each [employee] and what their job description was.”

The case got off the ground in 2007 after Madison solo attorney Edmond Clark agreed to take Sharon Perkins’s case. The 29-year employee of SNET, who retired in January, said she had shopped her claim around to other law firms but none were

interested. Instead they told her to take the severance offer and abandon the complaint.

But Clark felt otherwise. "As I looked at the facts and what they told me and looked at the law I was fairly convinced there was

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an action worth pursuing here at that time," said Clark. He filed the lawsuit in June 2007 but had to battle it out in court for well over two years before gaining class action status.

"After I filed the case in June 2007, we began to get interest all around Connecticut and interest throughout the country from people in other states who thought they had similar causes of actions" against AT&T, said Clark.

As interest grew, Clark teamed up with

the employment class action firm of Sanford, Wittels & Heisler in New York City. The firm organized the cases on a national scale. In December, two more potential class actions were filed in federal courts in California and Georgia. The Georgia case encompasses BellSouth's nine-state region, primarily in the south.

Joe Lewis Luque, a named plaintiff in the recently filed California case in San Francisco, candidly described his situation in court documents.

"They called me a manager but that's the opposite of what I was," said Luque. "When I tried to fire a technician assigned to me who was high on drugs, my manager told me "Who the f--- do you think you are to fire someone? You can't fire anyone. You don't have the authority."

#### **'Substantive Duties'**

Attorney Daniel Schwartz, of Pullman & Comley in Hartford, said "the devil is in the details" for these types of claims." Schwartz, who writes the Connecticut Employment Law blog, said AT&T can attempt to argue that it did properly follow wage and hour rules by providing proof of supervisory or administrative responsibilities that the employees had.

But another management side employment lawyer, Robert Brody, of Westport's Brody and Associates, said AT&T could

likely claim the overtime exemption only if the worker is an executive or in a specific type of administrative position. Executives typically have the authority to hire, fire, discipline, evaluate and assign work to employees. Those in administrative positions can still be exempt from overtime laws if they take directions from an executive but have the independence to carry out orders as they see fit.

"In these tough times, it's great to call somebody exempt from overtime but you can't just say it. They have to have the substantive duties to qualify as exempt," said Brody.

Bennett, meanwhile, thinks the AT&T cases signal a sign of the times.

"These types of claims are not new but I think with the current economy, as employers look for ways to avoid paying overtime, you should expect more of these claims to be filed. Sort of a cause and effect type of situation," said Bennett.

All of the lawyers agreed that it's not easy for an employee, especially given today's job market, to decide to take on their employer.

"I continue to marvel at their courage to take on this battle for justice, particularly in the face of economic uncertainty of these times when job loss is the reality of the day and employer retaliation a very real fear," said Clark, the Madison lawyer. ■