

Golf Club Ready To Pay \$1.4M To Settle Workers' Wage Suit

By **Joyce Hanson**

Law360 (September 6, 2018, 8:28 PM EDT) -- A Texas federal judge was set Thursday to approve a \$1.43 million settlement for two similar wage-and-hour class actions brought by banquet servers from New York against a Dallas-based golf club management company, granting the parties' bid for a hearing to settle despite the objections of two class members.

Chief Judge Barbara M.G. Lynn had ordered the hearing on July 24, saying that she would review the motion for certification of the settlement classes brought by Century Golf Partners Management LP and named plaintiffs Jillian Izzio and Heather Zoeller, and would consider approving their "enhanced" settlement and agreed-upon award of attorneys' fees and expenses, even though the objectors continue to oppose the settlement after participating in mediation talks.

According to Izzio and Zoeller's memo in support of the motion, U.S. District Judge Jorge A. Solis in October 2015 took the first step in the approval process by preliminarily approving an agreement and provisionally certifying the settlement classes from four clubs in New York state managed by Century Golf — Brierwood Country Club, Fox Valley Club, Tan Tara Golf Club and Harbor Links Golf Club.

The banquet servers in the Izzio and Zoeller suit filed Sept. 5, 2014, in Texas federal court asserted claims for withholding service charges, off-the-clock work without overtime compensation, failure to reimburse for uniforms and failure to appropriately pay overtime, according to the Izzio and Zoeller memo. A similar suit was filed five days later in New York federal court, with plaintiff Kara Ashby asserting identical claims as those asserted in the Izzio action. In March 2015, the Ashby suit was transferred to the Texas court and consolidated with Izzio in April, the memo said.

Separately, banquet servers Diane Law and Diane Gulla in August 2013 had filed an action against Century Golf in New York state court, bringing claims for unpaid service charges and failure to compensate them for so-called "spread of hours" shifts, according to the memo. Spread of hours pay provides for an additional hour's pay at the minimum wage rate required by New York for work days that are broken into shifts and last longer than 10 hours.

In June 2014, Anthony Metzger filed an action against the golf club in New York federal court, asserting the same claims as those in the Diane Law action and adding claims for failure to calculate overtime under the Fair Labor Standards Act and for uniform requirement violations. Metzger brought his claims only on behalf of the Harbor Links banquet service workers, the Izzio and Zoeller memo said.

In October 2014, after discovery, the parties to the Diane Law action participated in mediation and reached the "basic structure" of a settlement agreement, according to the memo. They then engaged in successful settlement discussions with the Izzio and Ashby plaintiffs, and the initial settlement agreement was reached.

At the time of Judge Solis' preliminary approval in October 2015, the classes expressed "overwhelming support" for the settlement, with members entitled to 83.3 percent of the settlement opting in, including members at Harbor Links, the memo said. But Metzger and another class member, Jillian Brana, joined as objectors to the settlement, saying the Harbor Links claims were separate from the other plaintiffs' claims.

The objectors said the settling parties failed to meet the typicality and commonality requirements governing class actions under Rule 23 of the Federal Rules of Civil Procedure, arguing that the representative parties' claims were not typical of the class' claims as a whole and that the four catering facilities named in the suit did not share practices in common because they changed their contracts and other documents at different times in different ways.

Judge Solis disagreed with the objectors, however, and on March 2016 he entered a final order certifying the classes and granting final approval of the settlement agreement, according to Izzio and Zoeller, who asserted that the Diane Law plaintiffs and their counsel had "conducted extensive discovery, both formal and informal," concerning all four golf clubs, including Harbor Links.

"In approving the settlement agreement, the court specifically overruled the Metzger objections," according to Izzio and Zoeller, who quoted Judge Solis as saying in court to objectors' counsel, "I believe based upon what I have before me that they had sufficient information and that the Harbor Links — that's the crux of your objection is that this is unfair to the Harbor Links employees, and it doesn't appear to me to be unfair."

The objectors in April 2016 appealed to the Fifth Circuit Court of Appeals, which remanded the case for "appropriate Rule 23 findings," according to Izzio and Zoeller's memo. The remand led to the mediation talks and the enhanced settlement, the memo said.

Century Golf has agreed to pay an additional \$225,000 on top of an original \$1.2 million settlement for a total settlement amount of \$1.425 million, which includes payments to participating settlement class members, court-approved attorney fees, costs and expenses, according to Izzio and Zoeller.

Representatives for the plaintiffs, the golf club and the objectors did not immediately respond Wednesday to requests for comment.

The plaintiffs are represented by Kenneth M. Stillman of Law Offices of Kenneth M. Stillman, Innessa M. Huot of Faruqi & Faruqi LLP, Adam R. Gonnelli of The Sultz Law Group PC, and P. Andrew Vona and Brian J. Hutchison of Muscato DiMillo & Vona LLP.

The golf club is represented by Craig R. Benson, Sherry L. Travers, Russell Zimmerer and Jessica F. Pizzutelli of Littler Mendelson PC.

The objectors are represented by Sarah E. Cressman and James Nelson Thomas of Thomas & Solomon LLP and J. Derek Braziel of Lee & Braziel LLP.

The case is Izzio et al. v. Century Golf Partners Management LP, case number 3:14-cv-03194, in the U.S. District Court for the Northern District of Texas.

--Editing by Joe Phalon.