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RadioShack, Employees Settle ERISA Action

By **Richard Vanderford**

Law360, New York (November 05, 2009) -- RadioShack Corp. has reached a settlement in a proposed class action brought by members of a company 401(k) plan who accused the electronics retailer of funneling their investments into an underperforming mutual fund.

Plaintiffs' counsel indicated that the case had been settled, Judge Terry Means of the U.S. District Court for the Northern District of Texas said in an order Wednesday.

The order requires the parties to file an agreed motion to dismiss the case or stipulation due to settlement along with a motion for approval of settlement no later than Nov. 30.

The proposed class included up to 13,000 RadioShack workers, who claimed that the company invested their money in Putnam Investments, chosen for a fee structure that saved the company money despite the funds' underperformance.

A settlement in principle has been reached, but the details of that settlement have not yet been hammered out, said Ronald Kravitz of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, who represents the plaintiffs.

The attorneys are conferring to draft a written agreement, Kravitz said, declining to comment further on the terms of the settlement.

Representatives for RadioShack did not immediately respond to requests for comment.

The 401(k) participants filed suit in October 2007, claiming that Radio Shack led its retiree plan participants to invest heavily in company stock, in spite of knowledge of its shortcomings.

In March 2008, the judge dismissed the claims that the company wrongfully pumped its own stock. After the setback, the plan participants charged ahead with allegations that the plan's

involvement with funds from Putnam also amounted to a breach of fiduciary duty.

The plaintiffs alleged that RadioShack breached its fiduciary duty to plan members by allowing investment in Putnam funds, despite the fund managers' poor performance and high-profile scandals.

Putnam has paid out nearly \$200 million to settle allegations of market-timing brought by the U.S. Securities and Exchange Commission, the Massachusetts Security Division and investors burned by the questionable trades.

In addition to the scandal, the fund also suffered basic performance problems, the plaintiffs claimed.

The plan managers could have selected better-performing and less expensive investment alternatives, given that the largest component was "essentially an active-managed index fund that fails to perform as well as the index," an earlier motion for class certification said.

Putnam deducted fees from the funds' assets rather than charging RadioShack, which encouraged the company to stick with the fund in spite of its poor performance, the plaintiffs claimed.

Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, Squitieri & Fearon LLP, Ajamie LLP and Gainey & McKenna represent the plaintiffs.

Kelly Hart & Hallman LLP and Morgan Lewis & Bockius LLP represent RadioShack.

The case is In re: RadioShack Corp ERISA Litigation, case number 08-md-01875, in the U.S. District Court for the Northern District of Texas.

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