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WEEKLY

Judge approves CenturyLink settlement over back taxes



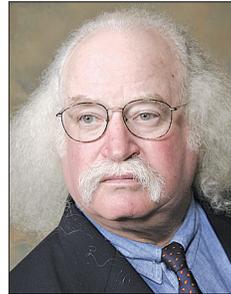
John Hoffman



John Mulligan Jr.



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BY HEATHER COLE
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After a three-hour hearing and a defense attorney threat to withdraw a \$15.5 million agreement because of an attorneys' fee issue, a St. Louis County judge approved both the settlement over phone taxes and the fees.

St. Louis County Associate Judge Joseph Dueker signed off on the settlement between CenturyLink and more than 250 cities. Adjusted for cities opting out of the settlement, it calls for CenturyLink to pay \$7.8 million in back taxes; \$2.3 million for taxes paid under protest and interim taxes; and a minimum of \$5.4 million in future taxes to be paid over five years after the final approval, according to figures provided by plaintiffs' attorney John Mulligan Jr.

About a dozen attorneys — including those representing CenturyLink, the plaintiffs, and six cities objecting to the settlement — attended a Dec. 12 approval hearing, which was conducted through drilling noise from courthouse renovations.

The settlement is the ninth in a series of lawsuits over the local taxes owed by telecommunication companies for added services, such as cell phone service, and surcharges beyond historical land-line offerings. The settlements of class action lawsuits over the issue have run in the tens of millions of dollars, with a \$65.4 million settlement reached with AT&T in 2007

weighing in as one of the largest.

Attorneys representing six cities objecting to the settlement raised a number of issues in court filings, including questioning settlement notices and revenue figures for CenturyLink. But objector's attorney David Streubel largely kept his arguments at the hearing to the subject of attorneys' fees.

The plaintiffs' attorneys' fees of \$2.83 million in the CenturyLink settlement are 25 percent of the total of the back taxes plus protest and interim taxes before the settlement amount was adjusted for opt-outs. Plaintiffs' attorneys John Hoffman and Mulligan pointed out that attorneys weren't taking a percentage of the future taxes, as they were entitled to. Adding in the guaranteed future taxes, their fee percentage dips to 16 percent of the total settlement amount before it was adjusted for opt-outs, Mulligan said later in an email to a reporter.

Plaintiffs' attorneys worked 3,300 hours, including in settlement negotiations over a year and a half, Hoffman, of St. Louis firm Korein Tillery, said at the hearing.

Streubel argued the fees should be docked in proportion to the number of class members — 19 cities — that opted out of the settlement. Among those opting out was Columbia, which would have gotten an estimated \$1.3 million in back taxes and taxes paid under protest. That city and Joplin, represented by Streubel's firm, Cunningham, Vogel & Rost, has filed a new lawsuit against CenturyLink. Cunningham Vogel

also represented all but one of the other cities that opted out.

Streubel estimated the attorneys' fees should be docked by \$431,000 and said the money should go to his clients. They paid his firm to sort through the numbers used for the settlement, find errors "and at least get the process a little closer to fair," Streubel said.

The defense wasn't advocating for an attorneys' fee reduction, but if any amount was cut from the fees, the money should stay with the company, said Stephen Clark, an attorney with Clark & Sauer representing CenturyLink. He estimated a potential cut of \$322,000 and said that the company now has the expense of defending the lawsuit filed by Columbia and Joplin.

CenturyLink attorneys successfully bargained for the right to rescind the settlement agreement if cities that would receive a total

of 5.5 percent or more of the back taxes money opted out, Clark said.

"If the court were to reduce fees by the percentage of opt-outs and have those fees be paid to Centurylink, Centurylink would waive its right to rescind," Clark said.

"Basically what we have here is a hostage negotiation," Hoffman said.

"It's a pretty good negotiation, though," Dueker said, pointing to the "11th hour" timing.

But the judge, who gave preliminary approval to the settlement in August, also approved the full attorneys' fee amount.

"Objectors suggest that their objections will be withdrawn in exchange for restoring 'basic side agreements,' which give them added benefits and fees for [Cunningham, Vogel & Rost]....This speaks volumes about the motivations at play here," Dueker said in his order awarding attorneys' fees.

The cities that objected to the settlement are Buckner, Butler, Cape Girardeau, Maryville, Platte City and Warrenton. The cities opting out are Adrian, Canalou, Columbia, Fenton, Green Park, Joplin, Lee's Summit, Liberty, Malden, Monett, Neosho, Overland, Raytown, Riverside, St. Joseph, Warson Woods, Webb City, Webster Groves and Woodson Terrace.

\$15.5 MILLION SETTLEMENT

TAXES CLASS ACTION

- **Court:** St. Louis County Circuit Court
- **Case Number/Date:** 12SL-CC01723-01/Dec. 12, 2014
- **Judges:** Joseph Dueker
- **Special Damages:** \$7,756,524.19 for back taxes; \$2,260,968.28 for protest and interim taxes through December 2014; \$5,443,750 future taxes guaranteed; \$2,826,083 in plaintiffs' attorneys' fees included in total
- **Caption:** City of O'Fallon, City of Troy and City of Orrick et al., v. CenturyLink Inc. and CenturyTel of Missouri
- **Plaintiffs' Attorneys:** John Hoffman and Douglas Sprong, Korein Tillery, St. Louis; John Mulligan Jr., Clayton; and Howard Paperner, Howard Paperner PC, St. Louis
- **Defendants' Attorney:** Mark Leadlove and Steven Perferment, St. Louis and Denver, Bryan Cave; Stephen Clark and Adam Hochschild, Clark & Sauer, Clayton