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## AA Skycaps Win Certification Of National Class

By Leigh Kamping-Carder

Law360, New York (February 04, 2010) -- A federal judge on Thursday certified a nationwide class of American Airlines Inc. skycaps who claim they lost out on tips when the airline imposed a curbside check-in fee for bags at airports, reversing an earlier ruling in a different case that a similar class would have been unmanageable.

In his ruling, Judge William G. Young of the U.S. District Court for the District of Massachusetts said that, although there are differences in state laws covering the plaintiffs' claims of tortious interference and unjust enrichment, the laws are similar enough to be tried in a class action covering skycaps across the country.

If and when the case goes to trial, Judge Young said he will put the question of American's liability to the jury in the form of a "core claim" that includes the common facets of the laws. But he will also ask jurors "special" questions to address the nuances of the laws from 34 jurisdictions.

"The common law of unjust enrichment and tortious interference is substantially similar throughout all jurisdictions at issue in this case," the judge said. "There are differences, but most of them do not concern dispositive issues, and the court can accommodate all of the significant differences by special questions to the jury."

Judge Young noted, however, that he would have refused to certify a class of skycaps bringing claims based on state wage laws, but the plaintiffs stipulated that they would not base their claims on wage law violations.

The suit involves a group of skycaps who claim that the airline's \$2-per-bag charge for curbside check-in help illegally denied them tips. The suit was filed shortly after nine Massachusetts skycaps won more than \$325,000 against American in April 2008 over the same claims, alleging violations of Massachusetts tips law.

In that case, captioned DiFiore et al. v. American Airlines Inc., Judge Young denied a bid for a nationwide class on the grounds that it would have been "unmanageable" and declined to certify a subclass of Massachusetts skycaps for failing to meet the numerosity requirement.

"This is a significant case addressing a serious wrong committed by an airline that affected workers across the country," said plaintiffs' attorney Shannon Liss-Riordan of Lichten & Liss-Riordan PC. "We're very pleased we're able to fight for them all."

Tom Smith, a spokesman for American, said the airline "respectfully disagrees with the court's decision," and believed class certification should have been denied.

Smith added that American has not ruled out asking for an interlocutory appeal to the U.S. Court of Appeals for the First Circuit.

"Notably, this decision is contrary to, and inconsistent with, the rulings in the earlier skycaps case, DiFiore v. American Airlines, in which the same court denied class certification," he said.

The DiFiore case, which included the nine skycaps from Massachusetts and one from Missouri, has had its own twists and turns, with the jury verdict ultimately being affirmed by the Massachusetts Supreme Judicial Court.

The high court's ruling prompted the plaintiffs to seek class certification in the current case, Overka et al. v. American Airlines, which had been administratively closed based on a stipulation between the plaintiffs and American, according to Liss-Riordan.

The Overka case was opened in order to let Judge Young could rule on the class certification issue, but now will be put back on hold pending American's appeal of the jury verdict in the DiFiore case, currently before the First Circuit.

When American imposed the fee in 2005, many passengers thought the charge was a tip for the skycap, rather than a revenue for the airline, which meant that the skycaps' compensation fell dramatically, according to the plaintiffs.

American has since rescinded the fee, according to the order.

The plaintiffs are represented by Lichten & Liss-Riordan PC.

American Airlines is represented by Fitzhugh & Mariani LLP.

The class action is Overka et al. v. American Airlines Inc., case number 08-cv-10686, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Melissa Lipman and Brendan Pierson