

Skycaps Seek Class Status In Jet Blue Bag Fee Suit

By Melissa Lipman

Law360, New York (September 02, 2008) -- A group of skycaps has requested certification of two overlapping classes in its suit against Jet Blue Airways Corp. over the airline's 2006 decision to charge a fee for bag-checking service.

The motion, filed Friday in the U.S. District Court for the District of Massachusetts, asks Judge George A. O'Toole Jr. to certify two nationwide classes against the airline and its contractor, Flight Services & Systems Inc. Skycaps employed both at Jet Blue terminals and by FSS will be in each of the national classes, according to the motion.

The lawsuit, originally filed in April, accuses the airlines of depriving curbside baggage handlers of tips that constitute the bulk of their earnings after Jet Blue began charging a \$2 fee for customers who use the checking services at more than a dozen airports nationwide.

Other groups of skycaps have brought similar suits against United Airlines Inc. and American Airlines Inc., both in the District of Massachusetts. In the American Airlines suit, nine plaintiffs won a verdict of more than \$325,000.

On Aug. 22, plaintiffs asked the court for leave to amend their complaint to add FSS and joint employment claims similar to those made against other airlines in related suits. The amended complaint would also add eight new plaintiffs — seven based at Logan Airport in Boston and one based in California — for a total of 11 plaintiffs, with 10 under the Massachusetts law claims.

That request, along with one filed the same day in a similar case against US Airways Inc., is based in part on Judge William G. Young's ruling in the American Airlines suit that the proposed Massachusetts class did not meet the numerosity requirement for class certification, according to the motions. The US Airways skycaps seek to add 12 new plaintiffs.

"Plaintiffs seek to add the ... Massachusetts skycaps in an abundance of caution — though plaintiffs have

alleged claims under the Massachusetts Tips Law on behalf of all 'similarly situated' employees ... plaintiffs add these Massachusetts plaintiffs in lieu of formally seeking certification of a Massachusetts subclass," the motion said.

Following that move, plaintiffs are no longer seeking the state subclass certification in the Jet Blue suit. Of the pending suits, only plaintiffs in the United case are still asking for the subclass, according to plaintiffs' attorney Shannon Liss-Riordan of Pyle Rome Lichten Ehrenberg & Liss-Riordan PC.

The plaintiffs still think they should be able to have both the subclass and national classes, but following Judge Young's decision "in order not to fight that battle repeatedly," the plaintiffs opted to name all or most of the Massachusetts plaintiffs, Liss-Riordan said.

The Jet Blue plaintiffs also moved for the court to order the defendants to provide the names of all potential class members and requested permission to send an opt-in notice to those individuals for the Fair Labor Standards Act claims.

The plaintiffs allege that the airline improperly took the tip credit since the skycaps are obligated to turn over the \$2 fee regardless of whether they collected the charge, according to Liss-Riordan.

On June 27, Jet Blue asked the court to transfer proceedings to the U.S. District Court for the Eastern District of New York, arguing that New York is "the clear center of gravity of this putative nationwide class action" and that Massachusetts law would likely "govern only a tiny fraction of the claims of the putative nationwide class," according to the company's motion.

None of the other airlines have sought a change of venue, according to Liss-Riordan, who said she did not expect the case to be moved.

Judge O'Toole has yet to rule on the motion, according to court documents.

The plaintiffs seek class certification, permission for other skycaps to opt into the suit, injunctive relief, restitution for lost tips and wages as well as full minimum wage, liquidated and multiple damages where permitted, and attorneys' fees and costs.

The United suit, also filed in April, involves nearly identical claims to those in a case filed against American in the same district in January 2007, according to the amended complaint.

In April, a Massachusetts jury awarded more than \$325,000 to nine skycaps employed by American at Logan Airport, finding the carrier liable for Massachusetts tortious interference and tips law claims.

A 10th plaintiff, a skycap at Lambert-St. Louis International Airport, lost his suit for claims of tortious interference under Missouri law.

In June, the judge in the American Airlines suit ruled that the jury had been given erroneous instructions regarding the airline's liability to independent contractors and granted a retrial for eight of the skycaps. The order did not apply to a nearly \$42,000 verdict for a ninth skycap who worked directly for American Airlines.

The plaintiffs argued that under Massachusetts tips law, it does not matter whether the airline directly employed the skycaps or not, according to Liss-Riordan.

The judge in that case told the parties he would certify the question to the Massachusetts Supreme Judicial Court. If the state high court agrees with the plaintiffs' argument, then they will not have to retry the American Airlines case, Liss-Riordan said.

Skycaps have also filed similar lawsuits against other contractors. One, against Huntleigh Corp., also in the District of Massachusetts, initially included US Airways' Prime Flight and FSS, which the plaintiffs have since chosen to add into the airline lawsuits in order to pursue the joint employment claims, according to Liss-Riordan.

The plaintiffs have continued to pursue Huntleigh separately because several airlines use its service.

Another contractor suit against Prospect Airport Services Inc., which was also originally included in the Huntleigh complaint, is pending in the U.S. District Court for the Northern District of Illinois.

"We've had to do a little bit of legal gymnastics getting these all filed in the right place, but the issue is that the \$2 charge itself was a gimmick that redirected the Skycaps' tips to the airlines," Liss-Riordan said.

In a separate case, American agreed in May to rescind its curbside check-in fee nationally and its no-tipping policy for skycaps at Boston's Logan Airport to settle purported class action claims that the policy was put in place in retaliation for the previous wage-and-hour lawsuit over the airline's curbside fee.

Only Jet Blue still uses the \$2 curbside fee. United also discontinued its charge a couple weeks ago, and US Airways has merged the charge into its new checked baggage fee, Liss-Riordan said.

"Nobody likes these new charges ... but I believe that where the \$2 charges have been dropped, some of the tipping has returned," Liss-Riordan said. "People aren't confused that this is the tip the way they would have been confused by the \$2 charge."

An attorney for Jet Blue was not immediately available for comment Tuesday.

The plaintiffs are represented in this matter by Pyle Rome Lichten Ehrenberg & Liss-Riordan PC. Jet Blue is represented by attorneys from Holland & Knight LLP.

The case is Travers et al. v. Jet Blue Airways Corp., case number 1:08-cv-10730, in the U.S. District Court for the District of Massachusetts.