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AA Skycaps Seek Cert. In 2nd Suit Over Bag Fees

By Melissa Lipman

Law360, New York (October 14, 2009) -- A group of skycaps suing American Airlines Inc. over its former curbside check-in fee for bags at airports across the country has launched a new bid for nationwide class certification based on a previous case that ended in a jury verdict for nine Massachusetts skycaps.

The motion — filed Tuesday in the U.S. District Court for the District of Massachusetts — argues that the earlier case demonstrated that it is feasible for the current suit to proceed as a multistate class action.

The suit involves 25 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.

The judge overseeing the earlier case had ordered a new trial after the verdict came down, finding that the jury was given erroneous instructions about what constitutes a service charge under Massachusetts tips law. But in August the Massachusetts Supreme Judicial Court reversed that decision, saying the federal judge had misinterpreted state law when he required a new trial.

That affirmation of the jury verdict persuaded the plaintiffs to launch their bid for class certification in the current case, which had been stayed and eventually administratively closed based on a May 2008 stipulation between the plaintiffs and the airline that called for American to rescind its check-in fee, according to plaintiffs' attorney Shannon Liss-Riordan of Lichten & Liss-Riordan PC.

Judge William G. Young, who is overseeing both skycap cases, rejected a similar motion without explanation in the earlier American case, which included skycaps from Massachusetts and Missouri. Though the jury had ruled for the Massachusetts plaintiffs under the state's tortious interference and tips laws, the Missouri plaintiff lost his suit for claims of tortious interference under Missouri law.

Now that Judge Young has "firsthand knowledge of the manageability of trying the claims of skycaps from multiple states," the plaintiffs hope the court will agree to certify the suit, according to the motion.

"Before the trial he did not know the case as well," Liss-Riordan said. "Now that we've been through the trial we have shown the court that this case cries out to be a national class action."

The plaintiffs argue that the claims of the skycaps from the two states were "tried together with ease" in the first suit both because the majority of the evidence deals with a centralized decision made in American's corporate office and because the two states' laws on tortious interference are "virtually identical," according to the motion.

Liss-Riordan said it would be nearly impossible to handle the case through statewide classes because there are relatively few skycaps at each airport, leaving the plaintiffs unable to demonstrate numerosity for certification.

American said in a statement that it planned to oppose Tuesday's motion as the airline "did successfully in similar litigation filed by the same attorneys."

But Liss-Riordan noted that "sometimes it's not such a bad thing for a court to take a look at this type of thing after a trial," arguing that the first American suit essentially acted as a test case to demonstrate to the judge that the action could work as a national multistate class action.

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

American Airlines is represented in the matter 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 Brendan Pierson