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After 1st Circ. Loss, AA Porters Seek New Trial

By **Jacqueline Bell**

Law360, New York (August 10, 2011) -- In a suit that fueled a related nationwide class action, American Airlines Inc. porters who say curbside check-in fees reduced their tips asked a Massachusetts federal court Wednesday for a new trial, arguing a First Circuit ruling didn't nix all their claims.

A decision handed down by the First Circuit in May found that nine skycaps' claims against American Airlines filed under the Massachusetts Tips Law were preempted by the Airline Deregulation Act. But the appeals court did not find that companion tortious interference claims were similarly preempted, the porters argued in the Wednesday motion, making them entitled to a new trial on that remaining claim.

"If the First Circuit had believed that the tortious interference claim was preempted just as the statutory claim was, it could have much more easily said so, but significantly, it did not," the plaintiffs argued.

The suit that had originally gone to trial claimed violations of the Massachusetts Tips Law and tortious interference, the motion said. The jury returned a verdict in the skycaps' favor on both claims and awarded them \$333,000 plus prejudgment interest and attorneys fees.

But in a May ruling, the First Circuit found that the Massachusetts Tips Law claim was preempted and "surmised" that the jury's verdict on the tortious interference claim was based on a finding that the airline had violated the Tips Law, the motion said

"In fact ... it is impossible to determine the reasoning behind the jury's decision to find in favor of the Massachusetts skycaps on their tortious interference claim. The verdict form was a general one and it did not require the jury to explain the basis for its finding of improper motive or means as to that claim," the motion argued.

The dispute began in 2005 when AA began charging passengers a \$2 fee for each bag checked curbside at Logan Airport in Boston. The porters had argued that passengers mistook the fee for a mandatory gratuity and sued the airline, saying the curbside check-in fee violated a Massachusetts law that says no employer can demand a deduction from a tip given to an employee by a patron.

The plaintiffs previously sought class certification, but District Judge William G. Young refused on the grounds that it would have been "unmanageable" and declined to certify the subclass of the Massachusetts skycaps for failing to meet the numerosity requirement.

But he granted certification as to liability in another related case, *Overka et al. vs. American Airlines Inc.*, in February 2010, saying state laws covering the plaintiffs' claims of tortious interference and unjust enrichment were similar enough to be tried in a class action covering skycaps across the country.

AA was represented before the First Circuit by Michael V. Powell of Locke Lord Bissell & Liddell LLP as well as by Amy Cashore Mariani, Michael A. Fitzhugh and David J. Volkin of Fitzhugh & Mariani LLP.

The skycaps are represented by Shannon Liss-Riordan and Hillary Schwab of Lichten & Liss-Riordan PC.

The case is Don DiFiore v. American Airlines Inc., case number 1:07-cv-10070, in the U.S. District Court for the District of Massachusetts.

-- Additional reporting by Roxanne Palmer. Editing by Eydie Cubarrubia.