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the Tower

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Cranwell settles tip case for \$7 Million

George C. Jordan III
Beacon Staff Writer

LENOX - 700 employees past and present will collect some \$7 million in tip money that was "skimmed off" by management at Cranwell Resort, Spa and Golf Club over a period of 10 years.

Management has acknowledged the class action lawsuit over allegations its management illegally withheld tips owed to workers between May 25, 2001 and May 1, 2011.

Carl R. Pratt, general manager, told The Berkshire Beacon, Wednesday that the next court date is Nov. 10 at 2 p.m. in Berkshire County Superior Court, Pittsfield at which time a final decision in the Fairness Hearing will be announced.

Preliminary approval by parties was agreed to in September.

"It was a joint action agreement by the parties," according to Atty. Paul Holtzman of Krokidas & Bluestein Boston, who represented the plaintiffs in the case.

Cranwell Management Corp., the owner of the resort, denied any wrongdoing.

"In the course of this ownerships 18 year history, Cranwell believed and continues to believe that all gratuities were distributed to it employees and was in compliance with the law.

"After these questions arose, Cranwell clarified its policies to ensure that there was no confusion on these issues.

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“We value the relationship with our employees and patrons are interested in moving forward.

“As one of the major employers and economic drivers in the Berkshires we will continue to provide a special place for both our employees and visitors as we have for the past 18 years,” Mr. Pratt said in a statement.

Mr. Pratt was named general manager in March replacing Lewis Kiesler, who retired after 11 years at Cranwell.

Prior to that he worked at Canyon Ranch from 1989 to 2006 and noted that he was not involved with a previous tips issue that later confronted the Ranch.

Suit filed four years ago

This is a result of two class action suits filed against Cranwell Management Corp. more than four years ago that allege employees were denied full service charges that were added to people’s hotel bills, as required by state law.

Meanwhile Massachusetts State Senator Benjamin B. Downing filed bill # 920-“An Act Relative to the Pooling of Tips”-at the request of Daniel A. Burack, president of the management team at Cranwell.

Sen. Downing’s bill would have weakened any civil action of claim of reimbursement from management.

Sen. Downing admitted that he made a mistake in filing the bill without doing some preliminary research as to its proposed impact.

“I filed the bill in January which was later heard by the Labor and Work force Development Committee in June. At that time, I asked the committee not to take any action.

“In March, I met with Atty. Shannon Lisa-Riordan to discuss the bill. Atty. Lisa-Riordan practice concentrates on class action litigation involving failure to pay wages, overtime, gratuities, minimum wage, and misclassification, according to the website.

“In retrospect, Section Four of the bill should have not been included which would have limited recovery of tips,” He said.

According to Atty. Shannon Lisa-Riordan, a partner at Lichten & Liss-Riordan, said the bill would prevent a class action suit against an individual owner of a company by its employees, and allow a business to claim as a defense that it had intended to pay a worker even when it has not and

eliminate common-law protections that provides a six-year statute of limitations.

One of the goals of the bill, filed by Sen. Downing was, according to Liss-Riordan, would have made that action to 2004 and thus limit the liability of a corporation or management for the past seven years.

“This would be a clear attempt to undo all the contrary court decisions that have occurred during that period,” she said.

Sen. Downing in pulling the bill after a group of former and current employees met with him to address the issue, claimed that the section of reduction in time sequence of seven years should never have been there and claimed it was a “drafting error.”

The Senator admitted that he filed the bill based in part by Mr. Burak.

“In retrospect,” Sen. Downing told The Beacon “That he made a mistake in drafting it...”

“I learn two major issues: I learned that you can’t talk about policy while there is a (pending legal) suit and perhaps when one filed a bill it appears as though you support the bill which in this case boxed me into a corner while the civil suit was pending,” the Senator said.

The lesson he said he learned is to have a series of conversations with people in support as well as those opposed before filing a bill. In essence, he needed to reach out and get other people’s opinion, which admittedly he did not do in this case.

Violations in Berkshire County

Violation of the tips law has occurred over the years in Berkshire County from the days when a Lenox restaurateur, would withhold partial tip earnings noting it was an “accounting cost of doing business” to a settlement by The Orchards Hotel, Williamstown for \$250, 000 involving 150 employees to Canyon Ranch, Lenox which settled a \$14.75 million suit brought on behalf of 600 employees back in 2008.

Patrick’s Pub was fined more than \$30,000 by the attorney general for taking tips from the waitstaff. The owners David, Micah and Bruce Powell paid \$25,343 in restitution in September to 46 employees and have been assessed a fine of \$4,800. They were found in violation by the office’s Fair Labor Division during the period of May 2008-December 2010.

In the Cranwell case, the suit was filed against Mr. Burak, his son, Peter, who serves as secretary of the corporation, Allen Movesian, treasurer; Kevin Kloc, the company’s former food and beverage manger and Lew Kiesler, the resorts former general manager by Stacie Wechter of Great Barrington, Kim Kimple of Lanesboro and Carli Bourassa of Lee on behalf of the other employees.

Atty. Holtzman and Atty. Richard Bluestein of Krokidas & Bluestein of Boston represented them in the class action suit.

“These are mandatory tips, and it’s a widespread issue in catering companies, restaurants, and resorts. This sends a strong message to other employers to comply with the law,” Atty. Holtzman said.

“Fortunately, Cranwell decided to settle. We were pleased they were willing to work with us, and we commend them for that.”

Cranwell spa employees filed suit in April 2007, and the food and beverage workers followed the next month after employees did not receive the entire 20 percent service charge customers pay instead of tipping workers individually.

Settlement negotiations, which began two years ago, agreed to a \$2.7 million settlement in the food and beverage workers’ case, and \$4.3 million for spa workers.

According to one former employee, management charged 20 percent gratuity but paid the employees only 15 percent—not the 20 percent as required by law. He is expecting to receive close to \$20,000 from the settlement.

Hanna Harbour, 29, of Sandisfield, who worked as a server at Cranwell from 2002 to 2006, earning \$2.63 an hour, plus tips, said she expects to receive a “couple thousand dollars” from the settlement.

Ms. Harbour, now a Massachusetts state trooper assigned to the Cheshire barracks, said “I’m happy I’m getting some money, but really it was my money to begin with.”

Ms. Harbour said she received tips from working at banquets, but not the full 20 percent the resort charged customers. She typically received no more than 15 percent, she said.

“But it’s not right for a corporation to skim off the top of people who work hard for it. That \$2.63 an hour is some people’s livelihood,” said Harbour.