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Waiters Sue Hoteliers Over Tips

By Pete Brush

Law360, New York (November 06, 2008) -- A putative class of waiters has sued Starwood Hotels & Resorts Worldwide Inc. and another hotelier, alleging they withheld tips collected at dining functions and used them to pay nonwaitstaff employees.

The lawsuit was removed to the U.S. District Court for the District of Massachusetts on Wednesday by hotelier Pyramid Advisors LLC, the second defendant in the case. The lawsuit initially was filed on Oct. 6 in Massachusetts Superior Court.

The lawsuit accuses the hoteliers of unjust enrichment, breach of contract and failure to pay the minimum wage under Massachusetts law and seeks damages in excess of \$5 million.

The putative class could number more than 100 waiters, according to court papers, but its exact size has yet to be determined.

The alleged violations took place at the Sheraton Colonial Hotel & Golf Club in Wakefield, Mass., and at about 25 other hotels and facilities in the state.

In removing the case to federal court, Pyramid said Wednesday it denies the factual allegations made in the case and denies that the putative class is entitled to relief.

According to the complaint, the defendants add a gratuity of between 12 and 20 percent to the bills at hotel dining functions but do not remit the total proceeds to the waiters.

Instead, the complaint says, the defendants keep a portion of the money and use it to pay managers and other nonwaitstaff employees. As a result, the waiters – who earn an hourly rate below minimum wage and depend on tips – say they are deprived of their rightful earnings.

The lawsuit also accuses the defendants of violating a "tip credit" law by withholding the gratuities despite paying the plaintiffs less than the state minimum wage of \$8 per hour.

"The Massachusetts tips law is one of the strongest in the country," Hillary Schwab of Pyle, Rome Lichten, Ehrenberg & Liss-Riordan PC, who represents the plaintiffs, said Thursday.

The plaintiffs filed statutory claims with the Massachusetts Attorney General's Office and have received right-to-sue letters, saying they've exhausted administrative remedies in the case.

The waiters are seeking a jury trial, full payment of their tips, an injunction stopping the hotels from withholding tips, treble damages, fees, costs and other relief.

Starwood Hotels, which is traded on the New York Stock Exchange, owns brands including Sheraton, Westin and St. Regis, among others, and operates 19 hotels in Massachusetts.

Boston-based Pyramid is a hotel owner and management company employing more than 7,600 workers, according to its Web site.

Neither Pyramid nor Starwood could immediately be reached for comment Thursday.

The plaintiffs in the case are represented by Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan PC.

The defendants are represented by Epstein Becker & Green PC.

The case is Malinski, et al. v. Starwood Hotels & Resorts Worldwide Inc., et al., case number 08-cv-11859, in the U.S. District Court for the District of Massachusetts.