

The Berkshire Eagle

Hotel and employees settle lawsuit over back pay

By Meghan Foley, New England Newspapers

Updated: 07/16/2010 07:21:07 AM EDT

Friday July 16, 2010

WILLIAMSTOWN -- The Orchards Hotel has agreed to a \$240,000 proposed settlement in a class action lawsuit involving approximately 150 current and former hourly employees.

Attorney Paul Holtzman, who is representing the employees, said Thursday while the settlement still has to receive final approval from the court, the "range of recovery" some employees will receive will be thousands of dollars in unpaid wages, tips and damages.

"We've gotten terrific feedback from members of the class who are delighted to be able to finally recover wages they earned through their hard work, but have not yet received," he said.

According to court documents, the settlement involves people employed by The Orchards Hotel between Aug. 15, 2006, and Aug. 23, 2008.

The Orchards was purchased by current owner HCC Orchards LP on Aug. 15, 2006, from International Hotel Management and Development Inc. for approximately \$6.3 million, according to real estate documents.

HCC Orchards LP is listed as a defendant in the case as well as Hay Creek Hospitality LLC, which has an ownership interest in The Orchards; Hay Creek Management Company, a New Hampshire corporation which manages The Orchards; and former General Manager Scott Frankel.

The lead plaintiff in the case is Deborah Mabey.

With state law ordering food establishments found to be withholding wages and tips to pay employees up to three times as much as they're owed, the employees

at The Orchards will receive between two and three times what they were owed in wages and tips, Holtzman said.

"The settlement is not only the recovery each employee is owed, but a multiple of what is owed," he said.

He said the case involved a portion of service charges -- which are added onto bills at the end of banquets, weddings and large events -- being withheld from servers, and all hotel and restaurant staff working at least eight-hour shifts were having 30-minute meal breaks deducted from their paychecks even though they weren't receiving them.

"What we alleged in this case was a portion of [the service charge] was going to managers, the sales department, and others who aren't permitted under law to dip into this money intended for waitstaff," he said.

Of the 20 percent "service charge," one-fourth or 5 percent was allegedly not going to the waitstaff, he said.

The Berkshire Eagle

"There were employees who were concerned the numbers didn't seem to add up. They were also concerned they were not getting clear answers to their questions," he said.

Efforts to reach a representative from The Orchards Hotel Thursday afternoon for comment were unsuccessful.

Holtzman said he commends The Orchards Hotel for addressing the issue promptly.

"Once we brought up the lawsuit, they moved promptly to seek a settlement and a resolution, and agreed to what we think is important relief," he said.

In addition to receiving unpaid wages, tips and damages, requiring transparency in sharing information between the hotel's managers and waitstaff was included in the settlement, Holtzman said.

"There can't be any mystery or confusion as to where the money is going," he said.

The settlement, which was reached on Feb. 4, received preliminary approval from Berkshire Superior Court in Pittsfield on May 27, according to court documents.

A fairness hearing on the settlement will be held on Sept. 8 in Berkshire Superior Court to determine if the court should grant it final approval, court documents stated.

Holtzman said businesses withholding employee wages and tips is a widespread problem in Massachusetts and nationwide.

Holtzman is an attorney with Krokidas & Bluestein

LLP, the firm that represented employees of Canyon Ranch in Lenox in a lawsuit claiming the business unlawfully retained employee wages.