

The Berkshire Eagle

Hotel, workers settle on tip issue

By Clarence Fanto, Berkshire Eagle Staff

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PITTSFIELD -- Following a scheduled fairness hearing on an out-of-court settlement, 150 current and former food and beverage workers at the Crowne Plaza Hotel stand to receive checks later this year to reimburse them for tips that weren't passed on to them by their employer.

It's the fourth recent settlement of its kind involving a Berkshire County hotel.

The Berkshire Common Corp., owner of the city's largest hotel, has signed off on a settlement of the class-action lawsuit originally filed at Berkshire Superior Court in November 2009 on behalf of the employees who served customers at banquets between November 2006 and June 2010.

The \$1.3 million settlement, which awaits expected final approval at a fairness hearing on May 1, includes legal fees. The workers will share about \$850,000, depending upon the amount of time they were employed at the hotel during the period covered by the lawsuit, according to attorney Paul Holtzman of the Boston firm Krokidas and Bluestein.

Some of the longest-serving employees may see payouts in the tens of thousands of dollars, he said. After the final hearing at Berkshire Superior Court, Berkshire Common is required to send out settlement checks no later than Oct. 17, according to court documents. Copies of the Nov. 29 settlement documents are in the mail to the affected employees.

Holtzman told The Eagle on Monday that any employee covered by the class-action suit who does not receive a notification should contact his office in Boston at (617) 482-7211.

One-third of the 20 percent service charges billed to patrons at banquets was withheld, said Anthony Chavarry of Dalton, who was the whistleblower and leading plaintiff on behalf of the workers.

The hotel's owners deny any liability or wrongdoing and assert that they have strong defenses to the employees' claims, according to the public court records.

Attorney Richard Michaud of the law firm Bernkopf Goodman in Boston, representing Berkshire Commons Corp. owner Eugene Weiss and Crowne Plaza manager Charles Burnick, told The Eagle on Monday on behalf of his clients that the case was based on a "misunderstanding," but that Berkshire Commons and its insurance company agreed to the settlement.

Holtzman said he has no reason to believe the settlement won't gain final approval.

"The resolution of the case reflects the commitment of the Crowne Plaza that employees receive their full gratuities," said Holtzman, "and we commend them for reaching this settlement and ensuring that the full amount of money left by patrons goes to the staff."

Chavarry, who's still in the food-service field but no longer working at the Crowne Plaza, told The Eagle he suspected "something fishy" was going on when the accounting department could not give employees "a straightforward answer on how much we actually made for an event we worked."

"We only make \$2.63 an hour and the waitstaff relies on tips," he explained, "so a substantial portion of our income was being skimmed off the top."

"I'm happy to stand up for people who are in a similar situation, being basically cheated out of a percentage of their income," Chavarry added. When he gets a settlement check later this year, he plans to put "a little something extra away to catch up on bills."

According to state law, only employees directly involved in service to customers are entitled to share tips -- waitpersons, counter staff, bartenders and buspersons are included. But food and beverage service managers, sales staff and others in management are not entitled to any portion of gratuities.

Holtzman's firm has represented workers in three previous Berkshire County cases involving withheld service charges.

He said investigations are under way into potential additional violations at companies in Berkshire County, but no court action has been initiated so far.

According to Holtzman, the latest case involving withheld service charges follows a statewide pattern at facilities or catering companies hosting weddings, conventions, business meetings or any other major function.

"It's a violation of the law when all of the money doesn't make its way to the employees directly involved in providing service," he said. Sometimes, a portion of the gratuities is diverted illegally to an executive chef, sales director, food and beverage director or other managers.

In addition to the violation of the law, "it's an issue of fairness to the workers as well as the patrons who believe the tips were provided to the employees," said Holtzman.

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Previous settlements ...

Here's a list of recent settlements involving Berkshire County hotels accused of failing to provide employees with gratuities:

- Cranwell Resort, Lenox, \$7 million settlement, November 2011, covering partially withheld tips to 700 staffers - food and beverage workers as well as spa employees. Resort denied wrongdoing.
- Orchards Inn, Williamstown, \$240,000 settlement, mid-2010, unpaid gratuities to 100 employees. Inn ownership denied wrongdoing.
- Canyon Ranch, Lenox, \$14,750,000 settlement, mid-2008, unpaid gratuities to 600 employees. Health resort denied wrongdoing.

Sources: Krokidas and Bluestein law firm in Boston; Eagle archives; other published reports.