

# Steak house may be liable for \$2.5m Suit against Lynn may have wide effect

## Waitresses win suit after losing their tip money and jobs

By Diane E. Lewis, Globe Staff | July 27, 2006

Hilltop Steak House in Saugus could be required to pay more than \$2.5 million in damages to wait staff after an Essex County jury found that the restaurant's function department illegally steered tip money to managers.

The Essex Superior Court jury that returned the verdict late Tuesday also found that the restaurant wrongfully fired four waitresses because they complained about losing a percentage of their tips.

The case, the first of 19 so-called "tip cases" to go to trial in the state, was filed after the Legislature amended Massachusetts law four years ago to say that waitresses, waiters, and bartenders are not legally required to share tips with managers or kitchen staff.

The Massachusetts tip law requires that all proceeds from tips, gratuities, and service charges that are added to bills after customers are served must be distributed to wait staff. The law bars restaurant owners from distributing the money to other employees, including managers, even if they also serve food and beverages.

"These waitresses made \$3.60 per hour plus a gratuity," said Boston lawyer Shannon Liss-Riordan, who represented the Hilltop wait staff. "But the managers who were getting their money were making several hundred dollars per week." She said that, in some cases, the waitresses received 14 percent of the 18 percent gratuity, with the remainder going to managers.

Boston lawyer John Coyne, who represented the restaurant, declined to comment.

The jury awarded \$125,000 to each of three plaintiffs, and \$75,000 to a fourth. The jury also found that harm suffered by the waitresses as a result of the restaurant's violation of the tip law and its decision to fire them merited tripling of \$610,000 in damages. Of that, \$160,000 will be shared by 42 members of a class certified by the court. With the addition of attorneys' fees and interest, the final judgment is expected to increase beyond \$2.5 million, said Liss-Riordan.

Janet Calcagno, 45, of Saugus said yesterday that she worked at the restaurant for five years and did not know that she was earning tips because the company did not allow wait staff to see the final bill.

“Normally, management would present the bills to the customers and wait staff was not allowed to see a bill,” she said. “Then, one day one of us saw the bill and noticed that they were charging 18 percent to the customers, but we were not getting all of the gratuity.” In January 2003, a month after four waitresses complained, they were fired. They are identified in court papers as Calcagno; Joan Rossi, 51, of Saugus; Sunok Gatchell of Revere; and Chong O’Connell, 45, of Everett.

During the trial, Hilltop Restaurant said its managers were entitled to tips because they regularly served food and beverages.

A dozen lawsuits over tips are still pending in the state, including cases that were filed against the Four Seasons, Gillette Stadium, the Weston Golf Club, Top of the Hub, Grill 23 & Bar, The Federalist, and Northeastern University. Seven other cases, including one involving room service at the Four Seasons and eating establishments at the Ritz-Carlton and Boston Harbor Hotel, have been settled.

Restaurants across the country are facing similar lawsuits. In June, a lawsuit filed in California on behalf of some 100,000 Starbucks counter staff was granted class-action status by a superior court judge. The suit alleges that the workers were forced to share their tips with supervisors in violation of wage laws. In New York, meanwhile, the state attorney general three years ago began cracking down on attempts to compensate wait staff only with tips. New York labor laws mandate a minimum wage of \$3.30 per hour for all wait staff regardless of the amount of tips earned.

Diane E. Lewis can be reached at [dlewis@globe.com](mailto:dlewis@globe.com).

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