

Ninth Circuit Court Decision Holds Tip Pooling Does Not Violate FLSA

Legal Alert
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Portland, ORE., February 24, 2010 – The U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Misty Cumbie v. Woody Woo, Inc.*, No. 08-35718 (9th Cir. Feb. 23, 2010) regarding tip pooling by wait staff. The Court held that requiring wait staff to participate in a tip pool that redistributes some of their tips to the kitchen wait staff does not violate the Fair Labor Standards Act (“FLSA”), provided that the employer pays a separate minimum wage. Misty Cumbie filed a class action lawsuit against Woody Woo, Inc. and Woody Woo II, Inc. (“Woo”), owners of the Vita Café in Portland, Oregon, alleging that its tip-pooling arrangement violated the minimum-wage provisions of the FLSA of 1938, 29 U.S.C. § 201 et seq. The Court concluded that “...the FLSA does not prohibit Woo’s tip-pooling arrangement.” Eric A. Lindenauer of Garvey Schubert Barer, the attorney representing Woo, said, “The case is important for restaurants in that it confirms that employers can require servers to share their tips with cooks and other ‘back of the house’ staff -- so long as they are paying a separate minimum wage. It also impacts casinos and other businesses whose employees receive tips.”

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