

## EMPLOYMENT CLASS ACTION STRIKES P.J. CLARKE'S



With the government cracking down on compliance with employment laws to raise tax revenues, many employees are involved in class actions, claiming poor work conditions. For instance, in November 2012, a former bartender at P.J. Clarke's, a New York saloon, filed a class action lawsuit against the pub for labor violations. The pub is located on Third Avenue at 55th Street in New York, NY. The former bartender claimed the owners, including actor and director Timothy Hutton, famous for the 1979 ABC TV film *Friendly Fire*, did not pay overtime, failed to deduct meal costs, and forced workers to over-report tips to prevent an IRS audit. Michael Nielsen, the former bartender, told the *Daily News*: "I worked there for five years, very hard, and throughout the entire time was treated without respect and unfairly." The former bartender, age 43, said for three years he started his Saturdays with a 7-hour shift at the Third Avenue pub then went across town for another 9-hour shift at its Lincoln Square location. When a person becomes a lead plaintiff in a class action lawsuit such as Nielsen, the individual is able to take part in choosing the lead attorney. Usually the lead counsel in a class action is approved by the court. In a class action, the lead plaintiff represents the injuries of the class members. A class action lawsuit bundles cases against a common defendant and if there is success, a court grants a settlement the class members equally split according to predetermined formula. In a class action, lead counsel designated by the court usually assumes a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all class members and their counsel. Lead attorneys are implied fiduciaries to all parties and parties' counsel in a class action so they are not permitted to engage in self-enriching behavior. Lead attorneys are analogous to trustees who look after a trust, rather than agents like the ordinary lawyer. The lead counsel has responsibility to pursue the good of all. For example, it appears they may make tradeoffs to maximize the value of all claims, and need just be reasonable and fair when making the tradeoffs. Nielsen said he regularly worked over 60 hours each week, but did not receive overtime. His attorney, David Gottlieb, said to the *Daily News*, "hundreds" of current and former staffers at the saloon should be eligible to join the federal lawsuit filed in Manhattan.