HOSPITALITY LIABILITY UPDATE

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1. **ADA/Facility** – *Rodriguez v. Investco, LLC, d/b/a Sandy Lake Towers*, No. 6:02-cv-916-Orl-31KRS (M.D. Fla. 02/24/04). Court dismissed claim against Investco as quadriplegic guest, who has filed approx. 200 lawsuits against establishments based on failure to comply with ADA guidelines, saying that Rodriguez was simply a pawn in an ongoing scheme to bilk attorney's fees in ADA lawsuits.
2. **ADA/Facility** – *Brother and Short v. CPL Investments Inc.*, No. 02-23680-CIV-Martinez (S.D. Fla. 03/22/04). Disabled Plaintiff, also a Plaintiff in 50 lawsuits in Fla., brought under the ADA, inspected rooms in Defendant's hotel to check accessibility. Other Plaintiff also disabled stayed in one room of hotel, but not others. Court dismissed first Plaintiff's case since he had never stayed in hotel. Court said second Plaintiff couldn't complain about rooms having barriers that he is unaware of. No proof of violations; hotel fixed allegations upon notice.
3. **ADA/Facility –** *Brother v. Tiger Partner, LLC,* Case No. 6:03-cv-445-Orl-22JGG (M.D. of Fla., 07/06/04). Motion of summary judgment granted for the Best Western hotel when litigious Plaintiff sought to bring a claim for ADA violations. Wheelchair bound Plaintiff stopped "by chance" at a Best Western inn near Orlando while traveling and inquired about the hotel's compliance with ADA standards. Plaintiff sued claiming he could not enjoy the use of the hotel because it lacked accessible rooms (they were all rented for the night) and did not have any "deaf kits". Court said Plaintiff had no standing to sue as he failed to show his chance of being injured was "real and immediate".
4. **ADA/Facility –** *Weddle v. Marriott Corp.* No. 99-CV-6482L (W.D.N.Y. 08/30/04) Prior to Plaintiff's arrival, she requested a handicapped accessible room at a Marriott hotel. None were available upon her arrival, so she requested a first floor room and the hotel assigned her to a third floor room. Early the next morning, during a fire alarm, the Plaintiff fell leaving her guestroom, but was able to get up and exit the hotel through the stairwell. The court held that the lack of an accessible room was not the immediate cause of her injuries.
5. **Attorney-Client Privilege/Incident Report Withheld–** *Celmer v. Marriott Corp.*, No.Civ. A. 03-CV-5229 (E.D. Pa. 07/15/04). Plaintiff was injured while making a delivery to the hotel. Plaintiff requested a copy of the security incident report and the request was denied based on attorney-client privilege and/or work product doctrine. Court granted Plaintiff's motion to compel and assessed hotel $1500 for legal costs and fees.
6. **Background Checks/Employees with Access to Guestrooms –** Nan Toder was attacked in her hotel room with a machete and strangled with her own pantyhose. The murderer, a hotel maintenance manager, was sentenced to life in prison in 2002. Nan's parents, Sol and Lin Toder, settled their claims with the hotel in April of 2004 for $4.6 million dollars. Parents are now lobbying state legislatures to require hotel and motel franchisees to do criminal background checks on all employees who have access to guestroom keys.
7. **Defamation/False Imprisonment.** *Pennoyer v. Marriott Hotel Services Inc*., No. Civ. A. 03-5060 (E.D. Pa. 06/29/04). Plaintiff was accused by hotel security of stealing convention related items at a Marriott hotel while walking around the convention exhibits, during the time when most attendees were at the opening night's festivities in another location. Plaintiff was asked to produce receipts for the items in the box he was carrying and was told to stay put by the hotel's loss prevention officer. The police subsequently arrived and let the Plaintiff go once Plaintiff produced the receipts. The

court said that the security officer's accusation was overheard by others in the exhibit hall and could be grounds for defamation. The court also allowed the claim of false imprisonment to go to trial and a jury would decide whether the Plaintiff had been confined.

8. **Defamation/Restaurant Review –** *Themed Restaurants, Inc. v. Zagat Survey, LLC*, 4 Misc.3d 974, 781 NYS2d 441 (Sup. Crt, NY Co, 2004). Plaintiff restaurant received an unflattering description and low rating in Defendant's publication well-known for its restaurant reviews. Plaintiff sued for defamation. The review was an edited summary of multiple anonymous consumer opinions. Such reviews are not actionable because they consist of opinion about the quality of food, service and décor which is protected speech. The court noted that the review did not imply that the food served was unwholesome or fails to meet health standards or that the restaurant is unsanitary. The complaint was thus dismissed. Additionally the court held that a commercial establishment open to the pubic is the equivalent of a public figure requiring it to plead malice with specificity.
9. **Discrimination/Racial/Failure to Assist with Issuance of New Room Key –** *Herman v. Marriott Hotel Services Inc*., No. Civ. AMD 03-2894 (D. Md. 05/11/04). African American guest, after working out in the hotel gym, found himself locked out of his guestroom and went to the front desk for help. Hotel's policy required identification of guest, either on the guest or in guest's hotel room, once accompanied by a hotel employee. Plaintiff stated his conversation with front desk clerk was not pleasant, and guest was impatient after 19-minute wait for clerk to call security and clerk's comments such as "you could have come in off the street." Also, Plaintiff alleged fellow conference attendee who was female and white, was issued a key from another clerk who had previously checked her in, without identification verification in violation of hotel policy. Suit for racial discrimination was dismissed and court said that a different hotel employee violating the lockout policy did not mean Plaintiff was discriminated against and found there was nothing wrong with hotel's policy or how it was enforced.
10. **Discrimination/Racial/Refused Service at Drive-Thru –** *OTAC #4, Inc. v. Waters,* No. Civ. A. 03A-11-004WLW (Del. Sup. Ct. 07/28/04). Plaintiff alleged racial discrimination when walk-up service was refused at a drive-thru window at Hardee's although a white patron in a vehicle was served. Restaurant stated they had a policy that refused service to people who walk up to the window rather than in a vehicle. Court agreed that Plaintiff was treated differently, not because of race but because he was on foot.
11. **Discrimination/Racial –** *Eddy, et al., v. Waffle House, Inc.* No. 2:03-2183-18 (D.S.C. 09/07/04). Two African American families entered a Waffle House restaurant and one patron overheard a racial remark made by an employee. Families left when a server approached the table and subsequently lodged a complaint on the restaurant's customer service number. Waffle House argued the remark was not direct evidence but a stray remark and not enough to support a charge of racial discrimination. The court said in an employment situation, one remark may not be enough, but in the public accommodation situation, it may be and remanded the case for further consideration to decide whether the one who heard the utterance was effectively denied service, another element of the racial discrimination claim. Summary judgment was granted against all patrons except for the one who overheard the remark.
12. **Discrimination/Age** – *Hospitality Law* (December 2004). Hotel is facing charges of refusing to rent a room to a couple, 20 years and 18 years old. Hotel turned them away because they weren't 21 years of age. State law allows hotels to refuse to rent rooms to minor under the age of 18.
13. **Dram Shop/Service Alcohol to Intoxicated Patron** – *Johnson v. Herbie's*, No. 01-2176B (Mass. Super. Ct. 02/10/04). Patron had two rum and coke drinks at a bar, and then subsequently crashed his car into Plaintiff's car causing injuries. Question was whether the bartender knew the patron was drunk when he was served. Plaintiff's arguments that patron said that the drinks were "pretty potent", patron's loss of neither memory nor that patron being relaxed and walking slowly showed that he was visibly intoxicated at the time the second drink was served. Perhaps different result if the Plaintiff showed patron was acting loud and vulgar, or was slurring his speech or stumbling.

14. **Dram Shop/Premises Liability/Slip and Fall on Ice and Snow –** *Mann v. Shusteric Enterprises, Inc.* No. 120651 (Mich. 06/30/04). Visibly intoxicated patron left the bar and slipped and fell on snow and ice in the parking lot. Defendant argued the applicable law is the Dram Shop law, which would protect the bar from suit, by the patron for any injuries related to the sale of alcohol. Court concluded that Dram Shop law didn't apply but that premises liability did. Case remanded with instructions to jury not to consider the fact that the bar knew the Plaintiff was intoxicated.
15. **Dram Shop/Intoxication of Employee –** *Biaggi v. Patrizio Restaurant, Inc.,* No. 05-03-00681-CV (Tex. Ct. App. 08/06/04). Plaintiff picked up her boyfriend from Defendant's restaurant after boyfriend's shift. Boyfriend was drunk and Plaintiff told boyfriend's manager that Plaintiff would drive. Plaintiff let her boyfriend drive and about a mile from the restaurant, the boyfriend hit a pole causing injuries to Plaintiff. Plaintiff sued restaurant under Dram Shop theory. Restaurant argued that Plaintiff should have known of the associated risks of drinking and driving. Court said Plaintiff's own negligence doesn't prohibit her from going forward with her case, as the harm the Plaintiff incurred was the foreseeable result of the intoxication.
16. **Dram Shop/Service to Intoxicated Patron –** *Alaniz v. Rebello Food & Beverage, LLC,* No. 14-03-00478-CV (Tex. App. Ct. 09/21/04). Patron was involved in a fatal accident one hour after leaving The Oasis bar. Plaintiff relied on videotape made at local convenience store just moments after the accident showing the patron was apparently intoxicated. Plaintiff was not able to show that the bar was aware at the time it served alcohol that the patron was intoxicated and the court was not willing to infer that he was intoxicated at the bar.
17. **Employment/Retaliatory Discharge/Sexual Harassment –** *Russell v. KSL Hotel Corp.*, __ So.2d __, 2004 WL 2101995 (Fl. App.). The court reversed a judgment NOV determining that nonsexual offensive conduct based on gender can constitute sexual harassment. The court further determined that the proffered explanation for the discharge of Plaintiff pastry chef was a pretext for prohibited retaliatory conduct.
18. **Employment/Negligent Hiring –** *Chagnon v. Tyson*, 11 AD3d 325, 783 NYS2d 29 (1st Dept, 2004). Plaintiff suffered injuries at a hotel during a press conference announcing a boxing match between Defendants Lennox Lewis and Michael Tyson. A cause of action for negligent hiring was dismissed in the absence of evidence showing Defendants' employer knew or should have known of the employees' propensity for the conduct that caused Plaintiff's injuries.
19. **False Identification/Club Suing Minors –** *Millennium Club, Inc. v. Avila***,** 809 N. E. 2nd 906 (Ind. App. 06/11/04). Minors gaining access by producing false identification that says they are at least 21 years old are inundating an Indiana club. The bar subsequently gets fined by the Alcohol and Tobacco Commission for allowing the minors to drink alcohol. The club sued the Defendant for $3000 and the small claims court dismissed the case. On appeal, the court said that the club is allowed to continue with its action and produce evidence that the club did not participate in the fraudulent identification scheme and that public policy should not prevent the cost from being borne by the minors.
20. **Forum Non Conveniens –** *Conaway v. Mandalay Resort Group*, 2004 WL 2474505 (Ca. App. 2 Dist.). Plaintiff, a resident of California, was injured at Mandalay Bay Hotel and Casino in Las Vegas resulting from an altercation with security guards. Plaintiff commenced a lawsuit in California. Defendant hotel sought removal of the case to Nevada based on forum non conveniens. Removal was granted because the injuries occurred in Nevada, the residence of a majority of the witnesses is Nevada, and Plaintiff made the decision to travel to Nevada.
21. **Franchise/Merger and Integration Clause** – *Days Inn Worldwide Inc. vs. Sai Baba Inc*., No. 3:03CV7148 (N.D. Ohio 01/26/04). Merger and integration clause kept slip page from being a part of franchise agreement, prohibiting franchisee's argument that amendment was valid.
22. **Fraud/Notice to Guests of Telephone Usage Charges –** *Hospitality Law* (October 2004). Las Vegas hotel settled lawsuit with former customers for failing to disclose to customers the collection of a $1 telephone usage surcharge and an energy surcharge of up to $3.50 per night.

23. **Group Sales Contract/Language Interpretation –** *National Tax Institute, Inc. v. Topnotch at Stowe Resort and Spa,* No. 03-1924 (1st Cir. 11/05/04). Plaintiff and resort entered into multi-year group sales agreement for conferences. Dispute arose on interpretation of language "Additional rooms may be blocked at the group rate subject to availability." Plaintiff's interpretation was that they are entitled to the group rate on rooms if the rooms had not yet been booked by other guests. The resort said it had full discretion whether or not to make the additional rooms available at the lower rate. Court of Appeals disagreed with the Plaintiff stating that it was unreasonable for Plaintiff to expect the resort to sacrifice its own profits to allow the Plaintiff to book more rooms at the lower rate.
24. **Intentional Infliction of Emotional Distress/Tribal Immunity –** *Webster v. Pequot Mystic Hotel, LLC,* 2004 WL 2397389 (Conn. Super.). A claim for intentional infliction of emotional distress applied where Plaintiff, who was the general manager of Defendant hotel, was the victim of a "deliberate, fraudulent, sham investigation" that ignored exculpatory evidence, deliberately misconstrued other evidence, and included hostile and unwarranted "interrogations" resulting in false evidence being presented to Plaintiff's superiors to garner the necessary support to terminate Plaintiff. Awards of punitive and non-economic damages were discussed in the opinion and upheld. Tribal immunity was also addressed and rejected.
25. **Mandatory Gratuities/Room Service Bill** – *Michaelson v. The Ritz-Carlton Hotel Company,* No. G032032 (Cal. Ct. App. 03/22/04). Hotels may charge mandatory gratuities when providing room service without violating the law. Plaintiff ordered room service from menu that said, "a taxable 16% gratuity charge and applicable sales tax will be added to all food and beverage prices." Court said patron is not only receiving food but also service and that they were not a single product.
26. **Mandatory Gratuities/Large Group** – *Hospitality Law* (November 2004). Patron, with a group of friends, had dinner at Soprano's Italian and American Grill in Lake George, NY. Patron refused to pay the mandatory 18% tip on the bill for his large party and only paid less than 10% due to alleged inadequate service. Restaurant called the police who arrested him for theft of services. Case dismissed after learning that restaurants may not legally obligate patrons to pay such a large mandatory tip.
27. **Mold Class Action against Hilton Hawaiian Village –** *Hospitality Law (January 2005).* Hilton hotel spent approximately $55 million to rid its Kalia Tower of mold in 2002. The tower was closed for a year. Guests staying in the tower prior to the shut down were not told of the existence of the mold problem. In a December 16 ruling, a circuit court judge certified a lawsuit as a class action where approximately 2,000 people are eligible to join
28. **Obesity -** *Hospitality Law (September 2004).* Many states have already enacted or will be enacting laws that prohibit citizens from filing suits against restaurants and food manufacturers for obesity, weight gain or health related concerns.
29. **Negligence/Defibrillator Not Necessary –***Salte v. YMCA,* 351 Ill.App.3d 524, 814 NE2d 610 (Ill.App., 2004). Plaintiff suffered a heart attack while using a treadmill at Defendant's health club. Defendant did not have a defibrillator on its premises. Plaintiff remained in cardiac arrest for eight minutes until the county paramedics arrived resulting in physical and emotional damages. The court held the Defendant did not have a duty to have a defibrillator on its premises, and Defendant's staff did not owe a duty to defibrillate Plaintiff.
30. **Negligence/Guest Attacked in Room**– *Young v. Kevin Fitzpatick and Sandman Motel,* No. 03-1038 (La. Ct. App. 02/04/04). Guest stabbed and beaten in room. Telephone wire disconnected; sent signal to front desk. Front desk clerk knocked on door and was told no problem. No other suspicious reason to investigate. Security plan by hotel would not have prevented attack so court ruled in favor of hotel.
31. **Negligence/Off-Premise Assault on Patron** - *Knebel v. Ka-Boos Bar & Grill,* No. 4-030/03-0653 (Iowa Ct. App. 02/27/04). Bar not responsible for off premise fight when bar had no reason to believe patron would be assaulted.

32. **Negligence/Off-Premise Assault on Employee –** *Brun v. Caruso*, 2004 WL 2915730 (Mass. Super.). Plaintiff's deceased was a waitress at Defendant restaurant. She was stalked by a frequent patron. Incidences of violence towards her by him escalated over time. The restaurant assigned the patron to a different server but did not exclude him from the premises, and hired him as a handyman, entitling him to unregulated access of the premises. He ultimately murdered Plaintiff's deceased by leaving her a package with a bomb in it which caused her death immediately upon opening it. In the wrongful death action the court refused to grant a summary judgment motion in favor of the restaurant.
33. **Negligence/Patron Injury No Warning Necessary –***Gauci v. Ryan's Family Steakhouses, Inc.*, Nos. L-03-1248 & L-03-1322 (Ohio App. 07/16/04). Plaintiff, along with a group of students, played a game of stuffing their mouths with dinner rolls, and upon being served a basket, stuffed two or more rolls into his mouth, causing injury when the steam burned his mouth. Court dismissed the case stating the restaurant was not required to warn the guest when served as the rolls were not extraordinarily hot. A restaurant is not expected to anticipate that an adult will stuff multiple rolls in his mouth.
34. **Negligence/Assumption of Risk Not Allowed When Negligence Present–** *Jagger v. Mohawk Mountain Ski Area, Inc.* 849 A.2d 813 (Conn. 06/22/04). Defendant ski company held liable for Plaintiff's injuries when Plaintiff collided with ski instructor during a preseason ski clinic. Court held that ski area operator had a duty to act reasonable and to minimize the risk of injury within areas of its control. Defendant argued that Plaintiff assumed the risk and the court said the doctrine creates an exception when an operator's negligence is present.
35. **Negligence/Off-Premises Incident–** *Legleiter v. Gottshalk*, 91 P.3d 1246 (Kan. App. 06/25/04). Bartender removed unruly patron at closing time. Patron injured in a fight with others on public property off premises of where the bar was located. Court held that absent circumstances that indicate there may be an elevated risk of danger to the patrons such as known criminal behavior in the area, the bar is not responsible for such injuries to patrons off premises.
36. **Negligence/Fitness Center Equipment Maintenance –** *Clayman v. Starwood Hotels & Resorts Worldwide*, No. 02-2597-JWL (D. Kan. 11/03/04). Plaintiff was injured while working out at Westin's fitness center. A heavy piece of equipment failed and caused a head injury. Westin outsourced the maintenance of its fitness equipment. Court denied summary judgment and stated that if the outside contractor was responsible for not maintaining the equipment, Westin could be held responsible for Plaintiff's injuries.
37. **Negligence/Emotional Distress –** *Wilson v. J & L Melton, Inc.*, No. A04A1725 (Ga. App. 10/07/04). Plaintiff began eating french fries after going through a McDonald's drive-thru and noticed blood spots on the fry container; she then vomited. Upon investigation, Plaintiff learned that the fry cook had cut his hand and had blood on it. The fry container was tested and showed it contained male blood. Plaintiff was tested negatively for HIV and hepatitis, but sued for emotional distress and negligence. The court denied the claim stating that Plaintiff's fear of being exposed to HIV or hepatitis is inherently unreasonable to recover damages for emotional injuries without proof that she was actually exposed to the diseases.
38. **Negligence/Off Premises Incident** – *Fellheimer v. Fairmont Hotels & Resorts, Inc.*, No. Civ. A.03-1677 (E.D. Pa. 10/11/04). Plaintiffs obtained a walking map from hotel, which took them off premises. Path was blocked by dense foliage and Plaintiff was struck by a car while crossing the street and was injured. Plaintiff sued hotel stating that the hotel knew of a dangerous condition along the path but failed to correct the condition or to warn them. Court rejected Plaintiff's claim stating that the hotel did not own or control the walking path, which was owned by Bermuda Government.
39. **Negligence/Guest Injuring Non-Guest –** *Delsol v. Layman, et al.*, No. B166359 (Cal. App. 10/25/04). Non-guest jumped from the roof of a four-story hotel injuring a pedestrian walking below. Court concluded that such act was not foreseeable and that the hotel did not have a special duty to Plaintiff.

40. **Negligence/ Pool /Proximate Cause –** *Lawson v. Edgewater Hotels, Inc.*, 2004 WL 2715302 (Tenn. App. 2004). Plaintiff youngster became ill due to excessive chlorine and a defective filtration system at a hotel swimming pool. The court granted Defendant's motion for summary judgment, on the issue of the level of chlorine, finding it was within acceptable range. On the issue of a defective filtration system, Defendant's evidence "certainly casts doubt on the assertion by the Plaintiffs that the ventilation system was not working". However, the court denied the summary judgment motion on this basis stating that, while Defendant "nipped at the heels" of the issue, a summary judgment motion requires that the Plaintiff's allegation be negated. Additionally, the decision addresses whether Plaintiff's injury could be caused by a malfunctioning filtration system and contains an enlightening discussion on proximate cause.
41. **Negligence/Liability of Hirer of Independent Contractor -** *Dunn v. LaJolla Cove Motel and Hotel Apartments, Inc*., 2004 WL 1814035 (Cal. App. 4 Dist.). Motel hired an independent contractor to install wall safes. Motel provided a table saw used by the contractor's employee. The saw lacked a properly installed blade guard system resulting in the blade severing contractor's fingers. The court affirmed the jury's verdict which attributed 75% liability to the motel, holding that the hirer of an independent contractor may be liable for injury to the contractor's employee where the hirer negligently provided unsafe equipment.
42. **Negligence Per Se –** *Atkinson v. MGM Grand Hotel, Inc.,* 98 P3d 678 (Sup. Crt. Nev., 2004). Plaintiff fell twenty feet into an excavation on the construction site at MGM Hotel and Casino in Las Vegas. An eight-foot chain-linked fence was built around the perimeter of the site but failed to block an entrance through a stairway. At the time of the accident Plaintiff had been drinking and entered the construction site looking for a secluded place to urinate. Plaintiff was entitled to a jury instruction on negligence per se.
43. **Premises Liability/Need for notice of debris on floor in trip and fall case –** *Oster v. Winn-Dixie Louisiana, Inc.,* 881 So.2d 1257 (La, 2004). Plaintiff slipped on a piece of plastic or cellophane, believed to be a wrapper from a cigarette package, on the floor of Defendant facility. Plaintiff failed to produce any evidence that Defendant created or knew of the hazard on the floor. This was "fatal to his claim." The court also noted that Defendant's records show that safety sweeps are made every half-hour. The closest inspection to Plaintiff's fall was 26 minutes prior.
44. **Premises Liability/Res Ipsa Loquitur/Exclusive Control.** *Nodurft v. Servico Centre Associates, Ltd.*, 884 So.2d 395 (Fl. App., 2004). While utilizing the ladies' restroom during a break in a business seminar held at a hotel, Plaintiff was injured when a wall-mounted trash receptacle fell and struck her foot. The court applied res ipsa loquitur notwithstanding "the instrumentality which caused appellant's injury was in a public place and accessible to . . . the public". The court held that the hotel had "sufficient exclusivity" to rule out the chance that the trash receptacle fell from the wall as a result of the actions of "some other agency."
45. **Premises Liability/Res Ipsa Loquitur/Comparative Negligence -** *Marx v. Huron Little Rock d/b/a Hilton Inn-LittleRock*, __ SW3d __, 2004 WL 2538264, No. CA 04-246 (Ark. Ct. App. 11/10/04). Plaintiff was injured while sitting on the closed lid of the toilet in her hotel bathroom putting on her pantyhose. The lid detached from the toilet-seat assembly, causing her to fall to the floor. The trial court wrongly instructed the jury on comparative fault, given that it is not uncommon for people to sit on toilet lids to perform various tasks. Jury instructions on res ipsa loquitur should have been read. The jury's verdict in favor of Defendant was thus reversed and a new trial ordered.
46. **Premises Liability/Open and Obvious/Assumption of Risk –** *Tucker v. ADG, Inc.* __ P3d __, 2004 WL 2098750 (Okla., 2004). Plaintiff, a spectator at a baseball game, was struck by a foul ball in his left facial and eye area. The court held that the risk of injury by a foul ball is a normal risk that is open and obvious to a spectator at a baseball game and therefore the stadium has no duty to warn, nor to reconstruct or alter the premises to eliminate the danger.
47. **Premises Liability/Open and Obvious/Ice and Snow Trip and Fall –** *Bentfield v. Brandon's Landing Boat Bar*, 2004 WL 1933179 (Mich. App.) Plaintiff slipped and fell on an accumulation of

ice outside a bar. The court held the condition was open and obvious defeating Plaintiff's cause of action unless the circumstance was unavoidable and presented an unreasonable risk of harm. The court held "there was nothing particularly unusual about a layer of ice and a layer of snow existing on the sidewalk such that the danger caused by it was unreasonable."

48. **Premises Liability/Security/Unforeseeable Event –** *Taboada v. Daly Seven, Inc*., 2004 WL 1858700, No. CL03-1075 (Va. Cir. Ct. 08/06/04). Plaintiff was viciously attacked while unloading his luggage in the parking lot of a Holiday Inn Express. Plaintiff claimed that the hotel had a duty to provide adequate security to deter or prevent criminal attacks and had recently terminated its security personnel due to cost containment issues. The case was dismissed because the incident was not foreseeable. Nothing about the hotel's business methods created a climate for criminal assaults nor had other attacks occurred on the premises.
49. **Premises Liability/Security** – Evidence of security precautions at other properties not relevant absent evidence that the other facilities were comparable - *Gerbino v. Tinseltown USA*, 2004 WL 3019093 (NYAD 4 Dept). Plaintiff security guard was attacked while attempting to prevent an assault of one movie theater patron by another. Defendant sought to introduce evidence that security measures at other movie theaters were no greater than at Defendant's. The court rejected the evidence absent proof that the other theaters were comparable. The case also contains informative discussions about a financially inadequate verdict and an excessive verdict.
50. **Premises Liability/Slip and Fall on Water** – *Henline v. Dover Restaurant Management Inc*., No. 2003AP050042 (Ohio Ct. App. 02/09/04). Slip and fall at Wendy's restaurant; although raining, water in vestibule located just prior to entering the restaurant area contained no signage and the caution sign wasn't visible to patrons until they entered the restaurant from the vestibule.
51. **Premises Liability/Entrance Area of Hotel**– *MacInternational-Savannah Hotel Inc. vs. Hallman*, 595 S.E.2d 577(Ga. Ct. App. 02/20/04). Guests were returning to hotel after dinner and attempted to enter a side door to hotel. They couldn't read the sign so they walked up brick steps to see sign that said, "Exit only. Do not enter". On the way back down the steps, Plaintiff tripped and broke her ankle. Suit for negligence that stairs were uneven, unlit and not maintained. Court held that hotel failed to illuminate the doorway, by posting a legible sign that could be read from the sidewalk, and by maintaining uneven steps
52. **Premises Liability/Slip and Fall/Hazardous Condition –** *Papoters v. 40-01 Northern Blvd. Corp.*, 11 AD3d 368, 783 NYS2d 555 (1st Dept, 2004). Plaintiff fell while descending stairs in the bathroom of a restaurant. An hour earlier Defendant saw a liquid on the stairs and reported it to a restaurant employee. At the time of his fall no wetness was observed by Plaintiff or witnesses. There being no evidence of a hazardous condition, summary judgment was entered for the restaurant.
53. **Premises Liability/Slip and Fall/Open and Obvious/Question of Fact –** *Schafer v. Steak N Buffett Mfg*., 2004 WL 2244124 (Ohio. App. 9 Dist.). Plaintiff fell at Defendant restaurant while going from a carpeted area to a tile floor. A metal strip joined the carpet and tile. Plaintiff claims she tripped on a buckle in the metal strip which she did not see prior to the fall. The restaurant denies the buckle caused the fall and argued that regardless, the buckle was open and obvious. There being questions of fact, summary judgment was properly denied.
54. **Premises Liability/Slip and Fall/Constructive Notice –** *Berger v. ISK Manhattan, Inc.*, 10 AD23d 510, 781 NYS2d 648 (1st Dept, 2004). Plaintiff slipped and fell on a rainy day on interior stairs at a McDonald's restaurant. After the fall he observed a wet patch. Five minutes earlier when he ascended the stairs he had not seen any wet spot. There was no evidence from which a jury could reasonably conclude that the wet spot on which Plaintiff slipped existed for a sufficient amount of time for the restaurant to have discovered and remedied it. Therefore Defendant was entitled to summary judgment.
55. **Premises Liability/Trip and Fall/Open and Obvious/Question of Fact -** *Collins v. McDonald's*, 2004 WL 1752913 (Ohio App.). Plaintiff tripped on a hole in the sidewalk outside a McDonald's restaurant while distracted by assisting other customers out the door, and suffered injuries. Whether

or not the hole was open and obvious was a question of fact that prevented the court from granting McDonald's summary judgment motion. The court rejected the notion that an ordinary person would look constantly downward while walking on a sidewalk.

56. **Premises Liability/Trip and Fall/Open and Obvious –** *Ryan v. Guan,* 2004 WL 1728519 (Ohio App. 5 Dist.). Plaintiff fell as she stepped onto the "flared side of a curb ramp" outside a restaurant. She alleged that the ramp flare was approximately one and one-half times steeper than the applicable building code provides. The court held this condition was open and obvious, and affirmed summary judgment for the restaurant.
57. **Premises Liability/Trip and Fall in Parking Lot –** *Marchant v. Boddie-Noell Enterprises, Inc., d/b/a Hardees of Bluefield,* No. 1:04CV00021 (W.D.Va. 11/10/04). Court dismissed a case where patron fell outside of a Hardee's restaurant in the parking lot. Plaintiff was disabled, walked with a walker and had a history of blacking out. A week later, Plaintiff returned to the restaurant and noticed orange cones on the sidewalk covering an exposed drainpipe, and subsequently sued the restaurant. Court held that it was just as likely that Plaintiff tripped over his walker as he could have stumbled on the sidewalk. Plaintiff wasn't sure the same area where he fell was the spot with the exposed drainpipe.
58. **Premises Liability/Trip and Fall/Expert Witness –** *Radford v. Monfort,* 2004 WL 1961674 (Ohio App.). Plaintiff slipped and fell on a rain-soaked sidewalk outside a McDonald's restaurant. Plaintiff hired a civil engineer and licensed surveyor as an expert to determine whether the walkway outside the restaurant was safe. The expert based his opinion on a method that deviated from the industry standard guidelines. The trial court's exclusion of the expert's testimony was not an abuse of discretion.
59. **Premises Liability/Slip and Fall** – *Beair v. KFC National Management Co.,* No. 03AP-487 (Ohio Ct. App. 03/23/04). Plaintiff slipped at KFC restaurant after refilling her drink and noticed the floor was wet and greasy under her hands. The manager's first statement to a nearby employee holding a mop, bucket and cleaning supplies was "[w]here is the wet floor sign?" The employee then posted the caution sign. Evidence showed that KFC knew about the slippery condition.
60. **Premises Liability/Failure to Provide Assistance to Guest on Arrival** – *Michaels v. International Rivercenter Partnership,* No. Civ. A. 03-1624 (E.D.La. 04/30/04). At midnight in 2002, guests arrive at Hilton New Orleans Riverside hotel. Registration desk was located on second floor. Hotel did not provide bellman or other employee to help late arriving guests. After a short wait, Plaintiff took escalator to the second floor and her wheeled luggage bag got caught in escalator jerking her arm and causing her to lose her balance sustaining injuries. Plaintiff claimed that an unsafe condition was created by the hotel for not having an employee on the first floor, uninterrupted elevator service and directions to a working elevator. Court agreed with Plaintiff that the hotel had a duty to maintain its premises in a reasonably safe and suitable condition; however, in this case the hotel did not have a duty to provide uninterrupted elevator and/or bellman service or to provide a sign informing the guests of how to contact hotel staff.
61. **Premises Liability/Slip and Fall –** *Flagstar Enterprises, Inc. v. Burch,* No. A04A0413 (Ga. App. 06/15/04). Patron at a Hardee's restaurant slipped and fell without being able to identify what caused the slick surface. It was not raining, but after giving notice to the manager, the manager put down floor mats and set up "wet floor" signs. The court dismissed the case stating that the patron did not sufficient evidence to support his claim. There was no evidence of an unreasonable hazard on the floor and Hardee's didn't have any knowledge of an unreasonable hazard. The manager's corrective action was not considered an admission of liability.
62. **Premises Liability/Non-Guest Activity Off Premises–** *Felix Aguila v. Hilton Inc*., No. 1D02-5061 (Fla. App. 06/03/03). During Spring Break in Panama City, Fla., a hotel security guard ordered all occupants of a loud, noisy guestroom to leave the room. One occupant, an unregistered guest, left and drove off property, killing the Plaintiff's daughter. The court said that a motel does not have a duty to protect the public from harm caused by patrons or guests off premises. Court also said that

the guard did not order the patron off the property, just out of the room, and the patron chose to drive away.

63. Premises Liability/Slip and Fall – *Clennon v. Hometown Buffet, Inc.*, No. AC24168 (Conn.App., 07/27/04). An 11 year old girl slipped on a wet, recently mopped floor while approaching the dessert buffet table to get some ice cream. The floor was noticeably wet and there were yellow cones in the area warning customers of the condition, although the girl did not see the cones until after she fell. Court said the restaurant created the slippery condition and the girl slipped on water not another substance and reaffirmed the lower court's decision.

64. Premises Liability/Ceiling Collapsed – *Harris v. Tri-Arc Food Systems, Inc.*, No. COA03-1106 (N.C. App. 07/20/04). Ceiling above patron head collapsed while visiting a Bojangles restaurant. Trial court granted summary judgment for Bojangles, Plaintiff appealed. The Appellate Court would not apply the doctrine of *res ipsa loquitur*, a doctrine where negligence is inferred by the circumstances surrounding the incident. Plaintiff failed to show that the instrument that caused the injuries was under the business' exclusive management and control. Court stated that the cause might have been a latent construction defect occurring when the restaurant did not have exclusive control over the premises.

65. Premises Liability/Chair Collapsed – *Banks v. River Oaks Steak House,* No. 2-03-363-CV (Tex. Ct. App. 08/19/04). Plaintiff sued to recover injuries from a chair in restaurant after it collapsed. Court stated that the restaurant inspected the chairs on a daily basis and none of the employees knew or had reason to know that the chair was dangerous. Licensed engineer also concluded that metal fatigue may have caused the chair to collapse and an untrained observer would not have known about the condition, therefore the appeals court agreed that the restaurant had no actual or constructive notice that the chair was unsafe.

66. **Premises Liability/Stool Collapsed** – *Harper v. Advantage Gaming Company,* No. 38,837-CA (La. Ct. App. 08/18/04) A stool which Plaintiff was sitting on in a video poker room at a Mexican restaurant collapsed under his weight. Plaintiff argued that a prior incident where an obese guest had damaged a chair's leg and the chair was subsequently disposed of was reason to prove that the restaurant had actual or constructive notice of the defective chair. Plaintiff was not able to successfully prove that disposal of the other chair showed that his chair was defective.

67. Premises Liability/Furniture Not Defective – *D'Amore v. Ritz-Carlton Hotel Co.,* No. G032731 (Cal. Ct. App. 08/23/04). Plaintiff attempted to open drawers that were locked where the mini-bar was located in an armoire at a Ritz-Carlton hotel. One of the handles on the door came off and hit Plaintiff's eye causing a detached retina and preventing Plaintiff from doing his job as a nuclear engineer. Court held that hotel didn't have a duty to warn as the armoire was not defective or dangerous but did recommend that the hotel include an updated mini-bar operation policy with the information it provides guests at check-in.

68. Premises Liability/Non-Dangerous Parking Lot – *Underwood v. Best Western West Bank, Inc.*, No. 04-CA-243 (La App. 08/31/04). Plaintiff fell injuring his right ankle in the parking lot of Defendant's motel. Plaintiff was not able to prove that the ramp presented an unreasonable risk of harm. In a parking lot where surfaces tend to be irregular, the owner may only be held responsible if the defect presented an unreasonable risk of harm.

69. **Premises Liability/Falling Icicle Over Entrance** – *McLean v. Rockford Country Club,* No. 2-03-0887 (Ill. Ct. App. 09/23/04). A falling icicle hanging over the entranceway to a club injured husband and wife. Defendant argued the natural accumulation rule, which protects business owners from liability, based on an accumulation of snow or ice that occurs naturally. Trial court dismissed complaint, and on appeal, the appellate court reversed allowing the Plaintiffs to amend their complaint to provide for an allegation that the club owner had a duty to provide a reasonably safe way to enter and exit the premises. Court said that a business owner who has a relationship with patrons and owes them a duty couldn't invoke the natural accumulation rule.

70. **Premises Liability/Slip and Fall** – *Rodriguez v. T Molitor, Inc*. No. 248140 (Mich. App. 09/30/04). Plaintiff slipped and fell in a snow-covered parking lot after having breakfast at Defendant's restaurant. During breakfast, approximately 5 –6 inches of snow fell. Plaintiff was aware of snow when entering restaurant. Plaintiff claimed ice under the snow caused the fall, which was not visible. Court held that ice and snow were an open and obvious condition that is anticipated on a cold winter day in Michigan; based on an objective standard.
71. **Premises Liability/Workers Compensation –** *Eagledale Enterprises LLC d/b/a Club Mecca v. Cox*, 816 N.E.2d 917 (Ind. App., 2004). Female off-duty employee was attacked by several female patrons at an upstairs VIP lounge in a nightclub in Indiana. Court held that although club may have had enough security officers on staff (20 officers for 700-800 patrons); however, the officers were not at their designated posts, were not adequately trained and were not enforcing the dress code. Employee was not entitled to workers' compensation recovery because, at the time of the injury, she was not engaged in an activity that was at least incidental to her employment.
72. **Premises Liability/Trespasser Status –** *Leffler v. Sharp, et al.*, No. 2003-CA-00378-SCT (Miss. 11/10/04). Locked glass door on second story of bar which lead to roof was marked "NOT AN EXIT". Bar patron exited through a second story window onto the roof located next to bar. Plaintiff fell approximately 20 feet causing severe injuries. Court held that Plaintiff, at first an invitee, became a trespasser upon exiting the bar. Bar owner owes a duty to refrain from intentionally or maliciously injuring a trespasser. Court held the bar owner took reasonable steps to secure access to the roof area by posting a sign and locking the door.
73. **Premises Liability/Speaker Placed by Independent Contractor Injures Patron –** *Magrum v. Dee Dee's A Tavern, Inc., et al.*, No. 08041 (N.Y.A.D. 11/10/04). Plaintiff was injured when a speaker sitting on top of a dart game in a bar fell and hit her head. Speaker was placed on the dart game by an independent contractor, karaoke performer. Tavern knew about speaker placement and that it was not secured, thereby negating the defense that the contractor was negligent. Summary judgment was denied.
74. **Price Gouging/Florida Hurricanes –** *Hospitality Law (September 2004)* Florida's Attorney General is reviewing complaints lodged against two Florida motels for price gouging that allegedly occurred during last summer's hurricanes in Florida. There were over 1,200 price-gouging complaints statewide that were filed by consumers. Under Florida law, the cost of necessities must remain at a price that was average in the 30 days preceding a disaster.
75. **Privacy/Stolen Credit Card** – *United States v. Cunag*, No. 03-5067 (9th Cir. 06/14/2004). Defendant, who checked into a California hotel, had no expectation of privacy as he used a stolen credit card to pay for the room. Hotel accepted credit card and was given fraudulent papers authorizing the use of the card. Police were able to search Defendant's guestroom.
76. **Property/Treasure Trove –** *Franks v. Kazi*, VCA03-1211 (Ark. App. 11/03/04). Plaintiff discovered $14,000 in cash in a dresser drawer at a Comfort Inn and sued the hotel owners to obtain the money. Court decided that the property was mislaid, intentionally placed by the owner, and not abandoned or lost; and therefore must be held in trust by hotel owner until rightful owner is found.

77. **Respondeat Superior –** *Williams v. Bell,* __ S.E.2d __, 2005 WL 14007 (NC App). Plaintiffs were enjoying a boat ride when their vessel was struck causing death of one and injury to another. The accident occurred during a national fishing tournament sponsored by American Bass Fishing Club, Inc. (ABFC). Defendant Bell, the operator of the boat that hit Plaintiffs, was the principal organizer of the tournament, a volunteer job. Once the tournament began he was a contestant and not an official. Per tournament rules, the fish were weighed and released back into the lake. On the day of the accident Bell had agreed to release the fish. After completing that task he returned to the dock, retrieved his wife who was waiting for him, and headed back in his boat to its trailer. The accident occurred during that trip. The court dismissed the case against ABFC finding that Bell had completed his activities on behalf of ABFC at the time of the accident
78. **Respondeat Superior/Scope of Employment –** *Wallace v. M, M&R, Inc***.,** 600 S.E.2d 514 (N.C.App., 2004). Plaintiff bar patron was identified by bouncers as a customer who had started a fight a week earlier. The bouncers decided as a group to approach Plaintiff and remove him from the bar. In the process several bouncers repeatedly struck and kicked Plaintiff resulting in serious injuries. The court concluded that the jury could reasonably determine that the injuries occurred while the bouncers were acting within the scope of their duties.
79. **Scope of Employment –** *Boyce v. Benbow Inn.,* No. DR010724 (Ca. Ct. App. 08/30/04). Plaintiff injured in an auto accident with a chef who was on his way to work. Employer not responsible for acts of its employees that occur during commute to work, however, it may be responsible if employee is on a special errand for the employer. Court stated that the chef brought food and equipment home for his own convenience and not with authorization from Benbow Inn.
80. **Scope of Employment/Workers' Compensation –** *Van Vleet v. Montana Association of Counties Workers' Compensation Trust,* __ P3d __, 2004 WL 2954909 (Sup. Crt. Mont.). Plaintiff's husband was injured when he fell from a hotel balcony while attending a conference of the Montana Narcotics Officers Association. Upon arriving at the hotel and registering, he went to a conference hospitality room to network and meet vendors of equipment he sought to purchase. His superiors were aware that alcohol was available in the hospitality room and instructed him only to refrain from drinking and driving. The hospitality room closed after midnight. Around 1:30 a.m. Plaintiff's deceased met colleagues and re-entered the closed hospitality room where he consumed additional alcohol and played "drinking games." While returning to his room he fell from a balcony suffering injuries which eventually caused his death. At the time he had a blood alcohol level of .20. Plaintiff's widow sought workers' compensation benefits. The court declined to draw a distinction between the earlier hours of socializing and drinking and the later visit to the hospitality suite. The court thus found that Plaintiff's deceased was attending to employment-related matters at the time of his injury enabling his widow to apply for benefits.
81. **Statute of Limitations/Discovery of Injury –** *Trips, Inc. v. Yaggy Colby Associates, Inc.,* 2005 WL 14925 (Minn. App.). Plaintiff had a hotel built in 1999. Within months of opening in June, 2000, Plaintiff noticed water dripping from the poolroom ceiling because of insufficient capacity of the HVAC system. Plaintiff hired a structural consultant in December, 2000 who advised Plaintiff there was substantial condensation in many areas of the hotel. In January, 2001 mold was observed on a bathroom ceiling in the poolroom. In October, 2002 mold was again observed in the poolroom building. An inspection of the attic revealed soaked insulation and mold. In March, 2003, the insulation was removed revealing rotting and moldy ceiling. The cause was determined to be the undersized HVAC system and a defective vapor barrier. A lawsuit was commenced in August, 2003. The applicable statute of limitations was "two years after discovery of the injury". The court dismissed the action, treating all the moisture problems as one injury of which Plaintiff was aware by January, 2001.
82. **Strict Liability/Exploding Water Glass** – *Gunning v. Small Feast Caterers, Inc.*, 2004 NY Slip Op 24150 (N.Y. Sup. 05/06/04). Complimentary water beverage, provided to patron along with meal, exploded and no one knows why. Court held restaurant strictly liable for defective glass as water was

an indispensable part of the meal and therefore sold to Plaintiff and no evidence showed that the diner did something to cause the glass to explode.

83. **Trademark/Movie Title** – *Club Mediterranee v. Fox Searchlightpictures*, No. 04-20273-Civ-Martinez (S.D.N.Y. 02/13/04). Movie studio, under First Amendment free speech right, successfully argued that movie title "Club Dread" was based on artistic expression, and court determined that the film would not confuse ClubMed's customers.
84. **Trademark/Infringement Action –** *Hooters of America v. WingHouse* Hospitality Law (January 2005). US District Judge dismissed case against Hooters, who alleged that WingHouse dressed its servers in outfits similar to Hooters restaurants, and that the interior design of WingHouse was similar to a Hooters restaurant. Court said that no reasonable juror could confuse WingHouse waitresses with Hooters waitresses. Hooters was ordered to pay $1.2 million.
85. **Trespasser/Man Ejected From Hotel** – *Lebovitz v. Sheraton*, No. 2003-C-2174 (La. Ct. App. 02/11/04). On Super Bowl Sunday, a man wanting a shoeshine in a hotel was determined by security as a ticket scalper. Security dragged man to street and called police. Man sued hotel for making false statements. Motion to dismiss by hotel was denied. If hotel had called police to handle, case might have been dismissed.
86. **Vendor Rebates/Woodley Road Revisited –** *2660 Woodley Road Joint Venture v. ITT Sheraton Corp.*, No. 02-1297 (3d Cir. 05/25/04). Appeal from 1999 verdict of approx. $31.5 million dollar award for antitrust violations, breach of contract, breach of fiduciary duty and punitive damages, the court disagreed on the antitrust award stating that the hotel owners were not the right party to bring the action. Also, reduced the award to $3.4 million finding that Sheraton essentially did nothing wrong except it failed to inform the owners, to which it owed a fiduciary duty, of the payment of rebates to the operator.
87. **Vendors/Tour Group** – *Cash v. Six Continents Hotels*, No. Civ. A. 03-3611 (E.D. Pa. 02/19/04). Lobby space for vendor tour group did not impute liability on hotel.
88. **Miscellaneous**:

- **Bogus "Reservation" Schemes similar to the Nigerian letter scam but uses phony money orders to secure rooms that are then cancelled and the money requested to be returned.** *Hotel/Casino/Resort Security* (August 2004).
- **Ongoing Theft of Hotel Toiletries Taken From Housekeeping Carts.** *Hotel/Casino/Resort Security* (August 2004).
- **Balcony Collapsed in Casino Injuring 50+ People.** *Hotel/Casino/Resort Security* (August 2004). Police say the scene was chaotic.
- **AEDs (Automated External Defibrillator) becoming more popular. Casino has saved 22 lives since starting Targeted First Responder program.** *Hotel/Casino/Resort Security* (July 2004).
- **Norovirus (Norwalk-like viruses that cause acute gastroenteritis in humans) Strikes Hotels in Philadelphia and Las Vegas**. *Hotel/Casino/Resort Security* (April 2004).
- **Bellagios Power Failure Cost $10 Million +;** hotel closed for three days. *Hotel/Casino/Resort Security* (April 2004).
- **Camera Cell Phones and Privacy Issues.** *Hotel/Casino/Resort Security* (April 2004).
- **Bathtub slips and falls due to cleaning solvents dissolving skid-proof floor.**
- **Electronic guestroom locks that may open with a simple magnet.**