Hospitality Case Review: The Top 100+ Cases that Impacted Us This Past Year

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Karen Morris is Town Justice in Brighton New York, a Professor of Law at Monroe Community College (MCC), and an author. She was recently elevated to the title of Distinguished Professor, awarded by the Chancellor of the State University of New York.

She has written several textbooks including Hotel, Restaurant and Travel Law and New York Cases in Business Law. She also co-authors Criminal Law in New York, a treatise for lawyers. She writes a column for Hotel and Motel Management Magazine entitled, *Legally Speaking*. Her latest book will be released in 2008 entitled, *Illuminations on Law and Life from Harry Potter's Adventures.*

Among the courses she has taught are Hotel and Restaurant Law, Business Law I and II, Constitutional Law, Movies and the Law, "The Michael Jackson Trial" and "O.J. Simpson 101; Understanding Our Criminal Justice System." Her course offerings include some in traditional classroom settings and others online. She won the Excellence in Teaching Award in 1994, having been selected by her peers, and the Chancellor's Award for Teaching Excellence in 2002, conferred by the Chancellor of the State University of New York.

Judge Morris writes newspaper commentaries on various legal issues and penned a monthly column for the Greater Rochester Track Club entitled, "The View from the Back of the Pack."

Professor Morris is a past president of the Greater Rochester Association for Women Attorneys, Alternatives for Battered Women, Inc, the Northeast Academy of Legal Studies in Business, and Text and Academic Authors Association, a national organization that advances the interests of academic authors. She also is a recent past Dean of the Monroe County Bar Association Academy of Law and past president of Brighton Kiwanis. She is a member of the governing board of the union for MCC faculty and professional staff.

Her favorite volunteer activities include being a Big Sister in the Big Brother program which she has done for twelve years, and a Girl Scout leader.

She received her Juris Doctor degree from St. John's University and earned a Masters of Law (LL.M.) in Trade Regulation from New York University. She previously was in-house counsel for Macy's Department Stores, an Assistant District Attorney in Monroe County, and an attorney in private practice.

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Diana S. Barber, J.D., CHE, is a full-time faculty member of the Cecil B. Day's School of Hospitality Administration in the J. Mack Robinson Business College at Georgia State University, Atlanta, Georgia; where she has taught since the summer of 2003. She teaches hospitality law, hotel management and an introductory course in hospitality.

In addition, Ms. Barber is also a hospitality legal consultant specializing in providing education to hospitality companies on preventative measures to reduce legal exposure, as well as a full range of legal services to hotels, motels, restaurants, event planning companies and clubs. She has over twenty years of legal hospitality experience.

Ms. Barber began her law practice as an associate attorney at King & Spalding in Atlanta, Georgia after graduating cum laude from Walter F. George School of Law at Mercer University in Macon, Georgia. She then spent over fourteen years as vice president and associate general counsel for The Ritz-Carlton Hotel Company, LLC. She is a member of the State Bar of Georgia, The Florida Bar, G.A.H.A., and the Georgia Hotel & Lodging Association.

Ms. Barber has given numerous presentations for hospitality related associations and hotel companies and has written many articles for hotel/motel security periodicals, meeting planner periodicals, the Georgia Restaurant Forum, Hotel-Online and the American Hotel & Lodging Association. In 2007, Ms. Barber was added to the editorial board of Hospitality Law monthly newsletter. In addition, she has served as a litigation industry expert. She also writes a monthly column for the Georgia Hotel & Lodging Association newsletter.

Diana Barber is "Of Counsel" with Berman Fink Van Horn, PC, a law firm in Atlanta, Georgia which is also the general counsel to the Georgia Hotel & Lodging Association.

Her hobbies include active participation in the Boys Scouts of America program as a Cub Scout Pack Committee Chairperson, a den leader and serving as team coordinator for little league baseball games.

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Accommodations/Discrimination

1. *Bivins v. Wrap It Up., Inc., d/b/a Nature's Way Café, et al.,* 2007 WL 3047122 (S.D.Fla 10/18/07). Plaintiff, a patron, filed a claim against Defendant's café alleging racial discrimination due to the inappropriate actions of the restaurant owner. The court determined that Plaintiff did show evidence that the Defendant intentionally discriminated against him and awarded Plaintiff $5,000 in compensatory damages and $5,000 in punitive damages.

ADA/Facility

2. *Molski, et al, v. Cable's Restaurant*, 481 F.3d 724 (9th Cir. 03/23/07). Plaintiff, a paraplegic, sued the restaurant for violations of the ADA when he noticed numerous architectural barriers in accessing the facilities, including the bathroom. Plaintiff acknowledged that he filed 374 similar ADA cases and that litigating these ADA cases was his form of employment. He projected that his annual income from settlements was $800,000. A jury found that since the Plaintiff made a living from suing for ADA violations, he could be considered a business and therefore was not an individual and was not entitled to the ADA's protections. On appeal, the court vacated the judgment against the Plaintiff and remanded the case for a new trial, with appeal costs awarded to Plaintiff. The court stated that the lower court abused its discretion and that there was no evidence to support the jury's conclusion.

3. *Panzica v. Mas-Maz Inc., d/b/a Cornerstone Pub & Restaurant, et al.,* 2007 WL 1732123 (E.D. N.Y. 06/11/07). Plaintiff, who uses a wheelchair, approached Defendant's restaurant, and noticed that there was not a wheelchair ramp in the front of the restaurant. She also looked through the windows and decided that the pub height stools were a barrier making the restaurant inaccessible, so she drove away without going in to the restaurant. She filed a complaint under the ADA and subsequently investigated the restaurant. She noticed a ramp which would allow for wheelchair access; however she did notice several barriers in the restaurant. The court found that Plaintiff filed her complaint on the mistaken belief that she was denied entry. Summary judgment was granted for Defendant.

4. *Holt v. American City Diner,* 2007 WL 1438489 (D.D.C. 05./17/07). Plaintiff has mobility impairment and encountered an architectural barrier upon his first visit to Defendant's business. The U.S. District Court found that Plaintiff's relationship

with Defendant's diner was too tenuous to support standing to sue because he did not plead why he wanted to return to the diner. The court was not persuaded that Plaintiff said he would return if the barriers were removed. Plaintiff was not allowed to proceed with his case.

5. *Antoninetti v. Chipotle Mexican Grill Inc., et al.,* 2007 WL 4162804 (S.D. Cal. 08/23/07). Plaintiff filed an action under Title III of the ADA claiming that the food preparation counters were inaccessible and the restaurant failed to provide equivalent facilities to patrons in wheelchairs. The court denied Plaintiff's claims stating that some accommodations were provided even though Plaintiff may not have liked what was offered. The court also denied Plaintiff's reconsideration motion.

6. *Skaff v. Meridien North America Beverly Hills, LLC, Le Meridien,* 506 F.3d 832 (9th Cir. 11/01/07). Plaintiff, a disabled patron, requested an accessible room with a roll-in shower. When he arrived he was assigned the wrong room and it took until the next morning to provide an accessible shower. Plaintiff sued seeking injunctive relief and the case settled out of court. The settlement included the hotel's agreement to remedy 63 of 69 instances of noncompliance with accessibility laws and to pay Plaintiff $15,000 in damages. The lower court denied Plaintiff's motion for attorney's fees. The appellate court held that the district court should have considered the motion for attorney's fees. The appeals court rejected the lower court's holding that a pre-requisite to recovering attorney's fees is giving Defendant notice and an opportunity to cure the alleged violations prior to Plaintiff filing suit. The court thus remanded the case for a determination on fees and costs.

7. *Hensley v. Haney-Turner*, 2007 WL 1599845 (Cal., 2007). The Defendant Waffle Shop entered a consent agreement relating to various violations of the ADA. Per the agreement, Defendant was required to make certain modifications to its facilities by a specified date to enable access by wheelchair patrons. The work was not completed on time and a civil contempt proceeding was begun. The court noted that the restaurant had "consistently moved toward completion of the necessary work" and dismissed the civil contempt claim. Said the court, "Substantial compliance is a defense to civil contempt."

Casinos/False Arrest

8. *Adams v. Harrah's Bossier City Investment Co., L.L.C.,* 948 So.2d 317 (La. Ct. App. 01/10/07). Plaintiff and his wife were playing craps at Harrah's Casino when security personnel, based on camera surveillance, accused Plaintiff of stealing a $500 chip from the table from another player. The police arrested Plaintiff who was charged with felony theft. The charges were dropped when the chip was not found during a search. Plaintiff sued for gross negligence, false arrest and other torts and Harrah's filed a motion for summary judgment which was denied by the trial court. On appeal, the court reversed the ruling stating that it is vital to the judicial system

that citizens be able to communicate alleged wrongful acts to police officers without fear of being sued for honest mistakes. A dissenting judge stated that Defendant used the police as a shield against liability.

Class Actions

9. *Shaw v. Marriott International, Inc.*, 474 F.Supp.2d 141 (D.D.C. 02/22/07). Defendant filed a motion to dismiss a class action lawsuit that alleged the company misrepresented its hotel room rates in hotels in Russia on its website due to the higher exchange rate. The court rejected Defendant's argument that the claims should be heard in Russia stating that the District of Columbia has a strong interest in protecting its residents and in regulating the business practices of its corporate citizens.

10. *Shulevitz v. Starwood Hotels.,* No. 07-2-13965-6SEA (Wash. 04/30/07). Plaintiff, visiting the Phoenician hotel in 2006, is seeking class action status for being assessed two $4 charges for "housekeeping gratuity" and $28 for "bell gratuity" while being a guest of the hotel under a group rate. Plaintiff claims he was not made aware of these charges at the time of reservation.

Copyright

11. *Controversy Music v. Down Under Pub Tyler, Inc.*, 488 F. Supp.2d 572 (Tex., 2007). ASCAP sued Defendant restaurant and night club for copyright infringement. For ten months ASCAP representatives tried on numerous occasions to advise Defendants of the necessity and availability of a license to perform songs contained in ASCAP's repertoire of musical compositions. Defendant ignored or rejected these offers. On a specified date an ASCAP representative heard five of its musical compositions publicly performed at Defendant night club, including Wild Thing. Defendant owner admitted he did not have a license. He said he did not know whether or not any of the subject songs were performed on the date and question as he does not keep records of the songs performed. The court held this was insufficient to put ASCAP's facts in issue and so summary judgment was entered against the restaurant.

Condemnation

12. *State v. Bristol Hotel Asset Co.*, 2007 WL 2042793 (Tex. App. 2007). A hotel had three entrance driveways to its facility. The State made a partial taking of hotel property to expand a highway in San Antonio. The hotel is 11 stories, 397 rooms, and is a full-service Holiday Inn Select. The state took ten feet of land fronting the hotel's property. As a result, two of the three driveways were unusable, requiring complete reconstruction to be operable. The jury compared the fair market value of the hotel before and after the taking, and awarded a judgment of $1,260,000. Affirmed on appeal.

Contract/Breach/Overbooking

13. *Ultrasound Imaging Corp., et al., v. Hyatt Corp.*, 2007 WL 2345256 (N.D. Ga. 08/10/07). Plaintiff booked a suite at Defendant's hotel for an event and the suite was taken by another guest at the time of Plaintiff's arrival. Plaintiff claimed breach of contract and interference with business relations, along with fraud. Defendant argued that the contract was nonbinding according to statutory legal requirements. The court disagreed and said the contractual requirements were met, but dismissed the fraud claims. Plaintiff was allowed to continue with his breach of contract claim against Defendant as the court denied Defendant's motion to dismiss.

Defamation

14. *Balboa Island Village Inn Inc. v. Lemen,* 156 P.3d 339 (Ca. Sup. Crt. 2007). Plaintiff Balboa Island Village Inn is a restaurant and bar located near Newport Beach. Defendant Anne Lemen owns property across an alley from the Village Inn. She became a vocal critic of the Inn. She complained to authorities numerous times about excessive noise and inebriated customers. She videotaped the Inn approximately 50 times, sometimes from her own property and sometimes on the Inn's property. Numerous times she followed customers to or from their cars while videotaping them, despite her request that she stop. She took many flash photographs through the windows of the Inn a couple of days a week for a year, upsetting customers. She called patrons "drunks" and "whores". She told customers the "food is shitty". She approached potential customers outside the Inn more than 100 times, causing many to turn away. She told employees they "worked for Satan". She asked the musician Autoro Perez if he had a green card and asked if illegal aliens worked at the Inn. She gathered 100 signatures on a petition by saying that the Inn sold alcohol to minors, hosted child pornography, prostitution, drug sales, filming of sex videos, the Mafia, and lesbian activity. While she was engaged in signature gathering the Inn's sales dropped more than 20%. The Inn sued for defamation. The court determined many of the statements constituted defamation and issued an injunction. It prohibited Defendant from saying that the Inn made sex videos, was involved in child pornography, distributes illegal drugs, has Mafia connections, encourages lesbian activities, participates in prostitution, served tainted food or sells alcohol to minors. However, to accommodate First Amendment mandates which protect people's right to present grievances to government officials, the injunction had to include a provision permitting Defendant to make such statements to government officials with relevant enforcement responsibilities. Additionally she was prohibiting from filming within 25 feet of the Inn's premises unless she is filming from her own property or is documenting circumstances surrounding an immediate disturbance or damage to her property.

15. *Tratt v. Washington Building Management Company, third-party plaintiff v. The Sports Bar and Uncle Tony's Bar,* 841 NYS2d 824 (N.Y. Sup. Crt. 05/16/07). Plaintiff, a minor, suffered permanent injuries from a fall inside a fraternity house as a result of drunken behavior. He had a blood-alcohol level of 0.26 percent. Plaintiff seeks damages under the Dram Shop Act against the two bars he attended, even though he was not served in one of the bars. The Sports Bar asked for summary judgment which was denied. The court placed the burden on The Sports Bar to negate the possibility that it served an underage patron. Plaintiff was seen visibly intoxicated at Uncle Tony's bar, was asked to leave, and was later seen at The Sports Bar. The Sports Bar only made vague references to a one-year-old policy about checking driver's licenses with a special light and offered no other proof that the bar did not serve Plaintiff.

16. *Luc, et al. v. Wyndham Management Corp. et al.,* 496 F.3d 85 (1st Cir. 08/07/07). Plaintiffs, a husband and then-pregnant wife, were injured when they were hit by an intoxicated driver who had been drinking at the Roxy in the Tremont Hotel. Mrs. Luc miscarried as a result of the accident and was in the hospital for 70 days. Plaintiffs sued under the dram shop theory and the court dismissed one claim stating that the evidence was insufficient to show that the bar employee knew or should have known that the patron was intoxicated. Court granted partial summary judgment and Plaintiffs appealed. The appellate court stated that a bar owner cannot be negligent unless the individual being served "already is showing discernible signs of intoxication." Just being intoxicated is not enough. The intoxication had to have been apparent to the server prior to serving the last drink.

17. *Tullar v. Big Kahuna,* 2007 WL 1574567 (Ky. App., 2007). Passenger was injured when vehicle in which she was riding veered from the roadway and struck a tree. He brought dram shop action against the nightclub where the driver had been drinking. In addition to compensatory damages, the jury awarded punitive damages in the amount of $500,000. The night club appealed. The court reversed, holding that punitive damages cannot be recovered in a dram shop action. The reason is – To recover punitive damages requires that the Defendant's actions be the proximate cause of Plaintiff's injury. With dram shop, the bar's sale of liquor is not the proximate cause.

18. *Rogers v. Anheuser-Busch, Inc.* 2007 WL 1847208 (Okla., 2007). Plaintiff's deceased was killed when her car collided with one driven by an intoxicated driver. Prior to the accident the driver had been at an annual country music festival called Calf Fry hosted by the Tumbleweed Bar. The event was sponsored by Defendant Anheuser-Bush which provided its products for the event. Anheuser-Busch brought trucks to keep kegs of beer refrigerated, and ran draft lines from the kegs to the points of sale. Its employees were on site to work with the beer retailers to "ensure

that the beer's delivery was successful and to troubleshoot any problems that arose." Anheuser-Busch's staff instructed Tumblewood employees on the proper operation of the draft equipment, but no Anheuser-Bush employee poured or served beer to retail customers. Plaintiffs sued Tumbleweed and Anheuser-Busch; the latter moved for summary judgment. The court granted the motion noting that Anheuser-Busch did not make decisions about which patrons to serve or how much alcohol to serve, and did not require Tumblewood to sell alcoholic beverages. "Like a typical supplier, it did not direct Tumbleweed's retail decisions. . . . While Anheuser-Busch's status as a manufacturer and wholesaler of beer does not immunize it from liability regardless of its action, Anheuser-Busch just supplied alcohol for the event; it did not serve alcohol to *retail consumers*. (Emphasis in original).

19. *Baxley v. Hakiel Industries, Inc.,* 2007 WL 1804382 (Ga. Sup. Crt, 2007). Plaintiff was injured on a motorcycle when he collided with a car driven by Mary Karafiat. Prior to the accident she had been drinking at Defendant's bar. Plaintiff brought an action against the bar. Georgia law requires that a dram shop plaintiff prove that Defendant bar knew the patron would be driving soon after leaving. The bar manager became aware of the accident the next day. Surveillance tapes of the night in question were customarily destroyed four days after their use. Notwithstanding the accident, the tapes in this case were re-used. Plaintiff sought a spoliation ruling; the bar claimed the cameras did not cover the area where the motorist had sat. The court however said an adverse witness charge to the jury was appropriate in this circumstance.

Employment/ADA Disability

20. *Byrd v. BT Foods, Inc., d/b/a Wendy's Coral Springs*, 948 So.2d 921 (Fla. App. 02/14/07). Plaintiff notified her employer, Defendant, that she was HIV positive. Plaintiff called in sick due to her HIV condition and brought her employer a note from the hospital. The employer refused the note claiming it looked like a fake. The Florida Omnibus AIDS Act doesn't mention that HIV Status is a disability; however, the court of appeals found that it is a perceived disability. The appellate court affirmed summary judgment to Defendant on the claim for intentional infliction of emotional distress but found the trial court erred in granting a summary judgment to Defendant relating to the Florida Civil Rights Act of 1992.

21. *Turner v. The Saloon Ltd., et al.,* 491 F.Supp.2d 753 (N.D. Ill. 05/25/07). This case includes claims for sexual harassment and retaliation. Plaintiff was a server at Defendant's restaurant. Prior to employment, Plaintiff was diagnosed with psoriasis, which affected his elbows, knees and genital areas, but not walking or working at the restaurant. Plaintiff would change his clothes in the common employee changing area and a female employee complained. The restaurant manager implemented a policy that anyone who was going to be naked, must change in the restrooms next door in the hotel. Plaintiff said those bathrooms were

unclean and refused to change there. Plaintiff also had an ongoing sexual relationship with one of his supervisors that ended in Plaintiff claiming sexual harassment. Plaintiff was ultimately fired for numerous other performance criteria. Plaintiff filed a charge with the EEOC alleging a violation of the ADA, and three months later filed a charge for sexual harassment, discrimination and retaliation. The court dismissed the ADA claim since it did not limit one or more major life activity, i.e., was not a disability. Plaintiff's sexual harassment claim was time barred and the one allowable occurrence was not sufficient, so summary judgment was granted for the Defendant. A claim that the restaurant violated the FLSA is pending.

Employment/Anti-Fraternization Policy

22. *Gooden v. Ryan's Restaurant Group, Inc.*, 2007 WL 855326 (Ky, 2007). Defendant restaurant had an anti-fraternization policy, prohibiting employees of the same restaurant from maintaining a personal relationship. Plaintiff, a manager at one of the restaurants, sought to pursue a relationship with one of the employees there and so sought a transfer. The restaurant conducted an investigation to determine if Plaintiff had violated the fraternization policy. Plaintiff denied having begun a relationship, was uncooperative during the investigation, and was disciplined therefore. The restaurant eventually transferred him. At the new restaurant, Plaintiff was accused of sexual harassment and violation of various policies, resulting in his termination. Plaintiff, a white male, sued based on reverse discrimination. During discovery the restaurant found instant messages sent between Plaintiff and his ex-wife on Yahoo! Instant Messenger. They revealed that Plaintiff had lied to Defendant in the investigation and was already having a personal relationship before he was transferred. Plaintiff asserted that his wife must have altered the messages. "Defendant received confirmation from Yahoo! that the messages were unaltered." This would be grounds to terminate Plaintiff – for violation of the fraternization policy and because he lied to Defendant.

Employment/Arbitration

23. *The George Town Club at Suter's Tavern v. Salamanca,* 2007 WL 1041657 (D.D.C. 04/05/07). Mr. Salamanca, a full-time waiter at the Tavern, was terminated from employment and filed a wrongful termination action based on race discrimination, retaliation and health insurance law violations. When initially hired, Salamanca received an employee manual which had a binding arbitration clause but he was not asked to sign any acknowledgment that he received the manual. Even when the manual was updated, he claims he was never asked to sign an acknowledgement, and the Tavern could not produce such evidence of acknowledgement. The Tavern sought relief from the court to require Salamanca to arbitrate his claims against the Tavern. The court found that he did not have a contractual obligation to arbitrate because the policy in the manual did not constitute an agreement to arbitrate under the Federal Arbitration Act and therefore he was not obligated to arbitrate.

Employment/Discrimination/Age

24. *Rufo v. Dave & Busters, Inc.*, 2007 WL 247891 (6th Cir. 01/31/07). Fifty-one year old Plaintiff was hired by Defendant as a manager-in-training, and shortly thereafter became the assistant general manager. Plaintiff had received above average performance reviews. Plaintiff's supervisor resigned when he was told to fire Plaintiff and recounted that the CEO had made a statement that they had too many managers who were on the back side of their careers and who were no longer productive; that they needed to go. Plaintiff filed a complaint that he thought Defendant may have been holding him back because of his age and subsequently filed a lawsuit alleging age discrimination and retaliation. The court awarded summary judgment for the Defendant. On appeal, Defendant argued that it did not advance Plaintiff because he exhibited poor judgment by telling stories about alien abduction, mailing babies overseas and claiming he formerly worked as a pimp. The circuit court of appeals affirmed the summary judgment award to Defendant.

25. *Garrett v. Garden City Hotel Inc.*, 2007 1174891 (E.D.N.Y. 04/19/07). Plaintiff, a 60-year old African-American woman worked as a housekeeper at Defendant's hotel. During her employment, she never applied for the executive housekeeper position but claims she was told she would not qualify for it. Plaintiff was fired due to her rude and abrasive conduct and she subsequently filed an action against Defendant claiming age and race discrimination, a hostile work environment and retaliation. The court found that Plaintiff failed to provide sufficient evidence that she was subjected to discriminatory treatment and awarded summary judgment to the hotel.

26. *Kassner, et al., v. 2nd Avenue Delicatessen, Inc., et al.,* 496 F.3d 229, 101 Fair Empl. Prac. Cas. 259 (2d Cir. 07/24/07). Two waitresses, ages 79 and 61, filed suit against their employer alleging age discrimination when the deli assigned each of them to work stations and shifts where earnings were lower than those of younger waitresses. The appellate court found that assignments to less desirable work stations and shifts can, depending on the facts, constitute a materially adverse employment action, and denied Defendant's motion to dismiss.

Employment/Discrimination/Disability

27. *Okoro v. Marriott International, Inc. and the Ritz-Carlton Hotel,* 2007 WL 980429 (S.D.N.Y. 04/03/07). Plaintiff, an employee at The Ritz-Carlton, New York, was dismissed from his housekeeping position when the Defendant learned that Plaintiff was involved in an arbitration dispute with Marriott International, the parent company of The Ritz-Carlton, from when he worked at the Marriott Marquis. The dispute with Marriott was still pending when Plaintiff began working at the Ritz. Plaintiff was terminated from employment and filed a grievance challenging his termination through his union representative. Plaintiff signed a settlement

agreement and release and was compensated for such release with a severance and references. Plaintiff denies receiving a severance and references. Marriott filed for summary judgment which the court denied since Plaintiff raised a material fact as to whether he signed a release waiver knowingly and voluntarily.

28. *Quitto v. Bay Colony Golf Club, Inc.,* 2007 WL 2002537 (M.D. Fla. 07/05/07). Plaintiff, a sous chef in Defendant's kitchen tripped while at work and injured his hip. He took FMLA leave for surgery and came back to light duty work. He was terminated based on his medical condition which limited the amount of weight he could lift. The job description listed heavy lifting as a function of the position however, not all duties were mandatory. Plaintiff sued claiming violation of the Americans with Disabilities Act. The court denied summary judgment for Defendant. It determined that, while defendant was not disabled, he may have been perceived as disabled by Defendant, entitling him to protection under the ADA. Additionally, an issue of fact existed as to whether defendant requested a reasonable accommodation.

29. *EEOC v. BobRich Enterprises, Inc.,* 2007 WL 669547 (N.D. Tex. 07/27/07). EEOC brought a claim on behalf of an employee who uses hearing aids and lip-reading against a Subway franchisee based on offensive remarks made by management. The comments included, "have you got your ears on" and "read my lips" The jury found for the employee and awarded her a $166,500 verdict.

Employment/Discrimination/Gender

30. *Angelucci et al v. Century Supper Club*, 158 P.3d 718, 59 Ca. Rptr.3d 142 (Cal. 05/31/07). Plaintiffs sued Defendant under the Unruh Civil Rights Act because they were charged an admission fee into the club that was higher than the admission fee for women, claiming they were discriminated against on the basis of sex. The trial court ruled in favor of the club and the appellate court affirmed, finding that a remedy is only allowed when the party requests non-discriminatory treatment and the treatment is refused. The Supreme Court of California disagreed and reversed stating that Unruh did not require the male patrons to state that they affirmatively requested non-discriminatory treatment but rather the Defendant had a duty to refrain from discriminating practices.

31. *Schlender v Boulder Junction Charcoal Grill*, 2007 WL 2789485 (E.D. Wis. 09/24/07). Plaintiff claimed she was sexually harassed by a co-worker after Defendant terminated her for tardiness. Summary judgment for the restaurant was denied as the court said the restaurant was not consistent with the enforcement of its policies concerning tardy employees. Also, the reasons for termination kept changing as Plaintiff's claims increased.

Employment/Discrimination/Pregnancy

32. *Cobain, Spitsen and Espinoza v. Destination Hotels & Resorts, et al.,* 2007 WL 1589533 (E.E. Cal. 06/01/07). Spitsen was employed as a marketing manager of a full service luxury resort in Lake Tahoe, California. While she was on maternity leave the hotel was sold and Defendant was hired to manage the resort. On the day before the changeover, each employee was told that they would be terminated and would need to reapply for their positions through Defendant. Spitsen reapplied for the marketing manager job; however, the position was eliminated by the new manager and Plaintiff's subordinate had been promoted to the position of Marketing Coordinator. Plaintiff sued for wrongful termination, retaliation and gender and pregnancy discrimination. Defendant argued that it never was Plaintiffs' employer. The court granted Defendant's summary judgment motion relating to Spitsen's wrongful termination and retaliation claims. The court denied the Defendant's summary judgment motion on the gender discrimination claim.

33. *Taylor v. Bigelow Management, Inc., et al., d/b/a Budget Suites of America,* 242 Fed. Appx. 178, 2007 WL 2164282 (5th Cir. 07/27/07). Plaintiff, the regional manager of two hotels, told her employer that she was pregnant. The senior vice president allegedly stated that women are not suitable for managerial positions since they miss too much work when they become pregnant. Plaintiff was demoted a few days later allegedly due to one of her hotels performing poorly. Plaintiff sued under Title VII and the district court in Texas awarded her $10,000 for back pay and $50,000 in punitive damages.

Employment/Discrimination/Race

34. *Wicker v. W&S Enterprises, Inc.*, 2007 WL 1545162 (Ga., 2007). Plaintiff was a black female who was terminated from her position as cook at a restaurant. She claims the reason was racial discrimination. The restaurant explained the termination as being based on Plaintiff's violation of rules – with the help of another employee she removed a "nasty, smelly" bag of garbage through the front door of the restaurant because the back door was locked, she had refused to perform some of her assigned duties, and she had a checkered disciplinary history. The court granted summary judgment for the Defendant, finding no evidence of discrimination. Said the court, "A reasonable employer would certainly be justified in terminating an employee who, despite previous warnings, carried a leaking, nasty bag of trash through the customer area of a restaurant, who refused to perform some of the her duties, and who had a disciplinary history."

Employment/Discrimination/Religion

35. *Pozo v. J&J Hotel Co., et al.,* 2007 WL 1376403 (S.D.N.Y. 05/10/07). Plaintiff, a 61-year old Cuban-born black female Catholic, who spoke limited English, asked her employer for Sundays off to attend mass. Defendant allowed Plaintiff to have

one Sunday off per month. Plaintiff insisted that she attend mass in NY City rather than near her home on Staten Island, so she could work, attend mass, and then return to work. The court found that Defendant's manager regularly insulted Plaintiff regarding her religion and treated her differently than other room attendants. A jury could reasonable find the environment to be hostile and therefore the court denied the hotel's request for summary judgment.

Employment/Discrimination/Sexual Orientation

36. *Jones v. The Lodge at Torrey Pines Partnership*, 54 Cal.Rptr.3d 379 (App. Ct., 2/8/07); Petition for review granted on a limited issue not referenced in this paper, 160 P.3d 661 (Sup. Ct. 6/13/07). Plaintiff alleged that his supervisor and the kitchen manager made daily jokes and sexual remarks using highly offensive words about women employees and directed graphic "gay-bashing" jokes at Plaintiff. Plaintiff advised his supervisor asking him to refrain from unprofessional remarks, and the supervisor crumpled up the document and threw it at him. Plaintiff and a female employee went to the HR director, who said he would investigate, but Plaintiff never heard from him regarding this complaint. Plaintiff sued for sexual orientation discrimination and retaliation and was awarded $1,395,000 and $155,000 respectively. After a reversal by the appellate court, the trial decision was affirmed in favor of the Plaintiff.

Employment/EEOC

37. *Ledbetter v. Goodyear Tire & Rubber Co., Inc.,* 127 S. Ct. 2162, 100 Fair Empl. Prac. Cas. (BNA) 1025 (U.S. 05/29/07). This United States Supreme Court decision changed the way courts view pay discrimination claims. Plaintiff worked for Defendant for nineteen years and when near retirement, she learned through an anonymous letter that she was paid far less than her male coworkers. Plaintiff filed a charge with the EEOC alleging that Defendant discriminated against her based on her gender. The jury trial awarded Plaintiff $3.8 million but the award was reduced to $360,000 and eventually overturned by the 11th U.S. Circuit Court of Appeals. The U.S. Supreme Court found that Plaintiff's Title VII claims were barred because they were not filed within the 180 day time period after the alleged discriminatory conduct had occurred. The decision was a 5-4 decision with dissenting opinions.

38. *Mihoubi v. Caribou Coffee Co Inc.,* 2007 WL 2331061 (N.D. Ga. 08/10/07). Plaintiff, a Muslim vice president of global franchising, was terminated from employment due to poor performance. Plaintiff filed a charge with the EEOC alleging national origin discrimination claiming that management had made inappropriate and offensive remarks about Islamic faith individuals. Defendant had documented legitimate reasons for terminating Plaintiff and the district court granted summary judgment for Defendant, dismissing all charges.

39. *EEOC v. V & J Foods, Inc., et al.,* 507 F.3d 575, 100 Fair Empl. Prac.Ca. (BNA) 1676 (7th Cir. 11/07/07). A sixteen year old worker at a Burger King restaurant brought charges against Defendant for the acts of the general manager, a 35-year old who reputedly had sexual relations with several of the female employees at the restaurant. The sixteen year old worker complained that the manager would rub against her, tried to kiss her and offered to pay her for sex. On appeal, the court found that the restaurant's complaint procedures were confusing and didn't follow a proper chain for reporting claims. The case was remanded for further proceedings.

Employment/FLSA

40. *Castellanos-Contreras, et al. v. Decatur Hotels, LLC, et al.,* 488 F.Supp.2d 565 (E.D. La. 05/16/07). Three guest workers at a New Orleans hotel were recruited from foreign countries and worked following Hurricane Katrina. The hotel failed to honor its promise to reimburse the workers for travel, visa, recruitment and other expenses. The workers sued claiming the lack of reimbursement resulted in a de facto deduction from the Plaintiffs' wages such that they earned substantially less than minimum wage. The court determined that the Fair Labor Standards Act, (which includes minimum wage mandates) applies to guest workers. The court therefore denied the hotel's summary judgment motion. The Plaintiffs were thus entitled to pursue their case based on the FSLA.

41. *Fast, et al. v. Applebee's International Inc.,* 243 F.R.D. 360 (W.D. Mo. 05/03/07). Plaintiff filed a complaint against Defendant restaurant alleging that the restaurant failed to pay him at least the minimum wage for his non-tipped work that he performed prior to clocking in. The court denied the Defendant's motion for summary judgment stating that evidence may show that Plaintiff did work prior to beginning his shift and should be compensated for that time.

42. *Chao v. Hotel Oasis, Inc.,* 493 F.3d 26 (1st Cir. 06/28/07). District Court found several violations of minimum wage and overtime violations affecting 282 current and former employees of the Puerto Rican hotel and restaurant. The Defendant argued that they had made innocent mistakes but the court of appeals found that Defendant's failure to keep sufficient payroll records and their intentional manipulation of personnel/accounting records provided evidence to the court that the hotel's mistakes were not in good faith nor were they in compliance with the FLSA.

43. *Estate of Boulis v. Bartsocas,* __So.2d __, 2007 WL 4322145 (Fla.App. 12/12/2007). The parties were involved in a restaurant business. Plaintiffs claimed an oral partnership agreement existed requiring them to invest time and effort with little compensation, and at some unspecified point in time they would share in the proceeds and profits of the partnership. Over 21 years they worked for the business, receiving some but not a lot of pay. When the owner died, the others sued for breach of implied partnership agreement, promissory estoppel, and unjust

enrichment. The jury rejected the claims of implied partnership and promissory estoppel claim. The jury did, however, award $1,211,231 for unjust enrichment. The amount was calculated by a CPA/expert witness who assessed the value of the Plaintiffs' "sweat equity" over the 21 years of work. On appeal the court determined that "sweat equity" was foreign to the state's jurisprudence and that the real basis of Plaintiffs' claims was unpaid wages. As such, a two year statute of limitations applied. The court thus reversed the verdict and remanded the case, ruling that the wage claim calculation should have been limited to the two most recent years.

Employment/FMLA

44. *Nguyen v. Berger Busters d/b/a Taco Bell,* 642 S.E.3d 502 (N.C. Ct. App. 04/03/07). Plaintiff, a general manager at a Taco Bell franchise whose wife also worked at the restaurant, was terminated due to allegations that he was adding hours to her time cards that his wife had not worked. Plaintiff was indicted on charges of embezzling but the case was dropped for lack of evidence. Plaintiff then filed a complaint against Defendant for malicious prosecution and abuse of process. The court found Burgerbusters to be liable and awarded Plaintiff $200,000. The decision was affirmed on appeal.

45. *Garabedian v. Lone Star Steakhouse & Saloon,* 2007 WL 1795677 (E.D. Pa. 06/20/07). Plaintiff, the general manager of Defendant's steakhouse, asked for and was granted FMLA leave. When he returned, his replacement was relocated to another restaurant. Shortly thereafter, Plaintiff was fired for alleged insubordination and unprofessional conduct. The interim manager was hired in Plaintiff's position on a permanent basis. Plaintiff sued for interference with his rights under the FMLA but the court disagreed since Plaintiff was reinstated after his leave in the same position. Plaintiff also claimed retaliation. The court determined that since Plaintiff was fired a little over a month after his return, it could have been retaliation on the part of Defendant and denied Defendant's request for summary judgment.

Employment/Retaliation

46. *Humphries v. CBOCS West, Inc., d/b/a Cracker Barrel*, 474 F.3d 387 (7th Cir. 01/10/07), petition for Cert granted, 128 S.Ct. 30 (9/25/07). Plaintiff, an African-American man, was employed at Cracker Barrel and during his first two years, his performance reviews were generally excellent. When a new supervisor came on board, Plaintiff said the new general manager made racially derogatory comments toward him. For five months, Plaintiff received five disciplinary reports alleging misconduct, including bank deposit shortage and providing customers who complained with free meals. Plaintiff was subsequently fired and he brought a claim for discrimination and retaliation under Title VII and Section 1981. The court dismissed the Title VII claims due to procedural deficiencies and ruled in favor of

Cracker Barrel on the Section 1981 claims. The appeals court reversed the summary judgment as to the retaliation claim. Defendant claimed it had a legitimate reason for firing Plaintiff - leaving the store safe unlocked at night. The court found the timing of the discharge suspicious; just one week after plaintiff claimed discriminatory practices. The appeals court affirmed the dismissal of the discrimination claim but not the retaliation claim. Retaliation can occur under Section 1981.

47. *Seever v. Carrolls Corp.*, __F.Supp.2d __, 2007 WL 4409776 (W.D.N.Y., 12/17/2007). Plaintiffs were employees of a Burger King located in Irondequoit, New York. They claimed various violations of the Fair Labor Standards Act (FLSA) by Defendant, owner of 350 Burger King restaurants. Specifically Plaintiffs claimed they had not been paid for tasks performed off-the-clock and for training, and suffered retaliation. Concerning the alleged off-the-clock claim, the court held the evidence was insufficient and dismissed the claim. The testimony consisted of "nebulous recollections of tasks each individual might have performed off-the-clock . . . and are uncorroborated by any other evidence." Concerning the alleged unpaid training, the court determined that the training occurred outside the employees' regular working hours, was voluntary and not required, was not directly related to their current jobs, and the Plaintiffs did not perform any productive work during attendance. As such Plaintiffs participation in the training programs was not compensable. On the retaliation claim, the court noted that the FLSA limits retaliation causes of action to retaliation for filing formal complaints, instituting a proceeding, or testifying, but not for complaints made to a supervisor. Defendant had developed a formal grievance procedure but Plaintiffs never filed a formal complaint concerning their claims. The court therefore dismissed this claim as well.

48. *Napreljac v. John Q. Hammons Hotels, Inc.*, 505 F.2d 800 (8th Cir. 10/10/07). Plaintiff, a hotel maintenance engineer, sued his employer after being terminated allegedly due to retaliation after reporting a workplace injury. The evidence showed that the alleged workplace injury never occurred and the court granted summary judgment for the Defendant. The court of appeals affirmed stating that falsely reporting an injury is not a protected right under the state's workers' compensation statutes and there was no evidence of retaliation.

Employment/Sexual Harassment

49. *Forrest v. Brinker International Payroll Company, d/b/a Chili's Grill & Bar*, __F.3d__, 2007 WL 4415497 (Crt. App., Me, 12/19/2007). Plaintiff worked as a server in Defendant's restaurant and while employed, she had a relationship with a line cook. The relationship ended and the cook became very upset. He started calling her names and not giving her items she needed from the kitchen. After lodging a complaint, the line cook was given a verbal warning and after additional misbehavior, a written warning; and later fired. The line cook continued to bother Plaintiff at work, even after a restraining order was issued. Plaintiff resigned and

sued Chili's for hostile work environment. The court found that Plaintiff's harassment was based on her gender and thus constituted sexual harassment. The court further found that Chili's response to Plaintiff's complaints was prompt and appropriate, and so granted summary judgment for the Defendant.

50. *Waffle House, Inc. v Williams,* 2007 WL 290808 (Texas Ct. App. 02/01/07). Plaintiff, a waitress on the graveyard shift, complained that the cook, Eddie, was making inappropriate gestures and lewd statements, as well as rubbing up against her chest when she tried to put plates on a high shelf. Plaintiff complained to her supervisor and the manager said that it didn't sound like Eddie, however, the supervisor moved Eddie to another shift. Plaintiff still felt harassed by Eddie as he would stare at her when he was a patron and they would see each other at shift changes. Plaintiff's attempts to use the integrity line were unsuccessful. She received a right to sue letter from the EEOC and the Texas Commission on Human Rights. The jury in the trial court found that she had been sexually harassed and assaulted and that Waffle House was negligent in supervising Eddie. The court did not find that the company retaliated against the Plaintiff for harassment. The appellate court found that Defendant did not follow its own company procedure and therefore Defendant was negligent in its supervision of Eddie.

51. *Alissia Myers v. Trendwest Resorts, Inc.* 56 Cal. Rptr.3d 501 (Cal. Ct. App. 02/28/07). Plaintiff was an employee of Defendant and alleged repeated acts of unwanted sexual advances by her supervisor, including driving to isolated locations and groping her while they were on sales calls. A coworker called the company's integrity line complaining of a hostile work environment and Plaintiff was terminated six months later. Plaintiff also reported a hostile work environment on the integrity line but alleges that she did not receive a follow up call. The trial court found for Defendant. However, on appeal, the decision was reversed. The appellate court said that an employer is strictly liable for harassment by a supervisor unless it results from a private relationship unrelated to the employment relationship. In this case, although the harassment occurred outside the workplace, there was no personal relationship and therefore no defense for Trendwest.

52. *EEOC and Torres v. The Restaurant Co., d/b/a Perkins Restaurant and Bakery,* 490 F.Supp.2d 1039 (D. Minn. 05/31/07). {Reported on this case last year; different issue} Plaintiff was sexually harassed by her supervisor who increased her workload and cut her hours when she refused his advances. Plaintiff sued alleging sexual harassment and retaliation. Plaintiff stated that fear of reporting the incident might lead to the employer reporting her immigration status. Defendant argued that Plaintiff lacked standing to bring a lawsuit because she was an undocumented worker since her social security number did not match her name. The court stated that she does have standing despite her immigration status and as to her additional claims; a reasonable jury could conclude that the harassment was pervasive enough to become a hostile work environment. Summary judgment for Defendant was denied.

53. *Hernandez v. Hard Rock Café International (USA) Inc., et al.,* 2007 WL 2782624 (E.D. Cal. 09/24/07). Plaintiff, a server at the Hard Rock Café in Sacramento, filed a complaint against her employer due to being harassed by her coworker. The complaint included numerous claims. Defendant argued that the exclusive remedy offered by California's Workers' Compensation Act barred Plaintiffs claims for negligent infliction of emotional distress and negligent hiring, supervision, training and retention. The court found that the Defendant failed to prevent the harassment that caused emotional distress and since the claims was based on sexual harassment, the claim was not barred by state law. Defendant's motion to dismiss was denied.

54. *Bohlman v. Silver Legacy Capital Corp.*, 2007 WL 1726570 (Nev., 2007). Plaintiff claims she was sexually harassed at work. Plaintiff testified her boss asked her what size her breasts were, told her that he thought they were probably a D or double D size, asked if her breasts were hard or soft, told her that he was a "boob guy" and that if he could feel them he could tell her what size they are, commented that he bets Plaintiff's husband likes to "play with your tits", told plaintiff of the sexual fantasies he had, and that Plaintiff could never experience, sexually, what he has experienced. These remarks increased in frequency from once a week to a couple of times a day. Plaintiff complained to the director of human resources but no action was taken. Defendant denied that the supervisor's conduct constitutes sexual harassment. The court denied summary judgment to the restaurant.

Employment/Termination

55. *Lopez v. Hyatt Corp.,* 2007 WL 1215093 (N.D. Tex. 04/25/07). Plaintiff, a 24-year employee at Defendant's hotel worked in the purchasing department. Defendant discovered unexplained invoices involving one of its vendors and undertook an investigation. The results showed that vendors submitted invoices for products that the hotel did not receive. Lopez claimed that his signature was forged on several of the invoices but also admitted that he sometimes signed for products without verifying that they had been received, in violation of the hotel's policy. Plaintiff was terminated and subsequently filed an action for wrongful termination and defamation. The court said that a reasonable jury could not find for the Plaintiff on either claim. Plaintiff simply did not provide enough evidence to raise a genuine issue of material fact and therefore summary judgment for Defendant was proper.

Employment/Testing

56. *Bazargan v. Hilton Universal City and Towers, et al.*, 2007 WL 103074 (Cal. Ct. App. 01/17/07). Plaintiff worked as a waiter for Defendant and after several years, he used inappropriate language to offend a co-worker and received disciplinary action. Two years later, Plaintiff claimed a co-worker along with others, began making unwanted sexual comments to him and he complained to the human resource department. Defendant hired a consultant to investigate the claims and

suspended him without pay. The investigator stated that she would need Plaintiff to visit with a psychiatrist to evaluate the truthfulness of his claims. Plaintiff resisted, but went ahead with the interview. Plaintiff signed a waiver acknowledging that the results would be made available to Defendant and that the doctor/patient confidentiality rules did not apply. During the test, Plaintiff refused to answer and filed an action against the doctor and Defendant for invasion of privacy and other torts. The trial court dismissed the case as to the doctor, and Plaintiff appealed. The court of appeals affirmed the lower court decision stating there was no privilege due to the disclosure statement Plaintiff signed; therefore the doctor had no duty to breach and Plaintiff could not claim emotional distress without an invasion of privacy claim.

Employment/Tip Sharing

57. *Morgan v. SpeakEasy, LLC, The Room of Chicago d/b/a South and Andre,* 2007 WL 2757170 (N.D. Ill. 09/20/07). Plaintiff, a server in Defendant's establishment, sued his employer for forcing employees to share tips with "managers." The alleged managers were servers with seniority who, in addition to serving, helped close, served as greeters, checked on tables during the dinner service, supervised employees' work, handled complaints, sent employees home, requested additional staff if needed, operated the restaurant's safe, took inventory, and maintained the facility's cleanliness. They did not have authority to hire, fire, or schedule. The court held that senior servers constituted tipped employees and thus the tip pool was valid. Additionally, Plaintiff argued he was not given notice that defendants used tips to offset their minimum wage requirements. Such notice is required by the FLSA. The court found a question of fact on this issue and denied Defendant's motion for summary judgment.

Employment/Unemployment Insurance

58. *Pluta v. SMSC Gaming Enterprises,* 2007 WL 1121371 (Minn. App., 2007). Plaintiff, who was terminated from his job at a casino, was denied unemployment insurance because of misconduct. He denied that his actions were misconduct. He used profanity and allegedly threw a remote control in the direction of two co-workers. He claimed that he did not throw it but "merely tossed it" and that he used profanity only once, not numerous times. The court found even Plaintiff's version of the facts constituted misconduct. Said the court, "An employer has the right to expect an employee to act peaceably and not engage in conduct that endangers other people's safety."

Employment/Unions

59. *Ward, et al, v. Circus Circus Casinos, Inc.*, 473 F.3d 994 (9th Cir. 01/10/07). Six Plaintiffs, who worked for Defendant casino, met during a scheduled work break in the employee dining room to distribute union related leaflets. One employee stood

on a chair (ala Norma Rae) and spoke about union members defending their employment rights. Those participating were chanting "Union, yes." and "We want a contract." Security guards interrupted the meeting to stop it and allegedly pushed through the crowed and handcuffed the worker standing on the chair. The workers brought suit against Defendant for assault and battery, false imprisonment, and several other torts. Defendant moved for summary judgment stating that the Labor Management Relations Act preempted the claims until the workers exhausted their administrative claims. The court said that even if the worker's claims interfered with business operations, the Defendant could still be held liable under state law if the facts regarding the guards' behavior were proven.

60. *Venetian Casino Resort, L.L.C. vs. National Labor Relations Board,* 484 F.3d 601 (D.C. Cir. 05/08/07). Venetian Casino attempted to deter union workers from protesting on its new and temporary front sidewalk by placing warning signs and broadcasting a message to union workers that it was private property and that they were committing a criminal trespass. The Venetian filed a complaint in federal District Court seeking a declaratory judgment and injunctive relief. The Plaintiff argued that it was private property. The court held that the walkway was public and that the Venetian engaged in unfair labor practices.

Employment/Workers Compensation

61. *State ex. Rel. Gross v. Industrial Commission of Ohio, Food, Folks & Fun, Inc., d/b/a KFC,* 874 N.E.2d 1162 (Ohio 09/27/07). Sixteen year old worker disregarded safety requirements at restaurant while cleaning a pressure cooker. He was injured by extreme pressure and boiling water in pressure cooker and applied for worker's compensation benefits. The employer conducted an investigation and learned that the sixteen year old worker intentionally disregarded safety instructions on the label and the warnings told to him by a co-worker. The employer sought to prevent him from receiving additional disability benefits. The court agreed with the employer because the sixteen year old worker "Willfully ignored repeated warnings not to engage in the proscribed conduct" therefore he abandoned his employment and was barred from receiving further benefits. Two dissenting judges noted that worker's compensation is intended to be a no-fault system of compensation, thus the decision opens the door for fault to be determined. On appeal to the Ohio Supreme Court, the court reversed the decision stating that although KFC appeared to be justified in firing the Plaintiff for violating work rules, the termination letter stated his discharge was related to his injury, so the court held that the termination was involuntary and therefore he should be entitled to temporary total disability benefits.

62. *Luo v. Gao*, 2007 WL 675635 (Ohio Ct. App. 03/07/07). Plaintiff accidentally spilled water on another employee's hand and the two employees began to argue. The retaliating employee hit Plaintiff on the back of the head with a large cooking utensil, causing permanent paralysis and brain damage. Plaintiff filed for worker's

compensation benefits and the restaurant owner appealed. The trial court found the injuries were not compensable under worker's compensation statutes. The appellate court disagreed and stated that they were compensable since the actions were willfully and deliberately inflicted. The trial court should have determined whether the Plaintiff was acting within the scope and course of his employment rather than focusing on whether the attacker was in the course and scope of his employment. The court reversed and remanded the case stating that the dispute did not arise out of an "imported quarrel".

Franchise

63. *Loyle v. Hertz Corp.,* __A.2d __, 2007 WL 4555201 (Pa., 2007). Planning a trip to Canada, Plaintiff in Philadelphia made a call to the Hertz Corporation to reserve a rental car in Toronto. The car was rented from Hertz Canada, Ltd. At the end of the trip, after returning the car and while waiting for his flight, Plaintiff was approached by armed police, taken into custody, subject to strip and cavity searches, and questioned for four hours regarding a loaded handgun found by Hertz cleaning personnel in the rental car he had driven. He denied it was his and claimed it must have belonged to an earlier renter. He suffered post-traumatic stress disorder from the ordeal and sued the Hertz Corporation. It claimed the proper party was Hertz Canada, Ltd. and moved for summary judgment. It was granted by the trial court but the appellate court reversed and referred the matter to a jury. The question for trial was whether Plaintiff reasonably relied that the only entity with whom Plaintiff dealt was "Hertz". The court noted that Hertz' advertising and reservation systems gave no hint that separate entities were involved. Said the court, a genuine issue of material fact exists as to the apparent agency of Hertz, as an agent for Hertz Canada, exists.

Franchise/Fraud

64. *Red Roof Inns, Inc., v. Murat Holdings, LLC,* 223 S.W.3d 676 (Tex. App., 2007). Plaintiff sought to be a franchisee of Red Roof Inn. Not long after Plaintiff's franchise contract was signed, Red Roof Inn announced its merger. The new company did not think Plaintiff's facility was compatible and sought to discourage Plaintiff from pursuing the franchise. Plaintiff sued based on breach of contract and tort claims. The parties disputed the choice of forum. The contract identified a state forum favorable to the franchisor for cases involving the interpretation, construction and enforcement of the franchise contract. Plaintiff's lawsuit was based on fraud and not the franchise contract. Therefore the contractual choice of forum did not apply. Instead the court looked at where the contract was signed, where the initial franchise fee was paid, where the franchisor was incorporated, where Plaintiff's performance occurred, where the alleged misrepresentations were made. The court concluded that the appropriate forum was the state in which the franchisee did business.

Franchise/Discrimination

65. *Elkhatib v. Dunkin Donuts, Inc. and Domecq,* 493 F.3d 827 (7th Cir. 07/10/07). Plaintiff, who is Muslim and a U.S. citizen, purchased a Dunkin Donuts franchise in 1979. He chose Dunkin Donuts because he did not have to handle pork. When the franchisor introduced breakfast sandwiches, Plaintiff agreed to sell them without bacon, sausage or ham, without objection from Defendant. Plaintiff opened another location without selling the pork products, without objection from Defendant's representative. Plaintiff attempted to relocate his franchise to a better location and Defendant would not grant approval because he did not carry the complete breakfast product line. Plaintiff sued based on discrimination and the District Court granted summary judgment to Defendant finding no basis for discrimination. The appellate court disagreed finding that the facts showed non-Muslim franchise owners in the area also did not carry pork products and their franchise agreements were renewed. The breakfast sales only amount to 4% of sales at all locations. Summary judgment was reversed and the case was remanded.

Franchise/Non-Competition

66. *Bennigan's Franchising Company, L.P. v. Swigonsiu,* 2007 WL 603370 (N.D. Tex. February 27, 2007). Franchisor's non-compete clause was unclear as it did not define "casual dining," and instead listed names of restaurants that would qualify as "casual dining." Also included were restaurants "in any way competitive with or similar to a Bennigan's Restaurant." The court, using NY law, stated that the non-compete provision was unreasonable, and therefore unenforceable, due to the franchisor's own testimony that the provision was needed to prevent former franchisees from operating the restaurants as "Bennigan's but putting other names on them." Franchisee had changed the restaurant and there was not another Bennigan's restaurant within 200 miles so there was no harm to franchisor.

Franchise/Termination

67. *Bray v. QFA Royalties, LLC*, DC Colo., Bus Franchise Guide, 786 SF.Supp.2d 1237 (D.C. Colo. May 5, 2007). Franchisor terminated franchise agreements after learning that the leaders of a franchisee association posted a suicide note of a fellow member on their website. Franchisor relied on contractual language in the agreement that they may immediately terminate without providing a right to cure to franchisees if the franchisees engaged in conduct that in the franchisor's sole judgment, materially impaired the goodwill associated with the franchisor's trademarks. The franchisees filed a motion for preliminary injunction. The court determined that allowing the injunction was not adverse to the public interest. In addition, the court also decided that there was a likelihood of success on the merits by the franchisees on the breach of contract claim due to the failure of the

franchisor to give notice and an opportunity to cure. The court said, "sole judgment" cannot be impulsive or retaliatory but must be deliberative or cognitive.

68. *Zeidler v. A & W Restaurants, Inc.* 219 Fed. App. 495, 2007 WL 528912 (7th Cir. 2/25/07); aff'd 230 Fed. App. 615 (7th Cir, 5/24/07). Franchisee opened a restaurant even though franchisor warned franchisee that a competitor (Dairy Queen) was opening nearby and would likely harm franchisee's business. Franchisor offered to return franchise fees to franchisee if franchisee chose not to open. The franchisee ended up closing for business for an extended time and the franchisor terminated the franchise agreement. The franchisee claimed that franchisor knew free standing restaurants were not profitable. The court held that the franchisee did act reasonably and dismissed the case.

Franchise/UFOC

69. *Travelodge Hotels Inc. v. Honeysuckle Enterprises Inc. and Richardson,* 2007 WL 2298193 (3d. Cir. 08/10/07). Defendant entered into a franchise arrangement with Plaintiff but never paid the franchise fee claiming that the hotel did not do as well as it should have done, as promised by the salesman who negotiated the deal with Defendant. The Uniform Franchise Offering Circular (UFOC) given to Defendant clearly had a disclaimer and Defendant was held to have read the UFOC. The district court found Defendant liable for breach of contract and dismissed Defendant's counterclaim for fraud and misrepresentation. The decision was affirmed on appeal.

Franchise/Vertical Price Restraints

70. *Leegin Creative Leather Products. Inc., v. PSKS, Inc., d/b/a Kay's Kloset*, 127 Sup. Ct. 2705 (June 28, 2007). Not a hospitality case, however, the U.S. Supreme Court ruling may have consequences that will affect hospitality franchises. The Plaintiff manufacturer terminated the franchise agreement with the dealer as the Defendant was discounting the merchandise by 20%. The U.S. Supreme Court overturned a 96 year old precedent, stating that vertical price restraints shall no longer be per se violations of the Sherman Act, but shall be scrutinized by "rule of reason" on a case-by-case basis. Now it may be possible to tell franchisees what to charge customers.

Insurance/Premises Liability

71. *American Best Food, Inc., et al. v. Alea London, Ltd.,* 158 P.3d 119 (Wash. Ct. App. 05/21/07). A patron at a night club was shot and severely injured by another patron while in the parking lot of the club. The injured customer was initially inside the club when the perpetrator started a confrontation and was ejected. But later he was allowed to return at which time he started the fight again. Both men were subsequently escorted outside the club by security personnel. The perpetrator

then pulled out a gun and shot the victim. Security guards carried the injured patron back into the club but the manager ordered them to remove him. The guards took him outside and "dumped" him, leaving him on the sidewalk. The victim filed a suit against the club alleging negligence. The club notified its insurance company of the claim. The company refused coverage on the ground that the policy excluded the event since it involved an injury arising out of an assault or battery. The club sought a declaratory judgment and the trial court granted the insurance company's motion for summary judgment. The appellate court disagreed and found that the injuries did not necessarily arise out of an assault or battery and the insurance company had a duty to defend the club. The case was remanded for trial.

Negligence/Alcohol

72. *Nunez v. Carrabba's Italian Grill Inc.,* 859 NE2d 801 (Mass. 01/09/07). Plaintiff, an eighteen year old previous employee of Defendant's restaurant, went to Carrabba's and consumed six alcoholic drinks and two hours later went to another bar. He drank at the bar also and while driving to a friend's house, was in a car accident when another car failed to stop at a red light in the opposite direction and hit Plaintiff causing serious injuries. Plaintiff's blood alcohol level was 0.13. Plaintiff sued Defendant for negligently serving him alcohol knowing he was underage, and the bar's negligence contributed to his injuries. The court denied Defendant's motion for summary judgment stating that the Defendant should have known he was underage and it may have breached its duty not to serve alcoholic beverages to an underage adult.

73. *Patterson v. Thunder Pass, Inc.*, 153 P.3d 1064 (Ariz. Ct. App. 03/08/07). Dawn Roque was intoxicated with she left the Defendant's bar. She backed her car into a parked jeep and drove over a parking barrier. An employee stopped Roque, took her keys and called a taxi, which never arrived. Eventually, one of the Defendant's employees drove Roque to her home approximately five miles away. Ms. Roque, within an hour, returned to the bar to get her vehicle, still intoxicated. She was involved in a head-on collision with Plaintiff who subsequently sued Defendant alleging he sustained injuries and damages as a result of the bar serving liquor to Roque. Summary judgment granted in favor of the bar was affirmed on appeal since the bar took reasonable steps to protect the safety of the public. The court also noted that it was not reasonably foreseeable that Roque would return to the bar within 45 minutes after being dropped off at her house and then operate her vehicle while intoxicated.

Negligence/Equestrian

74. *Rutecki v. CSX Hotels, d/b/a The Greenbrier Resort*, 2007 WL 1795624 (S.D. W. Va. 01/16/07). Plaintiff, a guest at The Greenbrier Resort filed a complaint against the hotel for negligence after she was thrown from a horse seriously injuring her back. Prior to riding she signed a release and an indemnification form but failed to

state the level of her riding ability on the form. She did tell the stable hand that she had ridden horses in the past. The court reviewed the West Virginia Equestrian Activities Responsibility Act which recognizes the inherent risks in horseback riding. The Plaintiff argued that the hotel failed to make reasonable efforts to determine her ability to safely participate in equestrian activities and other charges. The court, in a case of first impression, found that the resort could not be held liable since it met all of the duties of the Act and the Act was the only recourse for Plaintiff, the hotel was not grossly negligent and the hotel did not cause Plaintiff's injuries. The court granted Defendant's motion for summary judgment.

Negligence/Forseeability

75. *Schoop's Restaurant, et al, v. Hardy, et al.,* 863 NE2d 451 (Ind. Ct. App. 04/02/07). Ms. Hardy, along with her granddaughters, were eating at Schoop's Restaurant on a Sunday afternoon when a 70-year old man driving his pick-up truck suffered a heart attack, lost control of his truck and crashed into the wall of the restaurant killing a patron and injuring the Plaintiff and her two granddaughters, along with six other patrons. Hardy sued the restaurant claiming she was a business invitee and the restaurant owed them a duty of care to keep them free from unreasonable risk of harm. She also alleged that the restaurant failed to erect barricades or safety structures around the restaurant to protect patrons. The trial court did not award summary judgment for the restaurant, as requested by Plaintiff, but decided that a jury trial was in order. The appellate court disagreed and reversed the lower court decision stating that the restaurant did not breach its duty to exercise reasonable care to prevent harm since the accident was not foreseeable.

Negligence/Liquor Liability

76. *Anton v. Prospect Café Milano Inc.*, 474 F.Supp. 37 (2/05/07). Anton, a twenty year old, worked the evening shift at the café. Her mother alleged that someone at the restaurant served her alcohol knowing she was under the age of 21. Anton went with her assistant manager to his apartment on the 8th floor of a building. In the early morning, the manager called 911 because Anton had fallen to her death from the manager's eighth floor balcony. The toxicology report showed that she was intoxicated at the time of her death. Anton's mother filed a lawsuit against the café seeking $20 million in compensatory damages. The Café moved for summary judgment claiming that the suit is barred due to assumption of risk and contributory negligence. The manager refused to testify invoking his Fifth Amendment rights. The court denied the summary judgment stating that the café did not adequately demonstrate that Anton's own negligence contributed to her fall.

Negligence/Negligent Hiring/Supervision

77. *Golodner v. Quessant, Inc., d/b/a Café Charbon, et al.,* 2007 WL 2844944 (S.D.N.Y. 09/27/07). Plaintiff was sexually assaulted by an employee at the café

where she worked and brought suit alleging negligent hiring, retention, supervision and training as well as, intentional infliction of emotional distress and false imprisonment. The court granted summary judgment for the Defendant stating that a reasonable jury could not find that the café knew or should have known about the propensity of the employee to commit the sexual offense. Nothing in the record showed that a background check would have indicated criminal tendencies of the employee.

78. *Farooq v. MDRB Corp., d/b/a Ramada Inn Hotel, et al.,* 498 F.Supp.2d 284 (D.D.C. 08/03/07). Plaintiff's son was killed at a private event held at the Ramada hotel. The host of the party hired a private security force but failed to communicate with hotel security. Plaintiff alleged that hotel security should have exercised control over the hired security team. The court said that even if the allegations of supervision were allowed, there was no evidence regarding what type of behavior the hotel security staff should have exercised over the private security team and since no standard of care was established, the case was dismissed.

Negligence/Pesticides

79. *Gass and DeJong v. Marriott Hotel Services, Inc. and Ecolab Inc.,* 501 F.Supp.2d 1011 (W.D. Mich. 05/08/07). Plaintiffs were overnight guests in the Wailea Marriott Hotel in Hawaii and reported to hotel management a dead cockroach that was found by the sliding door. The hotel removed the roach and contacted Ecolab; who then sprayed the room. The women complained about the pesticides claiming that it made them ill and they were relocated to another guest room and subsequently transported to a doctor. Upon returning to their home, both women complained and received treatment for medical and psychological illnesses due to the pesticides. The women filed suit and the court found that the treating physicians could not identify which chemicals the women may have been exposed to and had no diagnostic test verifying that their exposure caused the symptoms described by the women. Summary judgment was granted for the Defendants.

Negligence/Res Ipsa Loquitur

80. *Pacella v. Resorts Casino Hotel and Millar Elevator Service Co.,* 2007 WL 2873651 (E.D.N.Y. 09/28/07). Plaintiff tripped on escalator, fell back and twisted her knee. The hotel security staff said, "Oh it's that escalator again." Plaintiff argued that the security guard's comment implied that the Defendants were negligent. The court found that Plaintiff did not present evidence that Defendants failed to practice proper preventive maintenance of the escalator or that Defendants had actual or constructive notice of a defective condition in the escalator. However, the court denied defendant's summary judgment motion relying on *res ipsa loquitur*. Plaintiff established through expert testimony that, although the escalator could have stopped for any of many reasons, it is more likely than not that the malfunction resulted from negligent maintenance.

Premises Liability/Negligence

81. *Jacob, et al., v. Grand Casino Gulfport*, 2007 WL 1558717 (E.D. La. 02/21/07). Plaintiff was doused with a four-smelling liquid when a ceiling panel fell at the Defendant's casino. Defendant's employee offered a free shirt to replace the dirty one and Plaintiff went to his room to shower. One week later, Plaintiff was diagnosed with a viral respiratory infection. He died nine days later from a heart attack believed to be caused by a staph infection and pneumonia. Plaintiff's wife filed a lawsuit against Defendant alleging negligence and premises liability. The court found that the Plaintiff's family failed to show a causal link between the Defendant's alleged negligence and the death as there was no indication of Listeria or similar bacteria in the deceased's cultures.

82. *Grimaldi v. Manhattan Arms Hotel,* 833 NYS2d 97 (NY App., 2007). Plaintiff was injured when a tenant living at a hotel dropped an air conditioner into the street as she was trying to remove it from the window. The tenant testified that no one at the hotel had anything to do with the appliance, she had requested the hotel staff to assist her but no one was available, it fell while she attempted to move it from the window. Further, the hotel had no reason to believe that the tenant would attempt to remove the air conditioner without assistance. The court ruled that the hotel owed no duty and therefore was not liable.

Premises Liability/Open and Obvious Danger

83. *Jack in the Box, Inc. v. Skiles*, 221 SW3d 566 (Texas 02/09/07). Skiles was a tractor-trailer driver for Jack in the Box for numerous years. He was attempting to unload a delivery of food products and learned that his automatic lift gates were stuck. The drivers are instructed to wait for a maintenance person to arrive to make repairs. The restaurant manager said that he was out of hamburger meat and needed the supplies. Skiles told his supervisor that he was going to use a ladder to climb over the non-functioning gate. While doing so he fell and heard both his knees pop. Skiles brought a negligence action against the company and the company moved for summary judgment, which was granted. The appellate court reversed the trial court's decision and remanded the case for trial. Jack in the Box argued before the Supreme Court of Texas that there was no duty to warn Skiles for an obviously dangerous condition and the court agreed reversing the case and finding for Jack in the Box.

84. *Uddin, Admr. V. Embassy Suites Hotel, et al,* 864 N.E.2d 638 (Ohio Sup. Crt. 2007) A ten year old girl drowned in an indoor pool at Defendant hotel. At the time she was watched by adults and other children played nearby. The water was, as described by various witnesses, "cloudy and murky," "real creamy," and "almost milky". Another witness said it was not possible to see the bottom of the pool even

though it was a maximum of five feet deep. Said another, "When a child went underwater you lost sight of them because the water was so murky and creamy." The Plaintiff was located not by visual inspection of the pool from its surface, but rather by someone feeling along the bottom of the pool for her body. The majority applied the open and obvious doctrine and dismissed the case. In a strong dissent, the lone judge commented that "To a ten year old child, the danger may not be as readily apparent."

85. *Freiburger v. Four Seasons Golf Center, L.L.C., et al.,* 2007 WL 1674020 (Ohio Ct. App. 06/12/07). Plaintiff was injured when he fell from a second tier platform on the hitting range at Defendant's golf center. He stumbled back off the ledge into the safety net. The net was intended to protect those who might fall off the second tier, however the net did not catch Plaintiff and he suffered serious injuries. The trial court granted summary judgment to the Defendant stating that the ledge was an open and obvious condition and that no duty to Plaintiff was owed. The appellate court reversed stating that although the Defendant did not verbally assure Plaintiff that the net would catch him, the net's purpose was readily apparent and should have caught him. Since a jury may find that Defendant may owe Plaintiff a separate duty to reasonably maintain the safety net, the court found that there was a genuine issue of material fact and the case was remanded for trial.

86. *Duval v. OM Hospitality LLC d/b/a Days Inn, et al.*, 651 S.E.2d 261 (N.C. Ct. App. 10/16/07). Plaintiff and her husband were injured when walking down a dark stairwell which was on a timer light switch that had been deactivated. Plaintiff argued that due to inadequate lighting, Plaintiff tripped and injured her nose, forehead, arm and leg. Defendant argued that the area was an open and obvious danger and therefore Plaintiff contributed to her own injuries. The trial court granted summary judgment for Defendant and on appeal, the appellate court reversed stating that a reasonable jury could find that Plaintiff was negligent and a jury could also find that she acted reasonably and with proper care. A jury is to hear the case.

87. *Hernandez v. Studio Plus Properties, Inc.,* 2007 WL 1166052 (Mi. App., 2007). Plaintiff fell while walking through the parking lot of Defendant hotel. When she had first tried to leave the hotel, she attempted to exit through the side door near her hotel room, but it was blocked by snow. She proceeded to the main entrance to leave. Once outside she walked carefully along a path that had been shoveled to the pavement. She did not see any ice before she fell, but felt it once she was on the ground. In response to her lawsuit the hotel claimed the condition was open and obvious. The court held that there generally is no duty to warn about or remove an open and obvious danger. Whether a condition is open and obvious is to be determined by an objective standard. As a general rule, the hazards presented by snow and ice are open and obvious, and therefore do not impose a duty on the property owner to warn of or remove the hazard. Where there is snow in winter in Michigan, there is likely to be ice, and the presence of snow puts a person on notice

that there may be slippery conditions. The hotel's motion for summary judgment was granted.

88. *Escurra v. Shawmut Design & Construction,* 864 N.E.2d 42 (Mass. App. 2007). Plaintiff suffered a fractured wrist when he fell from scaffolding while installing a ceiling mural during renovations of the Colonnade Hotel in Boston. Plaintiff sued the general contractor and hotel claiming they failed to provide safe working conditions. The Defendants asserted as a defense the open and obvious doctrine. The court agreed with the Defendants and dismissed the case, noting that the doctrine "operates to negate the existence of a duty of care." Installing art work on a ceiling creates risks that are open and obvious.

Premises Liability/Slip and Fall

89. *Kilcrease, et al., v. Barnhills Buffet Inc.*, 2007 WL 30623 (W.D. La. 01/03/07). Plaintiff slipped on a wet floor after a customer at the restaurant had spilled a tray of drinks on the floor. Plaintiff said she did not see the "wet floor" sign or the employee promptly mopping the spill. The restaurant filed a motion of summary judgment which was denied as the court said the Plaintiff did raise a genuine issue of material fact as to whether the restaurant exercised reasonable care to protect its customers from the spill. Plaintiff's husband argued he was entitled to bystander damages and the court dismissed his claim since the husband did not view the accident nor could he prove emotional distress.

90. *Miller v. TGI Friday's Inc.*, 2007 WL 723426 (N.D. Ill. 03/05/07). Plaintiff slipped on a piece of lettuce on a stairway at Defendant's restaurant. One of the employees who came to her aid after the fall apologized for the lettuce and Plaintiff overheard the employee telling the hostess that they should have cleaned up the stair. Defendant's motion for summary judgment was denied and the court stated that the repeated comment allegedly made by the hostess was admissible and it could be reasonably inferred from her duty of seating guests that it was within the scope of her employment to notify another employee of unsafe conditions.

Premises Liability/Statute of Limitations

91. *Richardson v. Bigelow Management, Inc.*, 2007 WL 1139775 (Tex. App., 2007). Plaintiff and her family stayed at a Budget Suites of America while their permanent home received treatment for mold. While there, the sprinkler system in their motel room went off, causing extensive damage to their clothes. She sued the hotel in negligence for $21,546.57. Plaintiff's case was dismissed because it was begun two months after the two year statute of limitations had passed. Plaintiff asserted additional causes of action including breach of contract, breach of implied warranty of habitability, and breach of warranty of fitness for a particular purpose. The court rejected the breach of contract case, holding that the facts alleged support a tort theory (negligent maintenance of the sprinkler system), not a contract one. The

court likewise rejected the warranty of habitability claim, finding it applied to landlord-tenant relationships only, whereas hotel guests are mere licensees. Similarly the cause of action for breach of the implied warranty of fitness for a particular purpose was disregarded because the warranty applies to "goods" under the Uniform Commercial Code and the rental of a motel room is not a good.

Premises Liability/Third Party Acts/Security

92. *Shadday v. Omni Hotels,* 477 F.3d 511 (7th Cir. 02/20/07). Plaintiff, attending a steelworker's union convention, met a lawyer visiting Washington and had drinks with him at the bar. When it closed, Plaintiff was waiting for the elevator when the lawyer began fondling and kissing her. Plaintiff resisted, and when the elevator car opened, she ran inside. He followed and raped her. A security guard found Plaintiff after she exited the elevator. The lawyer was arrested soon thereafter and was convicted of sexual assault. The hotel was one security guard short on the night of the incident and the court found that if all three guards had been there, none of them would have probably noticed the initial assault unless they happened to be near the elevators. The court found that it is unrealistic for the hotel guards to be required to see every inch of the property at all times. Plaintiff did not provide any evidence showing a lack of safety precautions to protect its guests for a luxury hotel in Washington. Summary judgment in favor of Defendant affirmed.

93. *Borda v. East Coast Entertainment, Inc., d/b/a The Voodoo Lounge*, 950 So.2d 488 (Fla. Dist. Ct. App. 02/28/07). Plaintiff was attacked at Defendant's lounge by a woman she said she didn't know. The bouncer at the lounge ejected both women. While Plaintiff and her friend were walking down an adjacent alley, the Plaintiff was again attacked by the same woman. Plaintiff suffered injuries to her knee and no longer felt safe in public. She sued the lounge asserting premises liability. The jury found for Plaintiff and awarded her $150,000. The court, through a motion for a directed verdict, limited the damages to $10,000. On appeal, the court said that Plaintiff's injuries were foreseeable and the lounge's duty of care was extended to the nearby alley, especially when both of the patrons were ejected from the lounge at the same time. The appeals court reinstated the jury's verdict.

Premises Liability/Trip and Fall

94. *Messer v. Texas Roadhouse Restaurant*, 2007 WL 1373880 (Tex. Ct. App. 05/09/07). Plaintiff and three of her guests went to Defendant's restaurant and were escorted to an elevated booth. When exiting the booth, Plaintiff suffered injuries fracturing her wrist and pelvis. Plaintiff sued Defendant for Defendant's failure to exercise reasonable care and failure to provide a warning. The trial court granted summary judgment for the restaurant which was reversed on appeal. The appellate court found that there was some evidence that the restaurant knew that the elevated booth posed an unreasonable risk of harm due to photos which showed the area was

dimly lit and no warnings were given to Plaintiff. The case was reversed and remanded to the trial court.

95. *O'Rourke v. Days Inn New Orleans,* 2007 WL 1575215 (La. App., 2007). Plaintiff was an employee of Defendant restaurant, Nora's Creole Café, which is located in a Days Inn Hotel in New Orleans. She slipped and fell at the restaurant, allegedly due to a defective and inoperable air conditioning system that allowed condensation to form on the floor, creating a dangerous condition. Pursuant to the lease between the restaurant and the hotel, the restaurant had sole responsibility for maintenance of the air conditioning system. Therefore the hotel is not liable to Plaintiff.

96. *Wert v. La Quinta Inns, Inc.*, 2007 WL 2351357 (M.D. Tenn., 2007). Plaintiff fell in the shower of a La Quinta Inn and suffered aggravation of a pre-existing back condition. He sued for damages. He claimed the floor had cracked previously but the hotel failed to replace it or support the area beneath the cracks. Instead, it allegedly attempted to patch the floor and place a bath mat over the cracks to hide them. After the fall, the hotel ripped out the floor and replaced it. The old flooring was disposed of in a dumpster. No part of it was retained. Plaintiffs sought sanctions for spoliation. The court determined the hotel was negligent for not preserving the shower floor. However, the plaintiff had taken photos which the court expected would be admissible as evidence and therefore denied the motion for a negative inference. The court also found that damages were sufficiently alleged to avoid summary judgment for the hotel where Plaintiff testified at length about the impact of the injury on his ability to work and enjoy activities of daily life, about activities in which he can no longer engage, about his pain and suffering, and about his wife's loss of consortium. Also presented were statements of medical expenses and lost income. Further, although Plaintiff's back problems were not caused by the fall, they were "permanently aggravated" by the accident, requiring two surgeries that "more probably than not" would not have been needed but for the fall.

Spas/Waiver of Liability

97. *Jones v. Loews Santa Monica Hotel, Inc.,* 2007 WL 1839447 (Ca. App. 2007). Plaintiff was a member of Defendant health club and spa which were located in Defendant hotel. Her signed membership agreement included a waiver of liability that stated, in relevant part, "Member hereby expressly waives any claim of liability for personal/bodily injury or damages which occur . . . while on the HOTEL and/or SPA premises, whether using exercise equipment or not "One day Plaintiff was walking on an outdoor sidewalk on the hotel's property, 50 feet from the spa entrance, when she tripped on a hose and fell, sustaining injuries. She sued claiming the exculpatory clause did not apply because she was outside the spa when she fell. The court, noting the clear language of the release, denied her recovery.

Trademarks

98. *Gulf Coast Commercial Corp. v. Gordon River Hotel, Assoc.,* 2007 WL 1655854 (Fla., 2007). This case involves a dispute between two companies that own hotels on Fifth Avenue in Naples, Florida. Plaintiff owns and operated The Inn on Fifth, a boutique inn with 87 guest rooms and a spa. Defendant owns and operates the Bayfront Inn on Fifth, located six blocks away. Plaintiff sued for trademark infringement. Because the mark is geographically descriptive, to win its case Plaintiff must show secondary meaning. "Secondary meaning" is the connection in the consumer's mind between the mark and the source or origin of goods or services. Among the factors to consider are length and manner of the mark's use; nature and extent of advertising and promotion;' efforts made by Plaintiff to promote conscious connection in the public's mind between the Inn on Fifth mark and its business; and the extent to which the public actually identifies the mark with Plaintiff's hotel. The court denied summary judgment to Plaintiff, finding a question of fact exists on the issue.

Trademark/Copyright/Infringements

99. *Kingvision Pay-Per-View Ltd. v. Carlos M. Guerra, Individually and d/b/a Cevicheria Los Guerras*, 2007 WL 539141 (E.D.N.Y. 02/16/07). Defendant, on numerous occasions, broadcasted boxing matches at his bar and restaurant without proper licensing or payment of fees to Plaintiff. Even after the lawsuit was filed and judgment was entered, Defendant continued to broadcast events. The court decided to award enhanced damages (punitive damages) for Defendant's actions since the unauthorized broadcasts were committed willfully and for purposes of direct or indirect commercial gain.

100. *Franklin Machine Products v. Heritage Food Service Equipment, Inc.,* 2007 WL 4287568 (N.D. Ind., 12/5/2007). In this copyright action, both Plaintiff and Defendant sell equipment and parts to franchisees of Denny's restaurants. Both litigants prepared catalogues for this purpose, and Plaintiff copyrighted its catalogue. In this lawsuit Plaintiff claimed that Defendant's catalogue violated Plaintiff's copyright. The court noted that "raw data", including listings of equipment and replacement parts, are not protected by copyright. The court reviewed the two catalogues, which were appended to the pleadings, and determined they were not substantially similar. The court stated they were different in content, style, form and manner of presenting the information. Defendant's motion to dismiss was thus granted.

Trademark/Franchise

101. *Best Western International v. Patel,* __F.Supp.2d __, 2007 WL 3307017 (D, Ariz., 2007). Plaintiff, a motel membership organization, was granted a preliminary injunction in a trademark infringement case. The organization sought to bar a member from displaying Plaintiff's trademarks. Plaintiff established a likelihood of success on the merits of both its breach of membership agreement and trademark

infringement claims. Plaintiff provided documented evidence that defendant hotel owner repeatedly failed to comply with Plaintiff's design requirements. Per the terms of the Membership Agreement, this authorized Plaintiff to terminate defendant's membership. The Agreement also required that, upon termination, a member must immediately cease use of plaintiff's trademarks. Defendant's continued use of the trademark created a very high likelihood of confusion. These circumstances justified the issuance of the preliminary injunction.

102. *ITC Limited and ITC Hotels Limited v. Punchgini Inc. et al.,* __N.E.2d__, 2007 WL 4334177 (2d Cir. 03/28/07). Plaintiff operated Bukhara, a successful restaurant which specialized in a cuisine and décor inspired by a location in India. The company went global and Plaintiff opened several restaurants in various countries. In 1997, the company closed its U.S. locations but kept the international restaurants open. In 1999, Defendants, who were workers at Plaintiff's former New York restaurant, opened the Bukhara Grill. Plaintiff sued Defendant claiming that use of a similar mark and trademark infringement, unfair competition and false advertising. The court granted summary judgment to Defendant concluding that Plaintiff had abandoned its Bukhara mark for restaurant services in the United States. The appellate court affirmed the summary judgment award even though there were numerous similarities between Bukhara and Bukhara Grill that could suggest deliberate copying.

103. *WB Music Corp. et al. v. Symetry Enterprises, LLC and Macchiarulo*, 2007 WL 2126361 (D.Conn. 06/26/07). ASCAP brought an action against a club for copyright infringement. The club had failed to respond to numerous requests to purchase a license agreement from ASCAP over a period of eight years although it regularly played copyrighted songs in its lounge. The court granted ASCAP a permanent injunction and ordered Defendants to pay $20,000 in damages and $3,000 in legal fees and costs.

Trademarks/False Advertising/Invasion of Privacy

104. *Lewis v. Marriott International, Inc.,* __ Fl. Supp.2d __, 2007 WL 4442785 (E.D. Pa., 2007). Plaintiff was the executive chef at a Courtyard by Marriott in Philadelphia until he left in 2005 to start his own catering business. He had been very successful in promoting wedding packages. He alleges that, over his objection, Marriott continued after he left to use his name in materials used to sell wedding packages. He asserted claims of false advertising under the Lanham Act and invasion of privacy. Marriott claimed that Plaintiff's name had not obtained a secondary meeting or commercial value as required for the false advertising and privacy claims respectively. The court found that Plaintiff's name had acquired the necessary secondary meaning and value, based upon the investment of time he made in developing his reputation, the investment of effort and money in promoting and selling his wedding packages, and the amount of revenue he generated for Marriott. The court therefore refused to dismiss Plaintiff's claim.

Trademarks/Contracts/Restrictive Covenants

105. *Citibrook v. Morgan's Foods of Missouri, Inc.* __S.W.3d __, 2007 WL 4233385 (12/4/07). In this action for injunctive relief, Defendant purchased a parcel of land in a shopping center that contained a restrictive covenant barring "forever" use of the property for anything but a Kentucky Fried Chicken restaurant. Defendant nonetheless opened a J.J.'s Fish and Chicken restaurant on the property. Plaintiff, the owner of the shopping center, sued for violation of the covenant. The court held that, but for the covenant's duration of forever, it would have been enforceable because the language was clear and unambiguous, and the shopping center did not allege fraud or mistake. However, "forever" is unreasonable as to time and therefore invalidates the covenant. Summary judgment for Defendant was affirmed.

Trademarks/Contracts/Insurance

106. *Maclaffe, Inc. v. Arch Insurance Co., et al,* __So.2d __, 2007 WL 4409704 (La.App, 12/19/2007). Plaintiffs are McDonald's franchisees who had all purchased insurance through defendant and who all suffered considerable damage from Hurricane Lili which struck south Louisiana in 2002. Plaintiffs purchased their insurance policies per a requirement in their franchise contract. They chose defendant insurer because the contract required that the insurer be franchisor-approved, and Defendant was the only approved insurer in the area. Plaintiffs claim that Defendant insurance agent violated its fiduciary duty to obtain the best insurance coverage because the policies contained a $25,000 deductible for a Named Storm such as Lili. The court dismissed the claim finding no causation between defendants alleged breach of duty and the loss suffered by Plaintiffs, since no other insurance was available to them.