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

Twelfth Annual
Hospitality Law Conference
February 10-12, 2014
Houston, Texas

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CO-RECIPIENT OF THE 2013 ANTHONY G. MARSHALL HOSPITALITY LAW AWARD

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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 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. In 2011, she published *Law Made Fun through Harry Potter's Adventures*. 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*, and a blog for Cengage Publishing Company on the law behind the news.

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 past Dean of the Monroe County Bar Association Academy of Law and past president of Brighton Kiwanis. In 2009, she won the Humanitarian Award, conferred by the Monroe County Bar Association and was named a Woman of Distinction in 2011.

Her favorite volunteer activities include being a Big Sister in the Big Brother program, which she has done for thirteen years, and a Girl Scout leader for an inner-city troop.

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 was previously an Assistant District Attorney, an attorney in private practice and in-house counsel for Macy's Department Stores. She has participated in several Macy's Thanksgiving Day parades as a clown make-up artist, Captain of the Bugs Bunny and Tortoise-and-the-Hare Floats, and a balloon handler for Clifford, the Big Red Dog.

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Diana S. Barber, J.D., CHE, is a Lecturer at 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 for over ten years. She teaches hospitality law and an introductory course in hospitality. She is also the Program Director of the School of Hospitality's Study Abroad program including a 3-week summer course on European Hospitality Experience to Spain, France, Monaco, Italy and Switzerland and in addition, a UK Hospitality Study Abroad program to Ireland, Scotland and England.

Ms. Barber is a recipient of the J. Mack Robinson College of Business Teaching Excellence Award in 2011 and was awarded 2011 Study Abroad Program Director of the Year by Georgia State University. In addition, Ms. Barber is the recipient of the 2010 Hospitality Faculty of the Year award and in 2012, received a Certificate of Recognition from the Career Management Center for the J. Mack Robinson College of Business. Ms. Barber is a member of Phi Beta Delta, an honor society for international scholars. Ms. Barber also serves as the faculty advisor to the GSU student chapter of the AH&LA.

Ms. Barber continues to be 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-five years of legal hospitality experience. Diana 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 with The Ritz-Carlton Hotel Company, LLC serving as vice president and associate general counsel. She is a member of the State Bar of Georgia, G.A.H.A., American Hotel & Lodging Association 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. Since 2007, Ms. Barber has been on the editorial board of Hospitality Law monthly newsletter. She also writes a monthly legal Q&A column for the Georgia Hotel & Lodging ("GHLA") 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 and continues to handle "hot-line" issues from members of GHLA.

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ADA/Facility

1. *Heyat v. Marriott International, Inc., et al*., No. G045694 (Cal. Ct. App. 01/10/13). Plaintiff, an 83 year old guest of the Defendant's time share resort, alleged he was disabled with Alzheimer's disease at the time he fell injuring his hip. Plaintiff was attempting to access the pool area and didn't see the signs indicating a ramp. He took the stairs and fell. He sued under the California Disabled Persons Act alleging that Defendant failed to post signs directing disabled guests to the ramp. The trial court granted summary judgment in favor of Marriott on the denial of equal access claim, and Plaintiff voluntarily dropped his other claims. The appellate court affirmed the lower court's decision holding that Plaintiff did lack standing to recover damages because he was not denied equal access to the pool area. The signs were in relatively close proximity to and in full view of the stairs. Judgment affirmed for Defendant.

2. *Locastro v. Cannery Casino Resorts, LLC d/b/a The Meadowlands Racetrack and Casino*, No. 13cv0168 (W.D. Pa. 04/23/13). Plaintiff, who suffers from mood swings and is bipolar, was ejected from the casino because of his actions at the poker table. He was not allowed at the racetrack or the casino. Plaintiff sued for discrimination based on his disability and said that his disability "can often make him a challenging person to deal with due to his mood swings". The court said that Plaintiff did establish that he was disabled under the ADA, but dismissed the claims that Plaintiff's rights under state and federal law were violated by the Defendant's decision to ban him from the property.

Casinos

3. *Okane v. Tropicana Entertainment, Inc.,* No. 12-6707 (E.D. Pa. 01/03/13). Plaintiff, a patron of Defendant's casino, was evicted from the casino back in 1999 for stealing two gaming chips worth $5.00. Plaintiff claimed she was mentally ill at the time and her condition is now under control. The casino security department kept a record of the incident. Years later, and after numerous requests from Plaintiff, Defendant allowed Plaintiff to visit the casino, however, Defendant kept the security report on file. Plaintiff claimed the keeping of the report caused her severe emotional distress and she sued Defendant for negligent and intentional emotional distress. The court threw out Plaintiff's claims stating that it was "simply not foreseeable that a reasonable person would

experience severe emotional damage from the maintenance of an internal security record of an event that, in fact, occurred." Plaintiff was a Pro Se plaintiff; representing herself.

4. *Perri v. Resorts International Hotel, Inc.*, 2013 WL 5676084 (NJ, 10/17/13). Plaintiff sues for injuries allegedly sustained when a stool on which he was seated in front of a slot machine at Defendant's hotel and casino "gave way. Plaintiff fell and sustained an injury to his back. A jury trial was held. The evidence referenced a prior fall resulting in back pain two years prior to the stool incident. The jury awarded Plaintiff $13,817 for past medical bills and nothing for past and future pain, impairment, and loss of enjoyment of life. Plaintiff sought a new trial, saying the verdict was inconsistent and irreconcilable because it included a finding that Plaintiff suffered injuries but denied that those injuries caused pain or lost enjoyment of life. The court denied the motion holding that the jury could reasonably have concluded that any pain and suffering resulted from the prior injury.

5. *Avidor, et al., v. Sutter's Place, Inc*., No. H037142 (Cal. Ct. App. 01/23/13). Plaintiff filed a complaint against the casino stating that Defendant violated California labor laws by requiring dealers to participate in a tip pool. Defendant argued that because tips were not left behind for service as is done in a restaurant, but rather tips were specifically handed to dealers by players that the tip should belong to the dealer and not go into the tip pool. All dealers were told about the arrangement in orientation when first hired. The trial court stated that it was irrelevant as to the intent of the player/tipper and that the concept of tip pools has already been declared legal by California courts. The appellate court agreed with the trial court and Plaintiff's claims were dismissed.

6. *Pittman v. Boyd Biloxi, LLC*, No. 1:12CV64HSO-RHW (S.D. Miss. 06/28/13). Plaintiff, a patron of the Defendant's casino once banned from the property, sued the casino for abuse of process, malicious prosecution, negligence, false imprisonment etc. when Plaintiff was arrested due to a being on the property and refusing to leave the casino premises. The trial court granted the Defendant's motion for summary judgment because Plaintiff failed to present any evidence to support her claims. The court said that although there was confusion among the casino staff, it did not rise to the level of actual malice. As for her false imprisonment claim, she was in police custody and not held by the casino so this claim failed as well.

7. *Koerber v. Wheeling Island Gaming, Inc.,* 2013 WL 162669 (W.Va., 01/15/13). Plaintiff sued Defendant casino and it's VIP Host for breach of contract relating to the facility's Player's Club. Plaintiff was advised that, as a member, she would receive semi-annually 25% of the money she spent gambling at the casino. She spent in excess of $40,000 and received only $146. Defendant VIP host moved to dismiss the claims against him. The court granted the motion noting that the VIP Host acted on behalf of the casino and so could not breach a contract by which he individually was not bound. Note: The case against the casino will proceed.

Class Action Certification

8. *Tiro, et al., v. Public House Investments, LLC, et al*., No. 11 Civ. 7679 (CM), 11 Civ. 8249 (CM) (S.D. N.Y. 12/04/12). Plaintiffs were food service workers at four New York City restaurants and they alleged violations of the Fair Labor Standards Act and other labor laws in New York. Plaintiffs moved for certification of the state law claims. The state law claims comprised violations of tipped, hourly food-service workers and non-tipped, non-exempt kitchen workers. Plaintiffs argued that the restaurants had a history of failing to pay minimum wage, overtime pay and other wages. The Defendants argued that the employees were unable to show that the restaurants were operated as a single, integrated enterprise for the purposes of a class action suit and the court disagreed. There were more than 400 tipped employees and more than 150 non-tipped workers employed at all four restaurants.

Contracts

9. *The Empire Hotel v. Walker & Zanger, Inc*., 107 AD3d 586, 2013 WL 3185157 (NYAD, 1st Dept., 06/25/13). Plaintiff hotel's interior designer contracted with Defendant for the purchase of natural travertine tile. The tile delivered was defective in an unexplained way. The hotel sued for breach of warranty of merchantability and fitness for a particular purpose. The invoice contained a broad disclaimer of all warranties which was fatal to Plaintiff's claim. Plaintiff argued that the disclaimer language was not sufficiently conspicuous. However, the disclaimer was printed in all-capital letters and "dominates" the conditions of sale explained at the bottom of the invoice. Plaintiff also asserted in the complaint a claim for quasi contract. However, the court held where a contract exists, there can be no quasi-contract. Plaintiff additionally claimed that Defendant orally warranted that the tile was suitable for use in a commercial hotel lobby when apparently it was not. However the court ruled that the invoice was an integrated contract and therefore it cannot, per the parol evidence rule, be modified by an oral agreement.

10. Sams Hotel Group, LLC v. Environs, Inc., 716 F.3d 432 (7th Cir. 05/31/13). A Homewood Suites Hotel franchisee contracted with Defendant architectural firm to design a six-story hotel in Fort Wayne, Ind. The fee per contract was $70,000. The agreement contained a provision stating that, in the event of negligence or breach of contract, the architect's "total liability to the [hotel] Owner shall not exceed the amount of the total lump sum fee . . .". When the structure was close to completion, serious structural defects were discovered. It was condemned and repairs were unsuccessful, requiring demolition. The franchisee estimated its loss at more than $4.2 million. Following trial the court found that the architectural firm was indeed liable for breach. However, the referenced contract clause limited recovery to the $70,000 fee. On appeal the court upheld the limited recovery based on freedom of contract.

11. *Las Palmeras de Ossining Restaurant, Inc. v. Midway Center Corp*., __NY2d__, 107 AD3d 853, 2013 WL 3024123 (NY App., Div., 2nd Dept., 06/19/13). Plaintiff restaurant rented space from Defendant landlord. A fire occurred in the building, causing substantial

damage to the restaurant, forcing it to close. Thereafter, Defendant decided not to restore the premises but rather, to build commercial office space. Defendant sent a notice to the eatery terminating the tenancy pursuant to the lease. Plaintiff sued, claiming the landlord breached its contractual obligation by not restoring the building. The fire clause in the lease authorizes the landlord to terminate the lease if the premises are rendered "totally untenantable by fire" and the landlord decides "not to restore or not to rebuild" the premises. The court noted that neither party disputes that the fire rendered the premises untenantable within the meaning of the contract, and found the lease to be unambiguous. Therefore, the landlord was not in breach by failing to restore the premises. The court thus granted summary judgment to the landlord.

12. *In re Online Travel Company Hotel Booking Antitrust Litigation*, __F.Supp.2d__, 2013 WL 2948086 (N.D.Tex., 0LaBma 06/14/13). Plaintiffs claim that online travel companies and hotels have conspired to set hotel room resale prices and agreed not to sell rooms below that fixed price. Thus Plaintiffs claim that ads by online websites of the "best" or "lowest" prices constitutes deception. One Defendant, Travelocity, argues Plaintiff must submit their claims to arbitration rather than the courts and has moved to compel arbitration. That site's User Agreement contains a clause requiring arbitration. All users of the site must click on a button saying they "agree" to the User Agreement before their reservations can be completed. The court agreed and further held that the User Agreement need not contain a "scroll through" feature requiring the user to review the Agreement prior to clicking on the "agree" button. The court also noted that users were "conspicuously presented with the agreement prior to [completing their bookings]. Travelocity's motion to compel arbitration was therefore granted.

13. *Howard v. Kerzner International, Ltd, Island Hotel Co., Ltd.*, 2013 WL 5353417 (Fla., 09/24/2012). Plaintiff and her husband ate a meal at Defendant's restaurant. The fish she ordered allegedly contained ciguatoxins. A contractual agreement between the hotel/restaurant, signed by Plaintiff husband when the couple registered, stated that any claims would be brought exclusively in the Bahamas where the hotel was located. Plaintiffs lives in Miami, Florida and brought this case there. The wife claims negligence on the part of the restaurant, and the husband claims loss of consortium. Defendant sought to remove the case to the Bahamas. Per federal courts, forum selection clauses are presumptively valid and enforceable. The court dismissed the husband's case in Florida since he signed the requirement identifying the Bahamas as the exclusive venue. The wife however did not sign the document and was unaware of its contents. She is thus not bound by the forum selection clause and was entitled to pursue her case in Florida. Dismissal of her case was thus denied.

Defamation

14. *Holcomb d/b/a Camp O Beach Resort v. Nefzger*, No. 2-1086/12-0701 (Iowa Ct. App. 02/13/13). Defendant wrote a letter to the editor of a local paper stating that the resort's beach area was "loaded with human waste." Plaintiff, the owner of the resort, sued for defamation. The district court granted summary judgment for Defendant, and the appellate

court agreed with the district court. The statements made in the letter were not libelous because they were substantially true. The sewage leak had been confirmed with the Department of Natural Resources and the county.

15. *Grand Resort Hotel and Convention Center v. Trip Advisor*, LLC, _F.3d_, 2013 WL 4525870 (Tenn., 07/30/13). Plaintiff hotel, in business since 1982, appealed a decision dismissing its defamation action based on being named number one on Defendant's list of dirtiest hotels. The court affirmed finding that the list was based on opinion, and the website's advertising did not lead readers to reasonably conclude that the list constituted fact. The website states "Dirtiest Hotels . . . as reported by travelers on Trip Advisor." The court determined the implication from this statement is that the rankings are based on subjective views, not objectively verified facts.

Discrimination

16. *Jimenez v. St. Francis Hotel Corp*., 2013 WL 5979510 (Ca. 11/08/13). Plaintiff claimed he was taunted by another customer while walking through Defendant hotel's lobby. Plaintiff verbally responded while "touching" the other's neck tie. As Plaintiff exited the hotel he alleges he was "tackled to the ground by two hotel security guards" who "violently ripped off his glasses and handcuffed him causing bodily injury." He was subsequently taken into custody by local police and held overnight at the county jail. No charges were filed and plaintiff was released. Plaintiff, a Mexican American, asserted a section 1981 claim based on national origin. He alleged no facts substantiating his "bare assertion" that he was subject to unequal treatment because of national origin." The court granted Defendant's motion to dismiss stating that identity as a minority, without more, is insufficient to raise a plausible inference that the two hotel security guards acted with the intent or purpose of discriminating against him due to national origin.

Dram Shop

17. *McMurtry, et al., v. Weatherford Hotel, Inc., et al*., No. 1 CA-CV 10-0863 (Ariz. Ct. App. 01/10/13). Plaintiff is the personal representative of Ms. Lucario who died from injuries when she fell from her hotel room window at Defendant's hotel. Plaintiff filed a claim against the hotel for dram shop and premises liability. Ms. Lucario was told that the hotel was smoke-free but that she could smoke from her balcony in her guest room or at the hotel bar which had a balcony that extended near her guest room. Ms. Lucario climbed out of her window and fell to her death. She had a blood alcohol content percentage of 0.263 at the time of her death. Plaintiff sued and the trial court granted summary judgment for Defendant. On appeal, the court reversed stating that a jury should determine whether the window was unreasonably dangerous and whether her attempt to reach the balcony from the window was an intervening cause of her death. The court also questioned whether the window area was an "open and obvious" danger. The dram shop liability claim should also be heard by a jury to determine if it was reasonable to foresee that an intoxicated person might climb out of the window of the room.

18. *Halvorsen, et al. v. T.G.I. Friday's Restaurant, et al*., No. A-1306-11T4, A-1435-11T4 (N.J. Super. Ct. App. Div. 03/06/13). Plaintiff and her three kids were injured by a drunk driver after the driver consumed alcohol at Defendant's restaurant. The driver's BAC was 0.278 about an hour after the accident. Plaintiff sued Defendant under the Dram Shop Act and the trial court found in favor of Defendant despite Plaintiff's expert who testified that based on the BAC, the driver would have exhibited unmistakable signs of intoxication that a "reasonably trained and reasonably perceptive server would have been able to observe…". On appeal, Plaintiff asked the court to decide whether an eyewitness was required to prove the Plaintiff's case and the court said no. Upon reversing and remanding the case, the appellate court held that a jury should decide whether the driver was served alcohol while he was visibly intoxicated.

19. *Purton, et al., v. Marriott International, Inc.*, No. D060475 (Cal. Ct. App. 07/31/13). At the annual holiday party sponsored by Defendant hotel, Defendant allowed each employee to have two drink tickets. Some of the employees were also drinking whisky from liquor supplied by the hotel. An employee, Michael Landri, testified he didn't drive home from the party, although there is disputing evidence that he did drive a group to his home. About twenty minutes later, Landri drove another coworker home and had a car accident killing the passenger in the other vehicle. He had a registered blood alcohol content of 0.16 and was convicted of vehicular manslaughter. The victim's family sued for wrongful death. Defendant hotel moved for summary judgment which was granted but reversed on appeal. The court held that the hotel may be found liable for its employee's actions as long as the proximate cause of the injury occurred during the scope of employment. A jury will determine if Landri appeared intoxicated and whether the drinking occurred during the scope of employment. The court said that it was irrelevant that the accident occurred after the employee got home safely.

20. *Davis, et al., v. RPoint5 Ventures, LLC d/b/a Float Pool and Patio Bar*, No. 01-13-00351-CV (Tex. Ct. App. 10/10/13). Ryan Davis accompanied a group of friends already at Defendant's bar and the group subsequently bought him a beer. He consumed the beer and subsequently drove the group near the Texas A&M Galveston campus, but lost control of his truck and sustained traumatic injuries and is now in a semi-conscious vegetative state. The Plaintiffs filed an action under the Texas Dram Shop Act against Defendant claiming Defendant must have served the beer to Ryan who was allegedly obviously intoxicated because at the scene of the accident, there were open and empty beer cans and two hours after the accident, Ryan's blood alcohol content registered at 0.15. The court granted summary judgment for Defendant because Plaintiff's expert assumed that Ryan had consumed alcohol elsewhere before arriving at the bar to achieve such a high BAC; however the bartender and video surveillance concludes that Ryan was not obviously intoxicated. Judgment of trial court in favor of Defendant was affirmed on appeal.

Employment/Arbitration

21. *Leos, et al., v. Darden Restaurants, Inc.*, No. B241630 (Cal. Ct. App. 06/04/13). Two former employees of Defendant alleged that Defendant violated the Fair Employment and House Act for claims such as sexual harassment, retaliation and others. Defendant sought to compel Plaintiffs to seek an alternative dispute method of arbitration as per the Defendant's four step process. Plaintiffs signed the policy prior to employment with Defendant and claimed in their suit that the arbitration provision was unconscionable. The trial court agreed and denied Defendant's motion to compel arbitration, however, on appeal the California Court of Appeals reversed stating that the provision was not unconscionable. The court found against Plaintiffs who argued that Defendant could change the policy anytime they wanted and the court said that Defendant did not have the right to modify the arbitration agreement except as may be required by law, which was stated in the policy.

22. *International Union of Operating Engineers Local 148 v. Millennium Hotel*, 2013 WL 3422021 (E.D. Mo., 07/08/13). Plaintiff worked at Defendant hotel for almost 40 years. Most recently he was promoted to Chief Engineer. While in that position the hotel made contributions to the Union's Health and Welfare Trust fund on his behalf and deducted Union dues from his paycheck. He ultimately was terminated from that position for "below-target performance". The union argued that the hotel underpaid his accrued sick leave and sought to compel arbitration, per the terms of the collective bargaining agreement (CBA). The hotel contended that Plaintiff was a supervisor when he was promoted to Chief Engineer. As such the collective bargaining agreement does not apply. Plaintiff's responsibilities as Chief Engineer included numerous supervisory tasks including approving wage increases, approving vacation and sick leave, administering discipline, and completing performance reviews. The court agreed with the hotel and held the CBA did not cover Plaintiff. Since arbitration is strictly a matter of consent (parties cannot be forced to forfeit their right to go to court; such right can be waived only by consent of the parties), and the CBA which consents to arbitration was not applicable to Plaintiff, the court refused to compel the hotel to arbitrate.

Employment/Discrimination/ADA

23. *Cordero v. Miraval Holding LLC, et a*l., No. CIV 10-642-TUC-JGZ (LAB) (D. Ariz. 01/17/13). Plaintiff, a busboy/server at Defendant's resort, sued Defendant under the Americans with Disabilities Act claiming Defendant failed to accommodate his epilepsy disability. Plaintiff asked for a long list of accommodations and many were granted by Defendant. One accommodation was to have Plaintiff's grandmother attend performance meetings. This request was denied because the grandmother was very disruptive during the first meeting she was allowed to attend even though she was told to be a silent observer. Plaintiff had surgery and suffered a stroke. A letter from his neurologist confirmed he was medically disabled and Defendant terminated his employment. The district court held for the Defendant.

24. *Arevalo v. Hyatt Corporation*, No. CV 12-7054 JGB (VBKx) (C.D. Cal. 05/13/13). Plaintiff, a housekeeper at Defendant's hotel fell and injured her knee and asked Defendant to accommodate her disability. The hotel did by placing her in a light-duty position for three months. After the three months, she was on leave again and upon her return, Defendant's HR department determined that Plaintiff could no longer perform the essential functions of her job, and she was terminated. She filed a complaint alleging discrimination based on her disability and the court granted summary judgment to the Defendant stating that Plaintiff's need for a cane at all times means that she is not able to perform the essential duties of her housekeeping job. Plaintiff argued that Defendant should have honored additional leaves of absences but the court said that would be futile since she was still using a cane and there was no evidence that her condition was going to improve.

25. *Jeffries v. Gaylord Entertainment, et al*., Nos. PJM 10-0691, PJM 10-2418 (D. Md. 03/27/13). Plaintiff, a turndown attendant at Defendant's hotel, took a leave of absence from work due to her recovery for disabilities relating to her breast cancer diagnosis. When she returned to work, she asked for a daytime position but there were no turndown positions on the day shift available. In addition, she asked to be placed in the reservations department and she did not have any previous experience in that department. Plaintiff failed to return to work after numerous requests and therefore Defendant terminated her employment. Plaintiff subsequently filed a suit for retaliation and claims concerning Defendant's failure to provide reasonable accommodations for her disabilities. The court granted summary judgment for Defendant and stated that Plaintiff failed to show that she was discriminated against or that Defendant refused to accommodate her disability. The court said that Plaintiff was not obligated to "invent a new shift" for her nor were they required to transfer her to a position in reservations in which she had no experience.

26. *EEOC v. Evergreen Alliance Golf Limited, L.P*., No. CV 11-0662-PHX-JAT (D. Ariz. 08/21/13). Kevin Rasnake filed a claim against his employer alleging that Defendant retaliated against when Rasnake went to HR and complained about a manager's one time use of the term "retarded" during a meeting. Rasnake has cerebral palsy and is visibly impaired. Subsequent to Rasnake's report, Defendant changed the compensation structure and Rasnake claimed retaliation and discrimination under the ADA. The court held that a single utterance of an offensive word fails to sufficiently change the conditions of employment to create a hostile work environment. And therefore Rasnake's complaint to human resources is not considered protected activity. The court said Rasnake failed to prove his termination and the pay structure changes were retaliatory as other employees were similarly affected.

27. *Brown v. Mystique Casino*, No. 3-723/13-0012 (Iowa Ct. App. 10/02/13). Plaintiff, a casino worker, had a history of treating an old and ongoing injury with pain medication. Plaintiff was not allowed to use the narcotic hydrocodone while at work but was allowed to use the drugs while off duty. Plaintiff subsequently cut his finger at work and according to Defendant casino's policy Plaintiff was required to take a drug test for illegal substances, not prescriptions. Plaintiff refused and was terminated. Plaintiff sued Defendant claiming Defendant used Plaintiff's test refusal as a pretext to discriminate against Plaintiff for

Plaintiff's disability. The jury found for the Plaintiff but on a JNOV motion, the court reversed the jury verdict noting that the casino had safety concerns but did make accommodations to Plaintiff.

Employment/Discrimination/ADEA

28. *Soto-Feliciano v. Villa Cofresi Hotels, Inc.*, __F.Supp.2d__, 2013 WL 478088 (Puerto Rico, 09/09/13). Plaintiff claims he was terminated from his job as a cook because of his age. While discussing Plaintiff's deficiencies, his supervisor had allegedly made an ageist remark. Plaintiff's firing occurred soon after. In the interim between the meeting and the termination, Plaintiff engaged in two separate incidents of insubordination and one incident of threats towards his supervisor. Therefore Plaintiff was unable to prove that age discrimination was the but-for cause of his dismissal as required under the Age Discrimination in Employment Act.

29. *Rohn v. Wyndham Vacation Resorts, Inc*., No. 5:12-cv-139-RS-EMT (N.D. Fla. 02/13/13). Plaintiff, an employee of Defendant's resort property, went to another of the chain's properties for a sales meeting. During his stay, his room was trashed, there was an allegation that he had prostitutes in the room and the non-smoking room was full of smoke. Plaintiff's job was terminated and he sued for alleged age discrimination, stating that the corporate philosophy was "out with the old and in with the new". Defendant claimed the slogan referred to new ideas. The court found in favor of the Defendant and dismissed the claim since Plaintiff was not able to show that Defendant displayed evidence of age discrimination. The hotel employment manual was very clear about termination if due to destruction of company property, inappropriate conduct that detracts from the hotel's reputation and failure to comply with laws. Plaintiff's argument also failed when Defendant proved that it was not the immediate supervisor who made the decision to terminate, but the executive vice president. Verdict for Defendant.

30. *Parris v. Wyndham Vacations Resorts, Inc., No.* 11-00258 SOM/BMK (D. Hawaii 10/18/13). Plaintiff, a sales manager at Defendant's time share business, filed a claim against Defendant alleging that he was demoted and harassed because of his age. Comments such as "Show the old-timers how it's done" were put in an email from the supervisor to younger workers. Upon denying Defendant's summary judgment motion, the court held that Plaintiff could proceed with his claim under the ADEA and a jury should decide if the supervisor's demotion decision was discriminatory in nature. The court did grant summary judgment to Defendant on the hostile work environment claims stating that age-related comments as noted in this case did not rise to the level of a hostile work environment.

31. *Hudson v. Lost Lake Woods Club, et al.,* No. 311315 (Mich. 05/23/13). Plaintiff, age 60, worked at Defendant's resort for eight years and was terminated for poor performance. Plaintiff filed a complaint alleging age discrimination because she argued she was in a protected class because she was over 40, suffered an adverse employment action and that she was qualified for her position. She argued that she was replaced by a younger worker

(38 years old). The Defendant argued that the Plaintiff's position had changed and that the new worker was only part-time. Most of Plaintiff's duties were absorbed by other workers. The trial court granted Defendant's motion for summary judgment and the appellate court affirmed the trial court's decision stating that there was ample evidence to support Defendant's position that Plaintiff's job performance and attitude were substandard.

32. *Phillips v. Starwood Hotels & Resorts Worldwide, Inc.* 2013 WL 5570416 (E.D.La., 10/09/13). Plaintiff was a 60 year old club lounge attendant at the Sheraton New Orleans Hotel. She was required to reapply for her job after the hotel renovated the club lounge, and she was not re-hired. Instead, her position was filled by a black female under 40 years old. In this lawsuit, Plaintiff claims she was the victim of age discrimination. She submitted her claim to the EEOC which issued a Notice of Right to Sue. That claim alleged that Plaintiff was personally discriminated against. The court case is based on a "pattern and practice of discrimination, not an isolated instance of individual discrimination." The court concluded that the two claims were separate and distinct, and since Plaintiff had not exhausted her administrative remedies on the "pattern and practice" claim, the case was dismissed.

Employment/Discrimination/Gender

33. *Medina v. Zippy's Restaurant,* 2013 WL 3157526 (D. Ha., 06/19/13). Plaintiff was a member of the wait staff of Defendant's restaurant. She was involved in several incidents involving aggressive behavior with other employees. An incident report stated that correction action was required concerning resolving conflicts, controlling emotions and raising issues. Suspension and termination were mentioned as possible outcomes for any subsequent incidents. A dispute arose concerning assignment of tables to the various servers. Plaintiff complained that the distribution was not equal and she was getting less than others. Per a restaurant rule, the table distribution was recorded on a board. Contrary to company rules, Plaintiff erased the board. Days later she was terminated. She sued alleging gender-based discrimination. The court dismissed the case on two grounds: 1) no similarly situated male was treated differently; and .2) the restaurant proffered a legitimate, non-discriminatory reason for the termination- her inability to refrain from aggressive behavior. Plaintiff had no evidence to suggest this explanation was a pretext. The restaurant's motion for summary judgment was thus granted.

Employment/Discrimination/National Origin

34. *Reguero v. Sun Stream Hotel, et al,* 2013 WL 2947906 (M.D. Fla., 06/14/13). Plaintiff sued Defendants for, inter alia, violations of Title VII for discrimination based on national origin and accent. Plaintiff did not previously submit his claim to the Equal Employment Opportunity Commission (EEOC). A Title VII lawsuit requires an allegation that Plaintiff filed a charge against the Defendant with the EEOC and received statutory notice from that agency of his right to sue. The reason for the requirement is to allow an opportunity for voluntary compliance and conciliation. Without so exhausting administrative remedies, a court cannot consider a Plaintiff's complaint. Therefore, the claim is dismissed without

prejudice. Plaintiff also sued Defendants for alleged violations of the Equal Pay Act based on alleged national origin discrimination. The Equal Pay Act is limited to discrimination in pay based on gender. Therefore Plaintiff's case is dismissed.

35. *Kowavi v. Intercontinental Hotels Group Resources, Inc.,* _F.Supp.2d_, 2013 WL 4737328 (Cal, 09/03/13). Pakistani employee sued his employer, Holiday Inn, alleging national origin discrimination and hostile environment. The court granted the hotel's motion for summary judgment finding that the inn terminated Plaintiff because of a legitimate, nondiscriminatory reason. The employee had an altercation with his supervisor during which the employee violated the employer's standards of conduct policy and its workplace anti-violence policy. Employee did not offer specific or substantial evidence to show the employer's proffered reason was a pretext. Concerning the hostile environment claim, during 12 years that Defendant worked for a particular supervisor, the latter referred to Plaintiff as "You are the Pakistani, right" or "You Pakistani" on ten occasions, and once called him "stupid Pakistani". The court determined this was not sufficiently pervasive or severe to constitute illegal harassment.

Employment/Discrimination/Pregnancy

36. *Dominick v. Hospitality Valuation Services, Inc.,* 2013 WL 54600654 (NY, 09/30/13). Plaintiff was a vice-president of Defendant search firm which assisted the hospitality industry in executive and senior level searches. Plaintiff became pregnant, told her boss and advised him that she intended to work through the pregnancy and return after the birth. After she called in sick several days due to severe morning sickness, she was terminated. The reason given was the quality of her work. She had not received any negative feedback from any of the partners. The court, while stating that poor performance is a legitimate, nondiscriminatory reason to discharge an employee, held that a question of fact exists whether poor performance was the cause. Therefore, Defendant's motion for summary judgment was denied. The fact that Defendant may have accommodated other pregnant employees, although probative, is not dispositive and does not warrant the grant of summary judgment in Defendant's favor.

37. *Glass v. Captain Katanna's, Inc., et al.,* No. 6:13-cv-421-Orl-19GJK (M.D. Fla. 06/17/13). Plaintiff was terminated from her employment with Defendant and she sued Defendant based on pregnancy discrimination under the Florida Civil Rights Act, which does not contain statutory language to include pregnancy, as the FCRA was in place prior to the Pregnancy Discrimination Act and was never amended to include pregnancy discrimination. The district court acknowledged that some Florida courts have held that FCRA does not permit pregnancy discrimination claims, however, the district court made the assumption that the Florida Supreme Court would interpret the law to include pregnancy discrimination because the Florida legislators would have understood "sex' to include pregnancy.

Employment/Discrimination/Race

38. *Boyer-Liberto v. Fountainbleau Corp. et al.,* No. JKB-12-212 (D. Md. 04/05/13). Plaintiff had worked in Defendant's hotel in food and beverage but was terminated a little after a month on the job for poor performance. Plaintiff claimed she was discriminated against because of her race and was retaliated against by lodging a complaint. Plaintiff based her claim of discrimination on the belief that the weekend restaurant manager had called her a "porch monkey" which allegation was denied by the manager. The court held that being called a racial epithet twice was not enough conduct to alter her conditions of employment as it was not sufficiently severe or pervasive enough. Her claims were dismissed.

39. *Carter v. Thompson Hotels d/b/a Sax Chicago,* No. 11-cv-360 (N.D. Ill. 05/03/13). Plaintiff, an African American working as an engineer at Defendant's hotel, was terminated for poor performance and Plaintiff sued for racial discrimination and retaliation. The court held that Plaintiff failed to meet the burden that the termination was pretextual or that there was a material issue of fact regarding the alleged disparate treatment. The hotel had evidence that the termination was due to poor work performance and attitude. The court therefore granted summary judgment to the hotel and dismissed the retaliation claim.

40. *Muktadir v. Bevacco, Inc*., No. 12-CV-2184 (FB) (RER) (E.D. N.Y. 08/13/13). Plaintiff, a Bangladeshi worker at Defendant's restaurant, filed an action against Defendant for racial and religious discrimination, retaliation and harassment due to a hostile work environment. Plaintiff claimed his managers and coworkers made daily comments about him being a smelly Bangladeshi bum and he said one coworker hit him in the genitals. Plaintiff claimed the Defendant didn't take any steps to prevent or remedy the situation other than transferring the offending employee to another restaurant location. Defendant's request to dismiss the claims was denied and Plaintiff will be able to proceed to assert his claims. The court held that Plaintiff satisfied the elements by filing internal complaints and a charge with the EEOC. The court also held that Defendant could also be held individually liable.

Employment Discrimination/Procedural

41. *Wilson v. Tribeca Grand Hotel*, 2013 WL 5966895 (NY, 11/8/13). Plaintiff filed a Title VII discrimination and retaliation case against Defendant hotel, her former employer. The complaint was filed 14 months after Plaintiff received a right-to-sue notice from the EEOC. To pursue a Title VII claim in federal court, a Plaintiff must file the complaint within 90 days of receipt of the notice. Plaintiff was "long after" the ninety-day deadline. In "rare and exceptional" circumstances the law allows for equitable tolling. Here the court found lack of due diligence and so refused to apply equitable tolling.

Employment/FLSA

42. *Allende, et al., v. PS Brother Gourmet, Inc., et al*., No. 11 Civ. 5427 (AJN) (KNF) (S.D. N.Y. 02/01/13). Plaintiffs are dishwashers and delivery workers at Defendant's restaurant.

Plaintiffs sued Defendant for violations of the Fair Labor Standards Act and New York labor laws. The issue concerned the cost of procuring and maintaining uniforms and alleged improper withholding of gratuities on Internet delivery orders. The court granted summary judgment to Defendant on the uniform issue stating that black shirts, black pants and black shoes were ordinary street clothing and not considered a uniform. As for the issue of improperly withholding gratuities, the court said a jury should decide as the law only allows deductions for the cost of processing of credit cards and converting it into cash. The issue remains as to whether the service fees charged by the Internet orders and delivery can be lawfully deducted from the worker's tips.

43. *Zamboni, et al. v. Pepe West 48th St. LLC, d/b/a La Masseria, et al.,* No. 12 Civ. 3157 (AJN)(JCF) (S.D. N.Y. 03/12/13). Plaintiff and his fellow employees brought an action against Defendant for violations of the Fair Labor Standards Act, alleging that the Defendant restaurant denied employees proper pay for overtime. Plaintiff argued that Defendant engaged in behavior designed to intimidate employees to sign a statement that they had not worked overtime. The court found this behavior to be "inherently coercive" and held that Defendant is required to inform employees that they have not waived any of their rights under the FLSA. The opt-in period for the lawsuit was extended.

44. *Solis v. SCA Restaurant Corp. d/b/a Luigi Q Italian Restaurant*, No. 09-CV-2212 (JFB) (ETB) (E.D. N.Y. 04/05/13). The Department of Labor brought an action against the Defendant claiming that the restaurant violated the FLSA by failing to pay minimum wage and overtime compensation. The restaurant did not keep adequate records and the DOL was not able to determine the exact hours worked by employees. The DOL also found that the chef was not exempt as he did not hire, fire or make suggestions for promotions, so he was wrongly classified as exempt. The court held in favor of the DOL and found that the restaurant failed to pay 12 employees FLSA overtime pay and noted that the failed record keeping attempts and violations were willful because the restaurant owner was aware of the requirements.

45. *Lucas, et al., v. Jerusalem Café, LLC., et al.,* No. 12-2170 (8th Cir. 07/29/13). Defendant café was sued by six undocumented immigrant workers for failing to pay minimum wage and not paying overtime. The court held that the workers, even though undocumented immigrants, were entitled to proper wages. After appeal by Defendant, the court affirmed stating that the FLSA does apply and the U.S. Department of Labor contends that the FLSA does apply to working undocumented immigrants. Even though Defendant broke the law by hiring undocumented workers, it does not give the Defendant the right to ignore other laws.

46. *Barquin, et al., v. Monty's Sunset, LLC,* No. 12-cv-24180-JLK (S.D. Fla. 10/02/13). Several servers at Defendant's restaurant sued alleging that Defendant violated their rights under the FLSA claiming they were not paid minimum wage or overtime. The servers also alleged that Defendant interfered with the servers' relationship with the customers by invoking a policy that did not allow patrons to leave tips in excess of the restaurant-mandated 18 % gratuity. The court dismissed that claim. The evidence showed that

although the servers may have been confused about the Defendant's way of paying them, they did not state this in their affidavits. The server complaints appeared to focus only on not making enough tips and the court held that these claims were too vague. The servers were receiving $4.26 over the overtime rate and overtime for more than a 40-hour work week.

47. *Mondragon, et al., v. Fernandez, et al*., No. C-08-05722 RMW, C-08-05721 (N.D. Cal. 09/20/13). Plaintiff filed a complaint stating that she was not paid overtime wages and the court held that she was exempt under state law. Plaintiff was primarily engaged in exempt duties and had the discretion and independent judgment in managing the bar. The court held that she was not entitled to recover overtime wages.

Employment/FMLA

48. *Wright v. Sandestin Investments, LLC,* No. 3:11cv256/MCR/EMT (N.D. Fla. 12/12/12). Plaintiff, an executive administrative assistant at Defendant's resort, went on FMLA leave for the birth of a child and during her absence, the hotel was sold and a new management company took over. They eliminated her position but not any other positions. She sued for violation of FMLA and pregnancy discrimination. The resort argued that they were not subject to the FMLA decisions of the previous management company and the court said Defendant was a "successor in interest to the employer" and held that a jury should decide whether the reason for terminating the Plaintiff was a pretext for pregnancy discrimination based on her maternity leave.

49. Speight v. Sonic Restaurants, Inc., 2013 WL 5754901 (Kan., 10/23/13). Plaintiff was employed by Defendant as a car-hop at a Sonic Drive-in Restaurant, where she had worked for three and a half years. She became pregnant. A week before her doctor planned to induce labor; Plaintiff was removed from the work schedule. She recognized this as Defendant's method of terminating employees. After she gave birth she sought to return to work and met with the corporate office. During that meeting, she learned for the first time of her rights under the Family Medical Leave Act (FMLA). The Act requires that employers provide workers with notice of FMLA rights once the employer knows that a worker qualifies for the leave. The court held that a reasonable inference exists that Sonic knew that Plaintiff qualified for FMLA leave during and after the birth of her child. The possible consequence for a business' failure to comply is liability for damages and benefits lost by reason of the violation. The Defendant's motion to dismiss was therefore denied.

Employment/Retaliatory Discharge

50. *Karatihy v. Commonwealth Flats Development Corp.,* _NE2d_, 2013 WL 518413 (Mass. App., 09/18/13). Plaintiff was a banquet server at the hotel for 10 years and was terminated. He now sues claiming retaliation. Plaintiff was the named plaintiff in a class action lawsuit against Defendant claiming violation of the Wage Act and the Tips Act. That case was

settled in favor of the banquet workers. None of the other named plaintiffs was terminated. The hotel had an attendance policy limiting the number of allowable absences, and requiring that employees give a minimum of four hours' notice if they will be late or will miss a shift. Defendant repeatedly violated these rules and was given numerous warnings, including two called "final written warning", and poor yearly evaluations. Other employees with attendance and tardiness issues have been fired. Plaintiff was unable to prove the necessary element that his termination was causally related to his participation in the class action. Although Plaintiff's participation in that suit was close in time to his firing, he violated the attendance policy before and during his protected activity. Summary judgment for the hotel was thus affirmed.

Employment/Sexual Harassment

51. *Ortiz v. Big Bear Events, et al*., No. 3:12-cv-341-RJC-DCK (W.D. N.C. 01/23/13). Plaintiff was a server at Defendant's restaurant for three years. She sued Defendant claiming she had been subject to sexual harassment by one of the owners who subjected her to unwanted sexual conduct. When management learned that Plaintiff had sought legal advice, her scheduled changed and she was no longer allowed to pick up additional shifts. She filed a charge with the EEOC and was later fired from her job. A magistrate judge said Plaintiff did not make a case for retaliation but the district court disagreed finding that she could proceed with her retaliation claim. The district court affirmed the magistrate court's dismissal of Plaintiff's claims for constructive discharge and intentional infliction of emotional distress as the allegations did not rise to the level of outrageous behavior or being of an extreme nature.

52. *De La Cruz v. Cal-Pac Sonoma, LLC et al.,* No. A129889, A130141, A131134 (Cal. Ct. App. 03/04/13). Plaintiff, a card dealer at Defendant's casino claimed she was subject to sexual harassment as a result of her supervisor continuously making sexual remarks to her. Plaintiff reported the alleged behavior to the HR manager who said she would tell the GM, but stated that the HR manager was concerned about retaliation since the supervisor and GM were friends. Subsequently, Plaintiff was given shorter shifts, less gaming tables and was criticized for her work. She was thereafter terminated. Previous to the harassment allegations, Plaintiff was a good worker and proficient at her profession. The court found Defendant liable for sexual harassment and retaliation and awarded Plaintiff $15,487 in economic damages, $500,000 in noneconomic damages, $1,500,000 in punitive damages, as well as over a million in attorney fees. The court reduced the punitive damages to $750,000. Defendant appealed stating that the punitive award was excessive and that testimony allowed during the trial was improperly used. The court disagreed stating that the behavior of the supervisor showed a pattern of harassment and that Plaintiff did suffer from retaliation. No trial court discretion was abused in awarding the punitive damages.

False Imprisonment

53. *Forte v. Hyatt Summerfield Suites*, No. C 11-2568 CW (N.D. Cal. 12/18/12). Plaintiff, a guest at Defendant's hotel, was acting erratic while in the lobby of the hotel claiming to the

hotel staff and others that his life was in jeopardy. The police were contacted and they tried for over an hour to get Plaintiff to leave his room. Plaintiff refused to come out to speak to the officers and began yelling through the door and windows of the hotel and told the officers they were in trouble. Plaintiff bolted himself in the room. Eventually, the officers decided that Plaintiff was a danger to himself and possibly others and detained him for a mental health evaluation. Plaintiff subsequently sued the hotel for wrongful eviction, false imprisonment, negligent infliction of emotional distress, assault, batter and civil rights violations. The court said that California courts have specifically recognized that a hotel cannot be liable for false imprisonment either for its communication to the police or for the conduct of the police in detaining guests. The court dismissed Plaintiff's claims. Summary judgment granted for Defendant.

Federal Jurisdiction

54. *Lucas v. Ultima Framingham LLC*, _F.Supp.2d_, 2013 WL 5405668 (Mass., 09/27/13). Plaintiff was on the wait staff of Defendant hotel and conference center. He was the named plaintiff in a class action lawsuit that alleged Defendant failed to distribute the full amount of the workers' gratuities. Soon thereafter Plaintiff was terminated and he brought this lawsuit in state court for retaliation. The hotel sought to remove the case to federal court, and Plaintiff denied that the $75,000 required amount in controversy would be met. The case was brought under a state statute which entitled successful plaintiffs to treble damages and attorney's fees. The court calculated that Plaintiff's earnings were about $5000 per month; after eight months of litigation he would be entitled to $40,000; when tripled the amount would exceed $75,000. The case was thus directed to federal court.

Forum Non Conveniens

55. *Sullivan v. Starwood Hotels and Resorts Worldwide, Inc.*, __F.Supp.2nd__, 2013 WL 2637179 (Mass., 06/13/13). Plaintiff, a resident of Massachusetts, was a guest at a Starwood Hotel in Beijing, China. While with his wife and two friends from his hometown, he fell due to a "hazardous object" in the hotel parking garage. He went to a clinic there, which transferred him to a hospital where he underwent surgery. Following surgery and his return home to Massachusetts, he received treatment at a clinic. He commenced a lawsuit in Massachusetts against the hotel. The hotel moved for dismissal based on forum non conveniens. The court denied the motion for the following reasons. Most of the key witnesses (Plaintiff's wife and the two travelling friends) live in Massachusetts. Plaintiff's long term care for the injury was provided by Massachusetts doctors. Certified and translated medical records had been received by Plaintiff from the Chinese facilities that treated him. While the garage where he fell is in China, juries typically do not view the location of the incidents underlying a lawsuit. Plaintiff is 69 and permanently disabled from the fall, rendering trips to China difficult. Further, Starwood is a United States corporation that regularly litigates in US courts.

56. *Flanagan v. Marriott Hotel Services, Inc.*, 2013 WL 2285045 (D. Mass., 05/23/13). Plaintiff, a resident of Massachusetts, suffered injury while a guest at Defendant Marriott

Riverwalk Hotel in San Antonio, Texas. Plaintiff commenced a lawsuit for his injuries in Massachusetts. Defendant moved to transfer the case to Texas based on forum non conveniens. The hotel planned to call eleven witnesses, all of whom reside in Texas. They include three police officers, six employees and two hotel guests. None could be subpoenaed by the Massachusetts court and thus could not be compelled to testify. Although the law gives strong preference to Plaintiff's choice of forum, the court will transfer a case where Defendant convincingly argues that circumstances support transfer. The court found such circumstances exist in this case and granted Marriott's motion to transfer the matter to a Texas court.

57. *Clarke v. Marriott International Inc.,* 2013 WL 4758199 (Virgin Islands, 09/04/13). Plaintiff slipped and fell in Defendant's hotel located on the Caribbean island of St. Kitts. She sued in the Virgin Islands where she resides, claiming negligence because the tub lacked a non-skid mat. In Defendant's answer it objected to personal jurisdiction. Defendant thereafter participated in the litigation for 21 months at which time it moved to dismiss for lack of personal jurisdiction. The court denied the motion, saying Defendant demonstrated a willingness to engage in extensive litigation in the forum and thus waived the personal jurisdiction objections. Defendant also moved for forum non conveniens. The court denied the motion in part because of the lengthy period between commencement of the case and Defendant's motion, and in part because several witnesses are located in the Virgin Islands (Plaintiff, her husband and her doctor), and there is no material difference between the substantive tort law of St. Kitts and the Virgin Islands.

58. *Siegel v. Global Hyatt Corp.*, 2013 WL 5436610 (Ill. App., 09/26/13). Plaintiff was attacked by a suicide bomber while a guest at the Grant Hyatt Amman hotel in Jordon. Plaintiff is suing in Illinois for wrongful death and negligence. The court granted Defendant's motion to dismiss based on forum non conveniens, finding the nation of Jordon to be a more convenient forum for all the parties. The hotel is owned by a Jordanian corporation, its chief security officer and security manager are residents of Jordan, relevant documents are located there and written in Arabic, numerous other witnesses live in Jordon, no necessary trial witnesses reside in Illinois, Illinois courts would have difficulty applying Jordanian law which has no official English translation, Plaintiff is not a resident of Illinois (it was chosen because Hyatt's corporate headquarters is there).

Franchise

59. Holiday Hospitality Franchising, LLC v. Premier NW Investment Hotels, LLC, 2013 WL 2319065 (N.D.Ga., 05/24/13). Defendant was a Holiday Inn Express Hotel and Suites franchisee. It failed to pay various fees due Plaintiff franchisor. In this lawsuit the franchisor seeks recovery of those fees. Defendant asserted as a defense that Plaintiff caused its own damages by opening a new Holiday Inn Express near Defendant's hotel. The court noted that the License Agreement did not grant Defendant any type of exclusive territory. "Thus, the granting of another license at a location near Defendant's property did not excuse Defendant's obligations under the License Agreement." Judgment for Plaintiff.

60. *Days Inn Worldwide, Inc. v. May & Young Hotel – New Orleans*, LLC, 2012 WL 6625627 (NJ, 12/19/12). Plaintiff Days Inn sued Defendant franchisee for violation of quality assurance requirements in the franchise contract and for failing to pay various franchise fees. Per the License Agreement Defendant was obligated to operate a Days Inn guest lodging facility for a 15 year term, and make periodic payments for royalties, service assessments, mandatory marketing program charges, internet booking fees, reservation system charges, guest service assessments, taxes, interest, relicense fee and other fees(!). Interest on any past due amounts was specified at 1.5%. Other contract provisions included a requirement that the licensees prepare and submit monthly reports, maintain accurate financial information, and allow Days Inn to examine, audit and make copies of the entries in these records. Additionally Days Inn has the unlimited right to conduct unannounced quality assurance inspections of Defendant's facility to verify compliance with Days Inn's quality assurance requirements. The agreement further authorized Days Inn to terminate the agreement with notice. The court determined the franchisee was in violation, Days Inn was authorized to terminate the agreement, and licensee owed the following amounts: recurring fees plus interest - $171,745.45; and liquidated damages in the amount of #312,346.50 based on a contract provision identifying the amount of liquidated damages as $2,000 multiplied by the number of authorized guest rooms, plus interest.

61. *Lenexa Hotel, LP v. Holiday Hospitality Franchising, Inc*., 2013 WL 4736245 (Kan., 09/03/13). Plaintiff hotel agreed to become a Crowne Plaza branded facility in exchange for assurances from Defendant franchisor it would promote Plaintiff's hotel in its reservation system, through the internet, call centers around the world and travel agent booking system. The assurances were made orally, in the franchise offering circular and in the License Agreement. These commitments were critical to Plaintiff because its primary concern in selecting a brand was generating corporate, transient and group demand for the inn. Plaintiff made modifications per a property improvement plan required by Defendant. Once opened, Defendant did not promote the hotel on the internet or on its central registration call centers. Plaintiff sued for breach of contract. The court denied Defendant's motion to dismiss.

62. *Dunkin' Donuts Franchised Restaurants LLC, et al., v. JF-Totowa Donuts, Inc., et al.,* No. 2:09-cv-02636 (WHW) (D. N.J. 10/09/13). Plaintiff sought a declaratory judgment to determine if several of its franchisees were violating franchise agreement provisions and Defendants filed a cross motion both seeking summary judgment. The district court denied both stating that questions of fact still remain regarding Plaintiff's allegations that its franchisees were filing false tax returns, violating immigration laws and causing identity theft in its practices. Summary judgment was denied.

Insurance

63. *Holiday Hospitality Franchising, Inc. v. AMCO Insurance Company*, No. 33S01-1206-CT-312 (Ind. 03/06/13). A minor guest at a limited service hotel was molested by a hotel employee, who entered the minor's locked room during the night. The hotel was insured under a policy issued by Defendant, which provided coverage for, as well as a duty to

defend against, claims for bodily injury and personal and advertising injury liability. The policy disclaimed coverage for bodily and personal injury which arose from intentional conduct and also specifically disclaimed coverage for acts of molestation and abuse. The minor's mother brought suit against the hotel owners and the hotel's insurance company sought a declaratory judgment to determine coverage under the policy. The trial court granted summary judgment for the insurance company and on appeal, the court reversed. On further review, the Supreme Court of Indiana held that the insurance company should be granted summary judgment stating that the definition of "occurrence' in the policy did not extend to the hotel employee's criminal behavior or the hotel's hiring of the employee. The policy specifically excluded acts such as molestation. The court noted that the plain and ordinary meaning should be used.

64. *Century Surety Co. v. Acer Hotel*, et al, 2013 WL 3575546 (Cal, 07/12/13). Plaintiff was a guest at Defendant hotel. Plaintiff was attacked with a knife by another guest and sued the hotel for his injuries. The hotel's insurance company denied liability, noting that the policy excluded from coverage bodily injury caused by "any . . . assault or battery;" The hotel claimed the exclusion applied only to assaults caused by hotel employees. The court held the contract term is unambiguous and the exclusion includes "any" assault and battery, including that caused by third parties. The insurance company's motion for summary judgment was thus granted.

Frivolous Lawsuit

65. *Sorapupu v. Sheraton New Orleans Hotel*, 2013 WL 2404595 (E.D. La., 05/30/13). Plaintiff suffered injuries that she attributed to a fall occurring at Defendant hotel. A security video camera recorded the fall. Plaintiff's three primary treating doctors all testified they could not opine that Plaintiff's injuries are, more likely than not, related in any way to the incident shown on the film. Judgment was entered in favor of the hotel. It now seeks sanctions against Plaintiff and her attorney for a frivolous lawsuit per Federal Rule of Civil Procedure 11. That rule is designed to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of attorneys to avoid meritless cases. The court imposed a sanction of $1000 against the attorney, noting that the claim required the judge and court to devote time and resources to Plaintiff's meritless claim. In calculating the amount, the court stated it should impose a sanction that both furthers the purposes of Rule 11 and is the least severe sanction adequate to such purpose.

Negligence/Premises Liability

66. *Goodwyn v. Belly Up Tavern, LLC*, No. D060680 (Cal. Ct. App. 03/18/13). Plaintiff was injured in a bar fight while attending a concert. Plaintiff testified the fight went on for over ten minutes and only ended when the thugs walked away. The bartender testified the security guards were attending to another incident but when the Plaintiff's fight broke out, guards responded within less than a minute. The jury believed the Plaintiff and awarded him $90,000 in damages attributing the injuries: 75 percent of the liability to Defendant and 25 percent to the thugs. Defendant asked for a JNOV (judgment notwithstanding the

verdict) and the trial court reversed the jury's verdict in favor of the bar. On appeal, Plaintiff presented evidence that Defendant had breached its duty of care and the court noted that although the evidence contradicted itself, a jury could conclude that the bar's staff was aware or should have been aware of Plaintiff's fight but failed to timely respond. The court reinstated the jury verdict.

67. *Anderson v. The Summit Group, Inc. c/b/a Residence Inn by Marriott* 2013 WL 5674708 (Miss., 10/17/13). Plaintiff sued for injuries she incurred when she fell on stairs at Defendant's Residence Inn in South Dakota. She alleged the fall resulted because of a defective condition in the carpeting on the stair. She offered no proof that the alleged condition was caused by Defendant, or that Defendant was aware of the condition or the length of time the alleged condition had existed. The court therefore granted summary judgment to Defendant hotel.

68. *Pelfrey v. Hotel Partners d/b/a Governor's Inn*, 2013 WL 5771183 (Tenn., 10/24/13). Plaintiff suffered a hip injury at Defendant's premises when she slipped and fell while exiting a recessed bathtub. She claims that Defendant breached its duty of car by "failing to install a non-slip surface floor, failing to install railing along the walls of the tub for gripping, failing to correct those conditions and failing to warn" of those conditions. Defendant moved to dismiss arguing that the facts are insufficient to establish liability. The court denied the motion, noting that, although business owners "are not insurers of their patrons' safety, they are required to use due care under the circumstances." The alleged lack of safety railings and warning are conditions under Defendant's control. The court noted this is not a case where Plaintiff alleged that she slipped because the floor was wet. Rather, she alleged a "permanently hazardous condition" that existed on Defendant's premises, that is, failure to install railings and/or a non-slip floor surface or warn of such condition. The court determined that Plaintiff asserted a "plausible claim" and so denied Defendant's motion to dismiss.

69. *Wotzka v. Minndakota Limited Partnership*, 831 NW2d 722, 2013 ND 99 (06/19/13). Plaintiff was a guest at a Radisson Hotel. He slipped while in the shower, and fell out of the shower suffering injuries. He sued the Radisson claiming it was negligent by failing to equip the shower with a non-skid strip, a bathmat, or a handrail. The lower court held that the dangers of slipping in a shower are open and obvious, and the hotel had no duty to install slip-resistant measures. That court thus granted summary judgment to the hotel. On appeal, the court noted that other jurisdictions are divided on whether a hotel owes a duty to provide slip-resistant safety precautions. The appeals court held that an open and obvious condition does not relieve the owner from a duty to keep the premises reasonably safe under the circumstances. The court thus reversed the grant of summary judgment concluding that a question of fact existed on whether the Radisson maintained the premises in a reasonably safe manner.

70. *Ortiz v. New York Palace Hotel*, 2013 WL 5763157 (Sup Crt. App. Term, 2nd Dept. 10/08/13). Plaintiff slipped and fell in front of a trash compactor located in Defendant hotel's loading dock area. The hotel moved for summary judgment. The motion was

denied because Defendant failed to submit sufficient evidence showing that its employees had not created the allegedly dangerous condition that caused Plaintiff to slip. Further, Defendant failed to show that it lacked constructive notice of the condition by failing to offer evidence as to when the area in question was last cleaned or inspected prior to Plaintiff's fall.

71. *Mitchelson v. Sunset Marquis Hotel*, 2013 WL 5917664 (Ca. 11/05/13). Plaintiff tripped and fell as she was walking past the Defendant hotel on a clear dry day wearing walking shoes in good condition. The location was not on the hotel's property but on a portion of the sidewalk located right in front of the entrance to the hotel's underground parking garage. The sidewalk was broken where she fell. She sued claiming premises liability. The hotel denied liability noting that the spot where she fell was not hotel property, and claiming that the defect was trivial. The appeals court reversed the lower court's grant of summary judgment to the hotel, finding that a property owner may be held liable for a dangerous condition on portions of the public sidewalk if they had been altered or constructed to serve a purpose for the benefit of that property owner apart from the ordinary use of a sidewalk. Here, the sidewalk had been altered to match up exactly with the entrance to the driveway leading to Defendant's parking garage, thus benefiting the property. Further, the court noted that the defect, which measured two and three-fourths by five and one-half inches was not minor nor trivial.

72. *York v. Hilton Worldwide, Inc. d/b/a Hampton Inns, LLC,* No. 2:11-CV-3033-JPM-cgc (W.D. Tenn. 06/14/13). Plaintiff, a worker for a delivery company, entered the hotel's housekeeping department to deliver some boxes and injured himself upon leaving when he allegedly stepped on a piece of metal near the door which caused him to slip and tear his ACL. There were no witnesses and Plaintiff didn't notify anyone until two months later. He sued Defendant for negligence. The court said the hotel did not have knowledge of the dangerous condition and since Plaintiff could not provide any evidence that the Defendant created a hazardous condition or that anyone had notice on the day of the injury, Plaintiff's claim for negligence failed. The court granted summary judgment to Defendant.

73. *De La Flor v. Ritz-Carlton*, 2013 WL 1481401 (S.D.Fla, 01/14/13). Plaintiff suffered a heart attack while working out in the Ritz-Carlton South Beach fitness room. A fellow-exerciser who was also a surgeon came to his aid. The latter attempted unsuccessfully to locate a defibrillator. Meanwhile a young boy at the scene called 911. Plaintiff survived but with permanent injuries. Plaintiff sued among others the owners of the land on which the hotel sits, claiming the hotel owed a duty to keep a readily-accessible defibrillator in the fitness room. Said the court, while an innkeeper owes a duty of care to guests, owners of the land on which the hotel sits but who do not participate in the management of the hotel are not responsible for alleged negligence on the premises. Note: Plaintiff can pursue his case against the hotel.

74. *Soto v. Olive Garden Italian Restaurant*, 2013 WL 3208271 (E.D. NY, 06/24/13). Plaintiff was injured at an Olive Garden restaurant in Brooklyn, New York, when she was struck in the head by a coat rack which had been knocked over by another patron. Plaintiff was

seated at a booth. The coat rack stood between her booth and a nearby table. Because it was winter, the rack had many coats hanging on it. The distance between Plaintiff and the rack was, per Plaintiff's testimony, approximately the length of her outstretched arm plus two inches. One of the people occupying the nearby table approached Plaintiff and apologized for knocking over the coat rack. The restaurant moved for summary judgment. The court concluded that a genuine issue of fact exists as to whether placement of the coat rack created a dangerous condition that posed a foreseeable risk." Said the court, a reasonable juror could conclude that it was foreseeable that the freestanding, unsecured coat rack would tip over if someone bumped into it. Therefore, the court denied Olive Garden's motion for summary judgment.

75. *Trompeter v. Hilton Hotels*, 2013 WL 5503206 (NJ, 09/30/13). Plaintiff entered Defendant hotel for the sole purpose of using the men's restroom. When he exited he saw cleaning personnel to the right of the restroom. He sat down nearby for a few moments to look up driving directions. He then went up a few carpeted stairs to a tile floor where he slipped and fell backwards and was injured. Plaintiff does not know what caused his fall. He "guessed" that the floor may have been wet because the cleaning people were washing. Plaintiff was asked whether he saw anything on his shoes to indicate the floor was wet or waxed and he responded "no". Plaintiff did not take photographs of the area nor is he aware of any pictures taken by others. The court granted summary judgment for the hotel.

76. *Rodriquez v. Bronx Zoo Restaurant, Inc.*, 972 NYS2d 31 (1st Dept., 10/01/13). Plaintiff fell on icy sidewalk in front of Defendant's restaurant. For a defendant to win a summary judgment motion, Defendant must establish either that it did not have constructive notice of the condition, or that it had made a recent inspection. In this case the "climatological records" reflected that the area received precipitation two days prior to the accident date, and the interim temperature was below freezing. At trial, a supervisor, who visited the Defendant franchise only twice per week, asserted that employees typically respond to winter storms by shoveling the sidewalk and then apply rock salt. But she had no personal knowledge that this procedure was followed in response to the storm in issue. A question of fact thus exists as to whether Defendant acted reasonably in satisfying its duty to provide safe premises. Therefore the court denied Defendant's motion to dismiss.

77. *Feagins v. Trump Organization*, 2013 WL 5676316 (Nev., 10/17/13). Plaintiffs were passengers in an elevator at the Trump Hotel in Las Vegas. Per the complaint, the elevator "free fell" then stopped abruptly, causing injury. At that time one of the minor plaintiffs was jumping in the elevator. Plaintiffs sued the hotel for negligence and Otis Elevator Company for strict products liability. The latter was under contract with the Trump Organization for maintenance and repairs. It denied there was a malfunction in the elevator's operation on the date of the incident and denied that the elevator was defective. Plaintiff provided no evidence or expert opinion that there was anything wrong with the elevator, that it malfunctioned on the date in question, or that any actions of Defendants caused or contributed to the alleged incident. The court granted summary judgment for the hotel and Otis. Concerning the negligence claim, the court stated the mere happening of an accident does not prove liability or the existence of a dangerous condition on the property.

Concerning the strict liability claim, the simple fact that a product failed is insufficient to establish a defect for purposes of strict products liability.

Negligence/Security

78. *Hoyt v. Gutterz Bowl & Lounge*, No. 11-0085 (Iowa 04/05/13). Plaintiff sustained injuries in Defendant's parking lot after a disagreement broke out in the bar. While in the bar, the bartender and a waitress asked the arguing patrons (including Plaintiff) to leave the bar. Plaintiff claimed he struck the other man in self-defense. Both were charged with disorderly conduct. Plaintiff claimed that Defendant failed in its duty of care to Plaintiff and the court disagreed and dismissed the case. On appeal, the decision was reversed as it wasn't clear to the appellate court whether the case was dismissed because Plaintiff's injury was not foreseeable or whether the Defendant breached it duty of care. A jury will decide.

79. *Baker v. Solo Nightclub, LLC, et al*., No. 11-2380 (E.D. Pa. 05/09/13). Plaintiff was shot while attending an event in Defendant's nightclub. Some but not all patrons were patted down for weapons and searched with a metal wand, and the club had a history of violent incidents in the past. The Defendant argued that they did not owe Plaintiff a duty to protect him from criminal conduct of a third party and that it was not foreseeable that a shooting would occur within the club. The court held that Plaintiff had sufficient evidence to put Defendant on constructive notice that patrons could be injured by third persons in the club due to the history. In addition, the club's video surveillance system was not working.

80. *Bracken v. Okura*, 2013 WL 3223873 (Ha. 06/24/13). Plaintiff sued Defendant restaurant for assault and battery relating to an incident occurring on New Year's Eve. Plaintiff attempted to enter the restaurant but it was closed for a private party. Security personnel physically restrained him and removed him from the premises. He sued and sought summary judgment which the court denied due to unresolved issues of fact. Plaintiff claimed he was unaware that the facility was not open to the public. The restaurant claimed the fact it was closed to the public was clear. The restaurant further asserted that Plaintiff purposefully entered the premises without authorization by hopping over a rope barrier. Further, the security officers asserted that Plaintiff caused a scene, was uncooperative, became aggressive, and was swinging his arms wildly causing security to wrestle him to the ground for safety reasons. Plaintiff denies that he was aggressive or resisting the guards.

81. *Lienhard, et al., v. Laxmi of New Llano d/b/a Hampton Inn Leesville Fort Polk*, No. 2:13-CV-00676-PM-KK (W.D. La 07/08/13). Plaintiff, a guest at Defendant's hotel was seen on video surveillance aimlessly wandering around the hotel. He ended up in another room that was unlocked but not occupied. When Plaintiff didn't show up the next morning for a meeting, his coworker asked the hotel for help. After reviewing the tapes and after another guest checked into the room not assigned to Plaintiff, the hotel discovered Plaintiff had passed out from an aneurysm. Plaintiff sued Defendant for negligence as Plaintiff's injuries were permanent and irreversible due to the hotel's delay in finding him. Defendant moved for a summary judgment which was granted. The court said that imposing a duty on

innkeepers to investigate and know the whereabouts of all their patrons was too big a burden and the only duty the hotel had was to use reasonable care and provide aid if the hotel knew or should have known that the guest was ill or injured.

82. *Hernandez, et al., v. Wyndham Hotel Management, Inc*., No. 11 C 6635 (N.D. Ill. 09/09/13). Two guests argued over noise that was coming from the adjacent room in Defendant's hotel. One stabbed Plaintiff who in turn sued the hotel. It moved for summary judgment which was granted by the court. The court said that there was no evidence from the Plaintiff that the other guest was a potential threat and a noise complaint is not enough to put the hotel on notice of a potential harmful event nor trigger a duty of care on the hotel's part.

Negligence/Wrongful Death

83. *Glenn, et al., v. Imperial Palace of Mississippi, LLC, et al*., No. 1:12CV227HSO-RHW (S.D. Miss. 05/15/13). Plaintiff's son died from alcohol poisoning while at Defendant's casino. Defendant argued that under Mississippi law, a patron who is injured by his own voluntary consumption of alcohol has no claim against the establishment that served him alcohol. Plaintiff, however, was able to convince the court that the casino knew of her son's level of intoxication yet they continued to serve him alcoholic drinks. The court held that Plaintiff alleged sufficient facts to continue and Defendant's motion to dismiss was denied.

84. *Contini, et al., v. Green Dolphin, Inc., et al.,* No. 1-12-3036 (Ill. Ct. App. 08/15/13). Plaintiff's father was killed about a block away from Defendant's night club by a patron who had previously been ejected from the club after assaulting the father. Plaintiff sued alleging that the club knew or should have known that the intoxicated patron who had previously assaulted her father might injure her father. As a business invitee, she claimed that the club had a duty of care which it breached. Defendant moved for summary judgment and its request was granted. Plaintiff appealed and the appellate court said that to require the club to warn patrons of potential issues would place an undue burden on the club and the attack could not have been reasonably foreseen.

Ordinance Challenge

85. Great Wall of Chinese Restaurant, et seq. v. Mayor and City Council Members, City of Camden, _A3d_, 2013 WL 59412128 (N.J. Super, 09/25/13). Several restaurants and convenience stores challenged a new ordinance of the City of Camden, New Jersey which regulates the hours of operation of certain businesses located within 200 feet of a residential zone. The law required that restaurants, retail food establishments and retail stores close by 11:00 p.m. on Sundays through Thursdays, and midnight on weekends. The purpose of the new rule was stated as improving the quality of life for residents, decreasing the incidence of arrests and criminal activity, discouraging activities that compromise public safety, and providing for efficient and economical utilization of scarce government resources. Following a seven day trial and presentation of statistics and expert opinion, the

court determined the ordinance is reasonably related to the stated purpose of improving the quality of life of residents. Although some testimony supported alternative methods of achieving crime reduction, this does not render the method chosen arbitrary, capricious or unreasonable. Plaintiffs' application to declare the ordinance null and void was thus dismissed.

Pleadings

86. *Feagins v. Trump Organization,* 2013 WL 5436549 (Nev., 09/27/13). Plaintiffs, all members of the same family, suffered injury when they were trapped inside an elevator at Defendant Trump Hotel International Las Vegas. The elevator went into a free fall for 20 stories. Plaintiffs sued the Trump organization and the Otis Elevator Company. Both Defendants failed to file an Answer timely but did ultimately issue the pleading. Plaintiff sued, seeking sanctions for Defendant's untimeliness. The court dismissed the claim stating that the remedy was a default judgment, not sanctions.

Res Ipsa Loquitur

87. *Kelly v. GEPA Hotel,* 2013 WL 3487098 (Ind. App., 07/11/13). While attending a church function at Defendant hotel, Plaintiff rode in a hotel elevator. While stopped, it moved. The heel of Plaintiff's shoe became caught in the gap thus created between the elevator and the floor. Plaintiff claimed *res ipsa loquitur* applied and the court agreed. One of the requirements is that the Defendant has exclusive control of the "injuring instrumentality at the time of the injury". The court ruled that "control" in this context means more than physical control but rather on the "right or power of control and the opportunity to exercise it." Here, the only party with the power or opportunity to inspect and maintain the motion controller and positioning device of the elevator was the hotel. An expert witness established the second requirement that Plaintiff's fall would not have occurred if the hotel reasonably inspected and maintained the elevator. Thus, *res ipsa loquitur* applies.

Stored Communications Act

88. *Brooks v. AM Resorts, LLC,* No. 11-995 (E.D. Pa. 07/03/13). Plaintiff was terminated and sued his former employer for alleged violations of the Stored Communications Act and the Computer Fraud and Abuse Act when Plaintiff discovered that his personal email messages had been reviewed by his former employer. During his employment, Plaintiff had allowed his computer to have a software program called TeamViewer installed on his personal desktop computer that would enable remote access to his computer when he was having technical difficulties with his work email account. The court denied Defendant's motion for summary judgment noting that accessing a privileged email exchange through another's email account qualifies as a violation and a jury will decide. The court did grant the summary judgment motion on the Computer Fraud and Abuse Act charge since no damages were proffered.

Tipping

89. *Villon v. Marriott Hotel Services, Inc.*, 2013 WL 5928997 (Hawaii, 10/31/13). Plaintiffs are food and beverage servers at the Wailea Marriott Resort. It imposed a service charge on food and beverages served at the resort but did not pay the entire charge to plaintiffs as tips. Instead, a portion was retained by the resort or used to pay managers and non-tipped employees. This practice was not disclosed to customers until challenged by Plaintiffs. Plaintiffs claimed that, pursuant to a Hawaii statute, either the full amount of the charge must be paid as tips or, if not, disclosure to the customer must be made. The court agreed based on the clear wording of the statute. Summary judgment was granted in favor of Plaintiffs for the time period before Defendant began disclosing. For the period after disclosure began, Plaintiffs challenged the sufficiency of disclosure in banquet event orders and the banquet menu, but not in the banquet contracts. On this issue, the court denied the resort's motion for summary judgment.

Trademark/Copyright Infringement

90. *BMI v. Quality Hotel and Conference Center*, 2013 WL 2444553 (N.D. W.Va., 06/05/13). Plaintiff sued Defendant hotel for copyright infringement, alleging that Defendant caused copyrighted songs to be publicly performed without a license or permission. Defendant defaulted in the lawsuit. Plaintiff's allegations were sufficient for entry of default judgment. Unlike allegations of fact, allegations in the complaint concerning the amount of damages are not deemed true when Defendant defaults. The court thus ordered a hearing to determine the amount of damages to which Plaintiff is entitled.

91. *J & J Sports Products, Inc. v. Orellana*, 2013 WL 3341001 (E.D. Cal., 07/02/13). Defendant is a Mexican restaurant in a rural community with an estimate capacity of 80-100 customers. It allegedly intercepted and exhibited without permission a championship welter-weight fight between Manny Pacquiano and Juan Manual Marquez III. Plaintiff, which owns the broadcast, sued for unauthorized publication or use of communications in violation of 47 USC Section 605, and Unauthorized Reception of Cable Services in violation of 47 USC 553. Defendant failed to appear in the lawsuit and so Plaintiff won by default on the liability issue. For damages, Plaintiff sought amounts in the high end of authorized ranges. For the 605 violation, statutory damages are permitted in an amount ranging from $1000 to $10,000. Additionally the court has discretion to increase the award by up to $100,000 if the violation is willful and committed for commercial gain. The court stated that awarding the statutory maximum is inappropriate absent "particularly egregious circumstances". In this case the court granted statutory damages in the amount of $5,300 noting that although the restaurant was almost full, it did not impose a cover charge, did not increase food or drink prices, and Plaintiff did not allege that any patrons were there primarily to watch the program.

92. *J&J Sports Products, Inc. v. La Bamba Restaurant, Inc.*, 2013 WL 3270567 (E.D. Va., 06/26/13). This case brought by the same Plaintiff as in the previous case is very similar

factually. In this matter, in response to the court's statement when determining damages that Defendant did not advertise the sporting event in question, Plaintiff asserted that Defendant may have used word of mouth advertising rather than printed promotions due to the illegal nature of the event. The court responded that it cannot make judgments based on mere speculation or possibilities. An additional justification given by Plaintiff for enhanced statutory damages is that piracy drives the price of licenses up for legal consumers.

93. *CPC Properties, Inc. v. Dominic, Inc*., No. 12-4405 (E.D. Pa. 08/21/13). Plaintiff, the owner of the intellectual property "Crabfries" used the word "Crabfries" on its menus, signs and packaging to sell crinkle-cut French fries. Plaintiff filed a trademark infringement suit against Defendant, an unrelated restaurant, claiming that Defendant used a picture of a crab next to the word "fries" in its advertisement and on its menus and claimed that the use of the image next to the word has the same effect as using the word "crab." The district court found in favor of Plaintiff stating that Defendant's use of the image of a crab near the word "fries" violated anti-dilution law.

94. *Wyndham Vacation Ownership, Inc. v. Timeshares Direct, Inc.*, 2013 WL 5289734 (Fla, 09/19/13). Plaintiff claims to be the world leader in the timeshare exchange industry. Defendant is in the business of helping timeshare owners rent or sell timeshares, and helping nonowners to find timeshares to rent. Plaintiff claimed that Defendant was using Plaintiff's trademark in Defendant's promotional materials in such a way as to cause confusion or deception The court declined to grant Defendant's motion to dismiss for trademark infringement and false designation of origin.

95. *Dorpan v. Hotel Melia*, _F.3d_, 2013 WL 45311783 (Cal., 08/28/13). The owner of a century old hotel named Hotel Melia in Puerto Rico filed a trademark infringement action against a competitor located 80 miles away named Gran Melia. Plaintiff did not register the mark but has used it. Plaintiff sought a declaratory judgment that its use of the term did not infringe Defendant's trademark. The court determined that a question of fact existed on the issue of likelihood of confusion and so vacated the district court's grant of summary judgment to Plaintiff.

Unemployment Insurance

96. *Strom v. Black Bear Casino & Hotel*, 2013 WL 2928034 (06/17/13). Plaintiff was employed as a sous chef in Defendant's casino buffet kitchen. It served 500-1500 people each night between 5:30 and 9:00. Plaintiff claimed the buffet was understaffed. This required that she abandon her supervisory duties to ensure food was available on the line. Per Plaintiff, she complained many times to her supervisor but no additional hiring was done. Plaintiff quit and applied for unemployment benefits. Per the court, an applicant for benefits who quits employment is ineligible for payments unless the applicant had "good reason caused by the employer", per Minnesota statute. A good reason is one that would compel an average, reasonable worker to quit. Whether a reason is a good one is a question of law for the judge. Plaintiff claims understaffing led to high stress, hot tempers, unsafe

cooking, burnt food, unsanitary conditions, and complaining customers. However, self-created stress and frustration does not constitute a good reason, nor does frustration or dissatisfaction with one's working conditions. Examples of circumstances that do include: substantially increasing an employee's duties or work hours, a confrontational relationship with an immediate supervisor resulting in physical illness. The court's ruling denied Plaintiff benefits, noting that "working condition that she experienced was inherent in her occupation as a sous chef and working in a restaurant."

97. *Rabideaux v. Fond du Lac Management*, 2013 WL 2372159 (Minn. App., 06/03/13). Plaintiff was a waiter with Defendant restaurant. He was twice arrested for DWI and placed on probation. He was diagnosed with a chemical dependency for which he received treatment. The restaurant has a policy requiring employees to call into their supervisor before the start of a shift to report an absence. Plaintiff was caught drinking alcohol in violation of the terms of probation and was arrested and incarcerated. He was in jail for 9 days, and called his boss on the third day. He claimed did not call earlier because he lacked the necessary money to purchase a phone card required for calls from jail. Plaintiff was terminated from his job and sought unemployment insurance. The restaurant claimed he was terminated for misconduct. The court affirmed the unemployment law judge's denial of coverage, noting that refusing to abide by an employer's reasonable policies, including those applicable to absences, generally constitute disqualifying employment misconduct. Here Defendant missed nine shifts and did not report the absence until the third day. Additionally, at the hearing Plaintiff asserted equitable arguments in favor of his receiving benefits including financial hardship and a long work history with the employer (18 years). The court rejected these arguments saying ". . . there is no equitable basis [in the Minnesota statutes] for allowing unemployment benefits."

Union/NLRB

98. *NLRB v. Hartman and Tyner, Inc., d/b/a Mardi Gras Casino, et al*., NO. 12-14508 (11th Cir. 04/16/13). The NLRB filed a charge against the Defendant casino stating that the casino unlawfully terminated employees who were involved in a union campaign. The union and the Defendant had an agreement where the Defendant agreed to take a neutral approach to unionization as long as the union agreed not to engage in union activity in the public areas or during employees' work hours. Just before the agreement was set to expire, the union began its campaign and allegedly breached the terms of the agreement. Defendant terminated six employees who were involved and the NLRB sought injunctive relief and reinstatement of the employees. The court held for the Defendant stating that the campaign had gone cold and there wasn't enough interest in the unionization so the NLRB's injunctive relief was not proper. The appellate court affirmed.

99. *Bejjani, et al., v. Manhattan Sheraton Corporation d/b/a St. Regis Hotel, et al*., No. 12 Civ. 6618 (JPO) (S.D. N.Y. 06/27/13). Plaintiff and several banquet servers at Defendant's hotel alleged violations of the collective bargaining agreement and sued alleging several claims, one being that the agreement reached between the Union and the hotel was a conspiracy to violate the rights of employees. The district court, faced with ruling on

hybrid claims, dismissed the case and said that the union may have been negligent in failing to inform the servers but did not act in bad faith.

100. *International Union of Operating Engineers Local 148, et al., v. Gateway Hotel Holding Inc. d/b/a Millennium Hotel*, No. 4:12-CV-1549-JAR (E.D. Mo. 07/08/13). Since 1974, James McHugh was on the engineering staff at Defendant's hotel, which recognized the International Union of Operating Engineers Local 148. In 1999, Mr. McHugh was promoted to chief engineer and was no longer a member of the bargaining unit. He was terminated for poor performance some time later and the Union filed an unfair labor practice charge with the NLRB. The NLRB declined to issue a complaint stating that McHugh was a supervisor and not entitled to union protection. Defendant moved for summary judgment which was granted since it was clear Mr. McHugh was a supervisor and supervisors are explicitly excluded from the collective bargaining agreement.

101. *International Longshore and Warehouse Union, Local 142 v. Grand Wailea Resort and Spa,* 2013 WL 4855267 (09/10/13). A server at Defendant's facility forged another server's Tip Out Sheet resulting in the former wrongly receiving $50 from the other's paycheck. Following an investigation, the wrongdoer was terminated, and an arbitrator found the termination was based on just cause. The discharged employee appealed. The court upheld the arbitrator's decision noting that the decision "drew its essence from the collective bargaining agreement" (meaning that the arbitrator's interpretation of the contract was plausible), judicial review of an arbitrator's decision is limited and highly deferential, and the degree of discipline is an issue for the arbitrator and will not be disturbed provided it can be rationally derived from some reasonable theory of the intent of the collective bargaining agreement. The arbitrator noted that the termination was legitimate because the perpetrator had intentionally taken another server's property, had knowingly falsified the other server's Tip Out Sheet, the company's handbook stated theft would not be tolerated, and the wrongdoer had previously been suspended for four days for grabbing food with his bare hands in violation of food safety policies and exhibiting hostility when his actions were challenged.

Vicarious Liability

102. *Arbogast v. Comida Management, LLC, d/b/a Mi Amigo's Mexican Grill*, No. 1 CA-CV 12-0579 (Ariz. Ct. App. 05/23/13). Plaintiff was struck by a car driven by an employee of Defendant's restaurant. Plaintiff argued that the driver was negligent and working at the time of the accident. Defendant argued that the manager loaned his car to the driver so he could get to work, and therefore he was commuting and not on the clock. The court granted Defendant's motion to dismiss stating that neither the driver's negligence nor the manager of the restaurant could be attributed to Defendant because it did not occur within the scope of employment. On appeal, the court affirmed the lower court's ruling stating that while generally employers are not liable for the conduct of employees while they are commuting to work, the law in Arizona has an exception that when an employer provides transportation to the employee and the travel time benefits the employer, then the employer may be held liable for injuries incurred. Plaintiff contends this incident falls within the

exception, but the court disagreed and stated that the manager was not even working as he was at home and merely loaned his car to the driver/employee and therefore this does not fall within the exception to the rule.

Warn Act

103. *Gray, et al. v. The Walt Disney Company, et al.,* No. CCB-10-3000 (D. Md. 01/03/13). Plaintiffs were former employees of ESPN Zone at Baltimore's Inner Harbor and sued Disney alleging violations of the Worker Adjustment and Retraining Notification Act when it closed the restaurant without giving them the proper notice. The employees were given 60-days' notice and received partial pay for 60 days but were told not to show up for work. Plaintiffs alleged they were entitled to full, expected wages during the notice period and the court agreed. The requested summary judgment of Defendant was denied.