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

Thirteenth Annual
Hospitality Law Conference
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Houston, Texas

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. Her current book writing project is *Law Made Fun through Downton Abbey*.

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 serving food at a soup kitchen.

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, CWP is a Senior 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 a perspectives 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 with study abroad visits to France, Monaco, Italy, Switzerland and Germany.

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. In furtherance of assisting students interested in special event planning, Diana recently completed her certification as a Certified Wedding Planner through the nationally recognized [the] Bridal Society in the summer of 2014 earning her CWP designation.

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 ("GHLA").

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 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 for members of GHLA.

Her favorite volunteer activities include chaperoning the award winning Lambert High School Marching Band invited by the Lord Mayor to march in the 2015 London New Years' Day Parade.

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ADA/Facility

1. *Ferguson v. CHC VII, LTD*., 2014 WL 6469455 (M.D. Fla. 11/16/14). Plaintiff suffers from several health conditions that limit his mobility and requested that the golf course defendant allow plaintiff to drive his golf cart on tees and greens. Defendant allows the use of golf carts but prohibits their use on tee boxes and the carts are not allowed to stop on the runway or be parked within 30 feet of the greens. The district court agreed with plaintiff and will allow him to pursue his ADA claims against defendant stating that plaintiff does have a disability, the golf club is a covered place of public accommodation, and plaintiff alleges that the removal of barriers at the property is readily achievable.

2. *Rodriguez v. Barrita, Inc.,* 11 F.Supp.3d 1062, 2014 WL 31739 (N.D. Cal. 01/03/14); *reconsideration denied* 2014 WL 282655 (N.D. Cal. 01/24/14). Plaintiff, a paraplegic, was unable to gain access to defendant's restaurant due to architectural barriers. Plaintiff listed 20 distinct barriers in the restaurant and filed a claim against defendant for violation of the ADA and state disability laws. Defendant had sought an exemption to the state law requiring ADA compliance repairs after a fire in the restaurant required reconstruction due to the cost of compliance being an unreasonable hardship. Defendant argued that plaintiff lacked standing to sue since he remained in his car during the visit. The court held that defendant did violate the disability laws and could have offered curbside service to customers with disabilities in order to satisfy the ADA requirements. In addition, state law mandated that the entrance be made accessible so the court held that defendant must make its entrance accessible to those customers with disabilities.

Arbitration

3. *Choice Hotels International, Inc. v. Vishal, Inc.,* 2014 WL 6391092 (D. Md., 11/14/14). Defendants had a franchise agreement with plaintiff Choice Hotels. Defendants breached the agreement by nonpayment of various fees. Per the franchise contract, the parties submitted to arbitration. The arbitrator awarded Choice Hotels a total of $118,200, which defendants failed to pay. Choice Hotels filed in court an Application to Confirm Arbitration Award. Defendants failed to respond and Choice Hotels sought a default judgment. The referee who heard the case recommended a default judgment be entered noting that Choice Hotels proved liability on defendant's part and entitlement to the amount of damages awarded by the arbitrator. Additionally, the court awarded post-judgment interest to continue to accrue until the judgment is paid.

4. *Choice Hotels International, Inc. v. F&R Group Investments*, LLC. 2014 WL 3405030 (D. Md., 07/09/14). Defendant was a franchisee of plaintiff. Plaintiff claimed defendant breached the contract and sent defendant an arbitration demand by certified mail, consistent with the contract. The mail was sent to defendant's address contained in the franchise agreement and returned to plaintiff as undeliverable. Defendant does not dispute that plaintiff used the correct address. Defendant failed to respond and an arbitration award was entered in favor of plaintiff. Defendant filed a notice to vacate the arbitration award. Plaintiff objected, noting the notice was sent beyond the three month statute of limitations in the Federal Arbitration Act. Defendant claimed it never received notice of the arbitration. The court dismissed defendant's motion to set aside the arbitration award because the notice of arbitration was sent to the correct address and certified consistent with the franchise contract requirements.

5. *Breckenridge Edison Devl't, LC v. Sheraton Operation Corp.,* 2014 WL 4802885 (SDNY, 09/18/14). Plaintiff owns the Sheraton St. Louis City Center Hotel. Per a contract between the parties, defendant was to manage and operate the hotel. The management contract required that the parties attempt to resolve any disputes through mediation. If any dispute remains thereafter, either party is authorized to initiate a lawsuit. The contract further provides that "if the dispute is an Arbitrable Dispute, either party may require that the dispute be submitted to final and binding arbitration". The contract defined what an Arbitrable Dispute was. The court noted the federal policy favoring arbitration and the rule that ambiguities as to the scope of the arbitration clause must be resolved in favor of arbitration. The court concluded that part of plaintiff's claim was arbitrable and part was not. Defendant's motion to compel arbitration was thus granted in part and denied in part.

Assault & Battery

6. *Belkin v. Casino One Corp. d/b/a/ Lumiere Place Casino and Hotel,* 2014 WL 1726907 (E.D. Mo, 05/01/14). Plaintiff entered defendant's casino and showed ID that he was over age 21, the threshold age permitted in the casino. Defendant's establishment was policed by "gaming agents" employed by the state Highway Patrol. They accused plaintiff of presenting fake ID, despite plaintiff presenting multiple forms of identification establishing his age. The law enforcement agents detained plaintiff became verbally abusive and threatening, using homosexual slurs. They also became physically aggressive including grabbing plaintiff's arms, neck and head, and forcefully throwing him to the ground. He sued for assault and battery, and false imprisonment. The court denied the defendant's motion to dismiss, finding the evidence sufficient to support the claims.

Automatic Gratuity Laws (New York)

7. *Dimond, et al., v. Darden Restaurants, Inc., et al*., No. 13 Civ. 5244 (KPF), 2014 WL 3377105 (S.D. N.Y. 07/09/14). Plaintiff sued Darden alleging that the 18% automatic gratuity on patrons' bills and the failure to list the beverage prices on the menu were in violation of the NY State General Business Laws. Under the relevant statute, a plaintiff must

prove that the "challenged act or practice was consumer-oriented", that the act was misleading and that injury was suffered as a result of the deception. Defendant argued successfully that there is no private right of action under the law. The NY Supreme Court has said that the law "does not grant a private remedy for every improper or illegal business practice, but only for conduct that tends to deceive consumers." The 18% gratuity charge was clearly stated on the menu and the patron could have left the restaurant. And plaintiff did not show any injury due to the beverage prices not being on the menu.

Call Centers/Disclosure of Recordings

8. *Ades & Woolery v. Omni Hotels Management, Corp.,* 2014 WL 4627271 (C.D. Cal., 09/08/14). Plaintiffs seek certification as a class to sue defendant. Plaintiffs claim Omni recorded calls to its toll-free reservation number without disclosing to callers that the conversations would be taped. Defendant had a company-wide policy of recording all inbound conversations with consumers. The proper class consists of 40,000 California callers who contacted Omni's reservation number between March 15, 2012 and March 22 2013, and provided personal information, not knowing the calls were being recorded. The court granted class certification. By permitting the class, possibly thousands of separate cases can be avoided. Further, the $5000 minimum recovery permitted under the applicable statute may not be sufficient to motivate individual litigation.

Casinos/Fourth Amendment Rights Violation

9. *West-Anderson v. The Missouri Gaming Company d/b/a Argosy Casino, et al.,* 557 F. Appendix 620 (8th Cir. 05/07/14). Plaintiff found money on the casino floor and picked it up. She alleged a security guard threatened her with arrest if she didn't return the money to the casino, which she did. She was handcuffed and taken to an office where she invoked her Fourth Amendment rights. Moments later, the handcuffs were removed and she was free to go. She sued the casino. The court dismissed all her claims. On appeal, the court said that the allegations by plaintiff were enough to raise an inference that there was no probable cause to believe plaintiff had committed theft so her claim should not have been dismissed at the summary judgment stage.

Child Labor Laws

10. *People of the State of New York v. Ross Violi and Dominick Violi*. Newsletter of the New York Attorney General, (12/14/ 14). Two owners of an upstate New York restaurant, both in their late 70's, pled guilty to violating child labor laws. Defendants hired a 17 year old and directed him to clean an industrial, power-driven pasta-making machine, a prohibited task for workers under 18. The machine severed his arm. He has had four surgeries to date and anticipates more. Defendants were ordered to pay a fine of $9,000, plus $13,300 restitution to the boy's family who travelled to Boston for his treatments. Additionally, while the eatery was under investigation, other violations were found including underpayment of the young employee's wages, and failure by the restaurant to have the

lad's working papers on file. A civil case by the family against the restaurant is also being pursued.

Class Action Certification

11. *Wadsworth v. KSL Grand Wailea Resort, Inc.,* 2014 WL 4829479 (D. Ha. 09/24/14). Plaintiffs are servers at defendant resort and seek certification as a class. Defendants are various entities that have owned and operated defendant resort during the applicable statute of limitations period. Defendant adds a preset service charge to customers' bills for food and beverage. Defendant retains a portion of the charge without disclosing to customers that the full charge is not paid to the wait staff. The court granted certification for a class action, the class being defined as follows: all non-managerial food and beverage employees who, from January 31, 2006 to the present, have worked at banquets, functions, other events, in-room dining, and small parties, where a service charge was imposed and where a part of that service charge was kept by the Defendants or management without adequate disclosure to customers."

Contracts

12. *Sheraton Atlanta Hotel v. Salzer,* __SE2d__, 2014 WL 4958212 (Ga. App., 10/06/14). Defendant is an event coordinator hired by a convention planner, Convention Organizing and Leadership Team, Inc., to book rooms at plaintiff hotel for a fan convention of "My Little Pony." Defendant, on behalf of the convention planner, signed a contract with the hotel which included a cancellation penalty. The contract identified the convention planner using the acronym C.O.L.T., Inc. Other than this contract, the convention planner did not utilize that name. Thereafter the convention planner cancelled the event, and the hotel sued defendant and not the convention planner for the penalty. The hotel claimed defendant was individually liable because he signed the contract on behalf of a nonexistent entity, and moved for summary judgment. The court denied the hotel's motion, noting that defendant disclosed to the hotel that he was acting as an agent and sufficiently identified his principal. The court rejected the hotel's claim that the acronym should be considered a fictitious name rather than an abbreviation.

13. *Chelsea Grand, LLC v. New York Hotel & Motel Trades Council, AFL-CIO,* 2014 WL 4813028 (SDNY, 09/29/14). Plaintiff owned a hotel. The workers were members of a large union that represents many hotel workers in New York. The hotel hired Interstate Hotels & Resorts (Interstate) to manage it. Interstate manages many hotels and has a collective bargaining agreement with the union. The hotel employees' claimed that, by the act of hiring Interstate, plaintiff became bound by the bargaining agreement. Plaintiff denied this saying Interstate lacked authority to bind the hotel on a pre-existing contract. The court disagreed, ruling that since plaintiff hired a management company with a pre-existing labor and union relationship, plaintiff was bound by the agreement.

14. *West Palm Beach Hotel, LLC v. Atlanta Underground, LLC,* 2014 WL 4662318 (D.NJ, 09/18/14). This case involved the potential conveyance of a hotel in West Palm Beach,

Florida. A letter of intent (LOI) required both buyer and seller to "act in good faith and exercise due diligence in negotiating and executing the Contract." A price of $13,750,000 was referenced in the LOI, which also stated that the LOI was "not a binding agreement." The deal broke down when seller sought a higher price, and seller sued the buyer for a declaratory judgment holding that seller had no obligation to transfer the property to defendant buyer at the price in the LOI. The would-be buyer counter-claimed, alleging plaintiff did not negotiate in good faith. The court held that a request made by plaintiff for an increase in the purchase price over the amount in the LOI did not constitute bad faith.

15. *Clark v. NYC Police Department,* 2014 WL 4804237 (EDNY, 09/25/14). Plaintiff, an African-American, purchased an 11-day stay at Best Western for her father and brother. When she went to visit them, she became disruptive and police ultimately handcuffed her and transported her from the hotel to the psychiatric unit of a nearby hospital. She was assessed and released within a few hours. She returned to the hotel but was called a trespassing "n-word" and denied entry. Plaintiff complained to management but no investigation was undertaken. She sued based on 42 USC Section 1981which outlaws discriminatory treatment when making or enforcing a contract. The court denied the hotel's motion to dismiss, finding that plaintiff is African American and thus a member of a protected class and the one racial epithet is sufficient to support plaintiff's claim of discriminatory intent. However, the hotel can attempt to prove at trial that the discriminatory acts occurred after she had gifted the reservation to her father, in which case she would no longer be a party to a contract and could not assert a section 1981claim.

16. *Brown v. Luxor Hotel & Casino*, 2014 WL 2858488 (D. Nev., 06/23/14). Plaintiff alleges that after purchasing a ticket for a show at the Luxor, security voided her ticket, removed her from the line by force, and banned her from the premises. Plaintiff is multi-racial and sued for public accommodation discrimination. She alleged that she filed her complaint with the EEOC and received a right to sue letter. However plaintiff failed to attach the right-to-sue letter to her complaint. Nor does she otherwise establish that she timely filed the present case within 90 days from the date of her right-to-sue letter. For this and other reasons, plaintiff's case was dismissed.

Criminal Law/Scalping

17. The World Cup was held this year in Brazil, governed by the Federation International of Football Association (FIFA). It hired a company named MATCH Group to sell hospitality packages including travel, hotel and game admissions. An executive has been charged with aiding scalpers. For example, ticket prices for the final game between Germany and Argentina had a top price of $990, but intercepted calls indicated the MATCH price was $25,000. Brazilian law prohibits reselling admission tickets for events at higher than face value, punishable by up to four years in prison. The trial date has not yet been set. "World Cup Scalping Scandal Continues in Brazil." *Associated Press*, July 8, 2014.

Discrimination/Racial

18. *Whitehurst, et al., v. 230 Fifth, Inc., et al.,* 998 F. Supp. 2d 233 (S.D. N.Y. 02/21/14). A group of thirteen black individuals sued defendant pub claiming they were discriminated against based on their race. Defendant counterclaimed against the group alleging tortious interference with prospective economic advantage and tortious interference with contractual relations. Plaintiff claims she made a reservation at defendant's bar for a birthday party. She said she spoke with an employee of defendant named Ruby. When plaintiff arrived, there was no reservation; and defendant did not have an employee named Ruby. Defendant attempted to accommodate plaintiff's party but the group kept blocking areas in the bar, and other patrons and employees complained. They eventually were asked to leave. The court stated that plaintiffs provided sufficient evidence for a jury to reasonably conclude that the bar's actions were motived by discriminatory intent so defendant's summary judgment motion was denied.

Dram Shop

19. *Smith v. S.P. Greenville Inn LLC, et al.,* 2014 WL 4825317(Ohio Ct. App. 09/30/14). Plaintiff filed a dram shop complaint when her husband was killed by a drunk driver who had consumed alcohol at the Local Aerie and the Greenville Inn. The driver was subsequently found dead due to an overdose of alcohol and other drugs. Plaintiff could not produce evidence that anyone at defendants' venues served the drunk driver when the driver was noticeably intoxicated. Ohio law requires that "actual knowledge of intoxication is a necessary component in fashioning a judiciable claim for relief". Testimony of the servers, patrons and a police officer stated that the driver did not appear inebriated.

Employment/Arbitration

20. *Baier v. Darden Restaurants, et al.,* 420 S.W.3d 733 (Mo. Ct. App. 02/25/14). Plaintiff worked as a waitress at Olive Garden at three different locations. At each restaurant she signed an acknowledgment of receipt of an employment manual which contained provisions for dispute resolution by arbitration. The first two times plaintiff signed the form, the management signature line was left blank. The third time plaintiff signed the management signature line had been removed from the form. Plaintiff filed suit against defendant alleging discrimination and harassment. Defendant moved to dismiss or compel arbitration based on the acknowledgements that plaintiff signed. Plaintiff argued that the forms were never signed by defendant and therefore there was no valid arbitration agreement. The court agreed and the decision in plaintiff's favor was affirmed on appeal.

Employment/CAN-SPAM Act

21. *Agardi v. Hyatt Hotels,* 2014 WL 2860658 (N.D. Cal, 2014). Plaintiff alleged she was terminated in retaliation for accusing her supervisor of sexually harassing her. The hotel investigated the claim and found it to be unsubstantiated. Plaintiff claimed the hotel conspired to destroy her name on the internet, controlled her email, was responsible for the appearance on various pornographic websites of women who share plaintiff's first name (!), and arranged for her to receive thousands of spam emails containing explicit sexual material. She sued on many grounds including violation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, known as the CAN-SPAM Act. The name reflects the bill's failure to prohibit many types of email spam and does not require e-mailers to get permission before they send marketing messages. The court dismissed the statutory cause of action because the Act does not provide a private right of action by consumers. Rather, the only entities that can sue using the Act are the FTC, certain state and federal agencies, state attorneys general and internet access service providers.

Employment/Discrimination/ADA

22. *Melton v. Resorts International Hotel, Inc., et al.,* 2014 WL 5341929 (D.N.J. 10/20/14). Plaintiff, a Type-1 diabetic, was terminated from his position as a doorman at defendant hotel after the hotel changed operating companies. All employees were terminated and subsequently encouraged to reapply. Plaintiff did reapply but was on light duty after injuring his shoulder and was not rehired. He sued, alleging he was discriminated against for his diabetes. Defendant argued that he was not re-hired because of his light duty status but the court held that defendant did know about the plaintiff's diabetes, even though defendant said it did not, and defendant failed to temporarily accommodate plaintiff's need for light duty work.

23. *Buffington v. PEC Management II, LLP d/b/a Burger King*, 2014 WL 2567181 (W.D. Pa. 06/06/14). Plaintiff's son battled cancer up until his death at the age of 14. Defendant noticed a decline in plaintiff's work performance and plaintiff was subsequently terminated for violating company policy, of which plaintiff claimed she was not aware. The policy prohibited crew members from driving for restaurant business under any circumstances. Plaintiff asked a crew member to pick up some funnel sticks from another restaurant and the crew member was involved in a car accident while doing so. Plaintiff was awarded $115,000 in front pay, $43,000 in back pay and $70,000 in compensatory damages for her claims of discrimination based on her association with a person with a disability in violation of the ADA. Defendant did not enforce its driving policy against similarly-situated managers. Affirmed on appeal.

Employment/Discrimination/ADEA

24. *Merrick v. Hilton Worldwide, Inc.,* 2014 WL 5800272 (S.D. Cal., 11/07/14). Plaintiff worked for many years as Director of Property Operations at Hilton in La Jolla, California and always received very good reviews. There came a time when his position was

eliminated. Plaintiff alleges the cause was age discrimination. The hotel asserts that plaintiff's dismissal was unrelated to age but instead was necessitated by labor costs The Hilton franchisor had ordered all hotels to cut labor costs by 7-10%. Defendant's management team wanted to eliminate just one position; aside from the general manager, plaintiff earned the highest salary of all the managers; plaintiff's position was less essential than other management jobs because he generated revenue only indirectly and had less face-to-face contact with hotel guests. Adding weight to defendant's position is the fact that plaintiff was not replaced, rather his duties were redistributed. The court granted defendant's motion for summary judgment and dismissed the case.

25. *Carufe v. Intercontinental Hotels Group Resources, Inc.,* 2014 WL 4384917 (M.D. Tenn., 09/05/14). Plaintiff was General Manager of defendant's Holiday Inn. Plaintiff alleged several ageist comments by his boss, the Regional Director of Operations. Plaintiff was called "old with old ideas" and "past your proper lifecycle." The director further stated, "I can't believe you've been here so long," and "You are old and sleepy." Defendant claims plaintiff failed to perform his job responsibilities consistent with defendant's standards, alleging an unpleasant odor in the hotel, sticky carpets, plus rusted and poorly-operating doors. Further, water treatment testing was overdue, and despite the director's efforts to develop a performance improvement plan, nothing changed. Plaintiff argues that defendant's claim is a pretext for age discrimination. The court found disputed facts and denied the hotel's motion for summary judgment.

26. *Fusco v. Tropicana Las Vegas, Inc.,* 2014 WL 4843677 (D. Nev., 09/26/14). Plaintiff was defendant's chief engineer. The director of facilities made comments to several of plaintiff's co-workers that he wanted the elderly workers "retired," and commented that plaintiff was "getting too old for this stuff." Thereafter the director confronted plaintiff and requested plaintiff retire. He refused and was thereafter terminated. In addition to alleging age discrimination, plaintiff sued for intentional infliction of emotional distress. The latter claim was dismissed. This tort requires "extreme and outrageous conduct." The facility director's ageist comments and plaintiff's termination do not rise to the level of extreme and outrageous behavior required. Said the court, if the facts of this case were sufficient, "every potential discrimination case would support an intentional infliction of emotional distress claim."

Employment/Discrimination/Gender

27. *Burch v. Bellagio Hotel and Casino,* 2014 WL 4472411 (D. Nev., 09/09/14). Plaintiff, an employee of defendant, sued for race and gender-based discrimination and harassment, and retaliation for filing a claim with the EEOC. She received a right to sue letter but did not file her lawsuit until more than six months later. Title VII requires filing within 90 days of receiving a right to sue letter. Thus, plaintiff's Title VII claim was dismissed. The court also dismissed plaintiff's Equal Pay Act claim because the complaint did not specifically allege that the hotel paid her a wage less than male employees with the same title. On the latter cause of action, the court granted plaintiff 20 days to file an amended complaint. The

court also "advised" plaintiff of various rules of pleading for her to incorporate in her amended complaint.

Employment/Discrimination/National Origin

28. *Cackovic v. HRH Chicago, LLC, d/b/a Hard Rock Hotel,* 2014 WL 2893198 (N.D. Ill., 06/26/14). Plaintiff, a Bosnian, was a housekeeping employee at the Hard Rock Hotel in Chicago. Her supervisor made negative comments about Bosnians including that they contaminate this country, they take jobs away from Americans and African-Americans, and they are difficult to communicate with. Plaintiff was terminated. She claimed the cause was her national origin. The hotel however cited violation of a policy as the grounds. Specifically, plaintiff locked herself in a guest room, did not respond when her supervisor knocked, told her supervisor to shut up, lied to her supervisor, and did not tell her boss where she was. Plaintiff was unable to establish that the hotel's explanation was a pretext. Defendant's motion for summary judgment was granted.

29. *Campbell v. Chipotle Mexican Grill, Inc*., 2014 WL 1089777 (D. Minn. 03/19/14). Plaintiff was terminated from employment for his habitual tardiness and filed a complaint alleging discrimination based on his ethnicity. Plaintiff was of Korean-American and African-American decent. The court granted summary judgment for defendant as Chipotle had established a legitimate, nondiscriminatory reason for the plaintiff's termination from employment. Besides being tardy, plaintiff also had behavioral issues which justified termination.

Employment/Discrimination/Pregnancy

30. *O'Rourke v. Boyne Resorts d/b/a Loon Mountain Recreation Corporation*, 2014 WL 496859 (D.N.H. 02/07/14), *reconsideration denied* 2014 WL 3547000 (D.N.H. 07/15/14). Plaintiff was fired from her position working in defendant's coffee shop restaurant at the resort for misappropriation of whipped cream. Defendant believed plaintiff was doing "whippits" which means inhaling nitrous oxide from the canisters. Just before termination, plaintiff had told defendant's manager that she was pregnant and plaintiff sued for pregnancy discrimination, claiming that the alleged whipped cream incident was a pretext for pregnancy discrimination. Plaintiff denied doing whippits but did not explain the very unusually high whipped cream usage for a single day at the restaurant. The district court granted defendant's summary judgment motion stating that the termination was substantiated by reasons unrelated to plaintiff's pregnancy. The court said although the time between the pregnancy announcement and the termination was close, the timing was not close enough to create a jury question because of defendant's strong evidence of plaintiff's misconduct.

Employment/Discrimination/Race

31. *Asare v. LM-DC Hotel*, 2014 WL 3027111 (D.D.C., 07/07/14). Plaintiffs, two black employees at defendant hotel and one Hispanic, worked in the front office. Management changed hands and plaintiffs, along with numerous other black workers, were terminated. White employees with less experience were retained and even promoted. The new hotel manager explained that he was getting "rid of all the trash." Plaintiffs claimed the reorganization was a pretext for intentional, racially biased termination of non-white employees. Defendant's motion for summary judgment on the race-discrimination count was denied. The court did however dismiss plaintiffs' retaliation claim because plaintiffs failed to allege they engaged in any protected activity. One plaintiff's complaint in writing to defendant about racial discrimination was not protected activity. Additionally, the plaintiffs sued for intentional infliction of emotional distress. The court held that calling plaintiffs "trash" on at least two occasions and displaying an offensive poster in the workspace were "mere insults" and employment slights, not sufficiently egregious.

32. *Battle v. Carroll and Hart Hotels, Inc.,* 2014 WL 1679422 (W.D.NY, 04/28/14). Plaintiff, a black woman, was a long time housekeeper employee of defendant Holiday Inn. She was terminated after a confrontation with her supervisor. During the encounter, the white male supervisor stated, "You people are never satisfied." Plaintiff interpreted "you people" as meaning blacks. The hotel claimed it meant housekeeping personnel. Plaintiff sued her supervisor and the hotel claiming race was a motivating factor for her discharge, and defendants therefore violated Title VII. The claim against her supervisor was dismissed because Title VII does not provide for individual liability. Concerning the case against the hotel, the court found that the phrase "you people" has conflicting meaning and therefore a jury should decide. The comment is not merely a single stray one since it led to plaintiff's termination and was uttered by the person who fired her. Summary judgment for the hotel was denied.

33. *Milladge v. OTO Development, LLC,* 2014 WL 4929508 (E.D. Va. 10/01/14). Plaintiff claimed racial discrimination when she was terminated as sales manager of two of defendant's hotels. She alleged that her supervisor was dismissive and condescending to her. Defendant provided evidence that plaintiff's hotels were generally ranked on the bottom compared to competitive ones. She was terminated for failing to improve metrics, being behind revenue goals and other sales-related issues. The court granted defendant's summary judgment stating that none of the examples plaintiff produced evoked race. Further, defendant's praise of other black sales managers undermined plaintiff's contention that her boss was racially biased. Plaintiff also failed to show how the supervisor's behavior was sufficiently severe to alter her employment conditions.

34. *Jones v. RMB and McCormick & Schmick's Seafood Restaurants*, No. 1:12-cv-04503, 2014 WL 1669808 (D.N.J. 04/28/14). Plaintiff, a black male, resigned from his position as the general manager of defendant's restaurant, then withdrew his resignation and filed a claim for racial discrimination, retaliation and hostile work environment under New Jersey state law. Defendant had already accepted plaintiff's resignation. Defendant's motion for

summary judgment was granted by the district court as defendant had legitimate, nondiscriminatory reasons for not allowing plaintiff to rescind his resignation.

Employment Discrimination/Procedural

35. *Lizarraga v. Central Parking, Inc. – The Waldorf Astoria Hotel* 2014 WL 2453303 (S.D.N.Y., 06/02/14). Plaintiff is a Mexican-American Catholic who was employed by defendant, a company that provides parking services at the Waldorf Astoria Hotel. When plaintiff met with his supervisor to complain about tip allocations, the supervisor said, "If you don't like it, you can return to your country." Plaintiff claimed discrimination based on race, religion and national origin. He filed with the EEOC and received a right-to-sue letter. He commenced his lawsuit five months after receiving the letter. To be timely, a Title VII complaint must be filed within 90 days. The only exception is circumstances warranting equitable tolling which requires "extraordinary circumstances." The court noted that plaintiff's tardiness in filing was not a matter of days or weeks, but nearly two months. Extraordinary circumstances were not present here.

36. *D'Avanzo v. Copper Cellar Corporation*, 2014 WL 1608368 (E.D. Tenn. 04/22/14). Plaintiff didn't get along with her supervisor or co-workers. She was terminated and claimed she was subjected to several types of discrimination and unwanted harassment, including a hostile work environment. Defendant terminated plaintiff's employment due to all the drama she created. The court dismissed her claims because defendant had a legitimate, non-discriminatory reason for terminating her employment as she was unable to get along with other employees and supervisors. She failed to substantiate a pattern of discrimination by suggesting isolated incidents were sufficient, and the remarks she referenced were time barred.

Employment/Discrimination/Sexual Orientation

37. *Bostick v. CBOCS, Inc*., No. 8:13-cv-1319-T-30TGW, 2014 WL 3809169 (M.D. Fla. 08/01/14). Plaintiff, a gay male employee of Cracker Barrel, was terminated from his job as an associate manager in training and alleged that his termination was due to sexual orientation discrimination. The court granted summary judgment for defendant stating that plaintiff's claim would fail because plaintiff did not establish a hostile work environment or that the circumstances were sufficiently severe or pervasive to change his employment. The court also said there was no retaliation by defendant as Cracker Barrel had legitimate, non-retaliatory reasons for terminating plaintiff, that being poor work performance.

Employment/Equal Pay Act

38. *Burch v. Bellagio Hotel & Casino,* 2014 WL 6884049 (D. Nev., 12/08/14). Plaintiff previously sued defendant for alleged violations of Title VII but the case was dismissed because plaintiff failed to timely commence the case after receiving a Notice of Right to Sue letter from the EEOC. Plaintiff filed an amended complaint, packaging the alleged discrimination in a claimed violation of the Equal Pay Act. However, said the court, the

Equal Pay Act "is not designed to remedy workplace harassment or racial discrimination violations". Instead, the Act outlaws only the wrong of paying one gender less than the other for equal work. A necessary component of an Equal Pay Act case is that two employees of different genders were paid a different wage for the same work. Plaintiff alleged only that she and other males had different job responsibilities and her coworkers had a greater opportunity for advancement. Plaintiff's case was thus dismissed.

Employment/FLSA

39. *Solis v. Suroc, Inc., et al.,* 2014 WL 4472615 (N.D. Ohio 09/11/14). Interesting analysis of correct classification of 5 sushi chefs at Sushi Rock restaurants. The # 1 sushi chef was FLSA exempt and chefs # 4 and # 5 were clearly not exempt as they didn't have any managerial authority at the restaurant. The question is whether the # 2 and # 3 sushi chefs should be exempt. The restaurant argued that # 2 and # 3 are exempt under the executive exemption and learned professional exception. The DOL argued no exemption exists for # 2 and # 3. The court stated that chefs # 2 and # 3 did not have culinary or college degrees but the restaurant claimed that they are continually being instructed and taught in a classroom setting using the restaurant as the classroom when they are not doing work. The court said this was not enough to meet the criteria for the "learned professional" exemption.

40. *Jerome v. World Wide Vacations, LLC, et al*., No. 6:14-cv-430-Orl-36TBS (M.D. Fla. 04/14/14). Plaintiff filed a complaint alleging he was not paid minimum wage or overtime. He claimed he was only paid for 30 hours a week and worked between 50-55 hours per week. The parties settled and the court affirmed the settlement agreement as being a "fair and reasonable resolution" of the FLSA issues. The general release plaintiff signed was sufficiently narrow to withstand scrutiny as it did not require plaintiff to release any unknown claims unrelated to the wage issues.

41. *Crate, et al., v. Q's Restaurant Group, LLC, d/b/a Cheddar's Casual Café*, No. 8:13-cv-2549-T-24 EAJ (M.D. Fla. 05/02/14). A group of employees at defendant's café filed separate complaints against defendant alleging that defendant violated Florida's minimum wage laws. Plaintiffs argued that their jobs constituted "dual occupations" and the court dismissed their complaints without prejudice because their argument for "dual occupations" lacked detail. The court held plaintiffs could proceed with their allegations that defendant violated the 20% non-tipped work rule.

42. *Hayes, et al., v. Greektown Casino, LLC, et al*., 2014 WL 1308839 (E.D. Mich. 03/31/14). Plaintiff security guards at defendant's casino alleged they were not paid overtime wages for time spent attending mandatory pre-shift roll call and for time necessary to collect equipment to perform their jobs. The security guards were under a collective bargaining agreement which required two paid 30-minute breaks each shift. The casino argued that the paid breaks more than compensated the officers for the time they claimed they were not paid. The court denied defendant's motion for summary judgment stating that issues of fact remained as to the extent of freedom that the security guards had on their breaks, and a jury needed to decide whether the break time was properly compensable or not under the FSLA.

43. *Khamlue, et al., v. Wyndham Vacation Ownership, Inc., et al*., No. 6:13-cv-531-Orl-28TBS (M.D. Fla. 01/15/14). More than fifty Asian members of the Mutual Education and Cultural Exchange program were employed by Wyndham and were given low-skill service work rather than being hired as trainees and interns. The workers sued defendant for violations of the Racketeer Influences and Corrupt Organizations Act and the FLSA. A settlement was reached for all the charges and the court approved the settlement agreement.

Employment/FMLA

44. *McElroy v. Sands Casino,* 2014 WL 6601030 (3d. Cir. 11/21/14). Plaintiff, a casino employee, filed for FMLA leave through the outsourced organization that handles these matters for defendant. Plaintiff's employment was subsequently terminated for disciplinary reasons and plaintiff sued claiming the casino breached his contractual right to a peer review and for violations of his FMLA rights. Defendant's motion for summary judgment was granted even though the FMLA inquiry was close in time to his termination. The court said the employee who terminated plaintiff was unaware of the FMLA request. Plaintiff also failed to show that his termination was a pretext for discrimination. The breach of contract claim failed since there was no employment agreement.

45. *Mathis v. Pinnacle Entertainment, Inc., et al*., 2014 WL 2880217 (W.D. La. 06/23/14). Plaintiff was injured during a work related incident and failed to come to work to fill out the necessary paperwork for FMLA leave. Almost two months later, after numerous attempts by defendant to reach out to plaintiff without plaintiff's response plaintiff's employment was terminated. Plaintiff did resolve his workers compensation claim and filed a general release of all claims. Plaintiff sued claiming he was penalized for requesting FMLA leave. The court disagreed, stating that plaintiff's signed release covered any claim for his FMLA leave and that even if the language in the waiver was insufficient, plaintiff was not able to show that he was discriminated or retaliated against under the FMLA.

46. *Gardner v. Detroit Entertainment, LLC d/b/a Motor City Casino,* 2014 WL 5286734 (E.D. Mich. 10/15/14). Plaintiff, a long-term employee of the casino, alleged that she requested all correspondence regarding her FMLA leave paperwork be sent by regular mail. After defendant began using an outsourced company to handle FMLA leave requests, notices were sent to plaintiff via email. Plaintiff was terminated for not providing certification paperwork and for not showing up to work. Plaintiff claims she didn't get the email messages requesting her to recertify her need for FMLA leave. Plaintiff sued defendant alleging that the casino interfered with her FMLA leave. Defendant filed for summary judgment, which was denied, as the court agreed with plaintiff that the email notice was insufficient and the court held that employees are entitled to a reasonable opportunity to cure FMLA defaults.

47. *Piazza Aguirre v. Mayaguez Resort and Casino, Inc*., 2014 WL 3734485 (D. P.R. 07/28/14). Plaintiff, the primary caregiver of her ailing father, had her night shift supervisor position changed. She sued the casino for discrimination because of her disabled father, and

retaliation for complaining. The court granted summary judgment to defendant but held plaintiff could proceed against defendant on the retaliation grounds since defendant failed to explain why plaintiff was stripped of her supervisory role. Defendant did have a legitimate business reason for changing plaintiff's shift hours.

Employment/Meal and Rest Breaks

48. *Rodriguez v. Taco Bell Corp*., 2014 WL 5426733 (E.D. Cal. 10/23/14). Plaintiff, an employee at defendant's restaurant, filed an action alleging that Taco Bell failed to provide adequate meal and rest breaks in connection with the defendant's discounted meal policy. The policy allowed a 50% discount but employees must consume the meal on the restaurant premises. Plaintiff alleged defendant's policy violates California law that requires employers to relinquish all control over employees during meal and rest breaks. Defendant's summary judgment motion was granted by the court. Defendant argued that the meal discount was entirely voluntary and the court agreed stating that the restriction to eat the meal on premises was not substantial enough to interfere with the rights of employees during breaks.

49. *Monson v. Marie's Best Pizza, Inc., et al*., 2014 WL 2855860 (Ill. Ct. App. 06/20/14). Plaintiff filed a complaint against defendant claiming that defendant unlawfully deducted a quarter hour from her wages for its employee meal credit program. Plaintiff contended that the meal policy was in violation of the Illinois Wage Payment and Collection Act. A chart was prepared by plaintiff to illustrate defendant's actual cost of providing the meals. The court granted defendant's motion for summary judgment noting that defendant did not deduct more than the reasonable cost of employee meals, which is the law. The appellate court affirmed holding that defendant provided documentation sufficient to show that defendant was not profiting from the meal credit program. Statutes do not require a showing of actual cost in implementing the meal program.

Employment/Negligent Hiring

50. *Mindi M. v. Flagship Hotel, Ltd.,* 2014 WL 2895226 (Tex. App., 06/26/14). Plaintiff's minor son was sexually abused by a hotel bellman. The hotel had not performed a criminal background on the employee because he was recommended by another employee. His criminal record was lengthy and included indecency with a child, six counts of sexual misconduct while he was incarcerated, convictions on four drug charges, and two assault cases including one aggravated assault with a deadly weapon, evading arrest, theft and robbery. The court noted that a hotel must exercise reasonable care when hiring employees. Failure to do so breaches a duty. The lower court granted summary judgment in favor of the hotel (!). On appeal, that was reversed and the case will proceed to trial if not resolved by a settlement.

Employment/Negligent Misrepresentation

51. *Franklin, et al., v. Pinnacle Entertainment, Inc*., 2014 WL 752631 (E.D. Mo. 02/25/14). Defendant announced it was closing its casino in three months and informed employees that their employment would end but that they could apply to work at other properties owned by defendant. No employees were promised employment, but some did apply and were hired at the other properties. Plaintiffs, consisting of 67 employees, claim they were orally informed that they would receive severance packages and bonuses. Shortly thereafter, defendant issued a writing stating that no severance or bonuses would be given. Plaintiffs sued defendant for negligent misrepresentation and the district court dismissed the claims. Missouri is an employment at-will doctrine state and the terms of employment are not contracts enforceable at law. The court said employers have the right to modify and /or discontinue policies at it chooses.

Employment/Non-Compete Agreement

52. *Boudreaux v. OS Restaurant Services, LLC, et al.,* 2014 WL 4930474 (E.D. La. 09/30/14). Plaintiff signed an employment agreement with Outback Steakhouse stating that he could not be employed for two years after termination at any Outback Steakhouse or proposed Outback Steakhouse within a 30 mile radius. Plaintiff claims the provision is invalid under the theory of intentional interference with contractual relations and a violation of the Louisiana Unfair Trade Practices Act. Defendant's motion for summary judgment was granted. The court held that plaintiff failed to file sufficient support for the tort claim because he only sued the corporate entities and not the individual corporate officers. In addition, there was no evidence to indicate that defendant engaged in fraud or misrepresentation to enforce the agreement.

Employment/Retaliation

53. *Ferrell v. Great Eastern Resort Corp, Inc., et al*., 2014 WL 5877785 (W.D. Va. 11/12/14). Plaintiff lodged a complaint with defendant's human resources department alleging that he was demoted in his former position as a result of a romantic relationship with his supervisor. Such relationships are against defendant's policy. Plaintiff filed a sexual discrimination claim with the EEOC. The following year, plaintiff was terminated based on his sales numbers – poor performance- and he filed a charge of retaliation claiming his termination was a result of his having filed the EEOC complaint. None of plaintiff's supervisors knew of the EEOC complaint. Human resources personnel had marked his file that he was not eligible for rehire due to numerous complaints by co-workers. The court found enough evidence of a legitimate non-retaliatory motive to grant defendant's motion for summary judgment.

54. *Moncel v. Sullivan's of Indiana, Inc*., 2014 WL 1905485 (S.D. Ind. 05/13/14). Plaintiff alleged that she was sexually harassed while employed at defendant's restaurant. Defendant had a clear sexual harassment reporting policy and provided a hot line for registering anonymous complaints. Plaintiff never availed herself of the reporting requirements nor the

hot line until after she was terminated for poor performance. She stated she didn't complain while employed for fear of being fired. She did complain about being bullied on the restaurant's Facebook page. The district court dismissed plaintiff's claims as she failed to show that defendant had any knowledge of any sexual harassment or a hostile work environment. Furthermore, plaintiff only complained of bullying and not sexual harassment on the Facebook page.

55. *John Goold v. Hilton Worldwide, et al*., 2014 WL 2465831 (E.D. Cal. 06/02/14). Plaintiff, the director of finance at a Doubletree hotel, sued for retaliation when he was terminated for allegedly violating hotel policy in connection with employee break periods. Plaintiff claimed he was retaliated against as a result of complaining about sexual harassment by one employee against another. Summary judgment for defendant was denied and the court held in favor of plaintiff noting that the short time between the complaints and plaintiff's termination could be indicative of a causal link between plaintiff's protected activity and his separation from employment.

Employment/Sexual Harassment

56. *Dyer v. East Coast Diners, LLC, d/b/a Denny's, et al*., 2014 WL 3720527 (D. Mass. 07/23/14). Plaintiff alleged that her supervisor sexually harassed her by rubbing his body against her body and making verbal sexual comments. Plaintiff claimed that Denny's did not have a policy or any protocols about how to voice a sexual harassment claim. She told her general manager and he said he would take care of it. Days later, the supervisor approached plaintiff, screamed at her and subsequently terminated her employment for starting malicious rumors. She sued and survived the defendant's motion for summary judgment on her hostile work environment and retaliation claims. The court said plaintiff presented sufficient facts that both the general manager and the supervisor engaged in a pattern of sexually intimidating behavior.

57. *D'Annunzio, et al., v. Ayken Inc. d/b/a Ayhan's Fish Kebab Restaurant, et al*., 2014 WL 2600322 (E.D. N.Y. 06/10/14). Three sisters worked at defendant's restaurant and alleged that a coworker sexually harassed them. The sisters complained but the restaurant did not take action. Defendant's employment handbook, which contained anti-harassment policies, had not been distributed in many years, nor had defendant provided adequate anti-harassment training. The coworker violently and sexually assaulted one of the sisters and the perpetrator was subsequently deported. A district court granted summary judgment in favor of plaintiffs and denied defendant's motion to dismiss, stating that plaintiffs provided overwhelming evidence that they were subjected to a hostile work environment.

Employment/Wage and Hour

58. *Tolentino v. Starwood Hotels & Resorts Worldwide, Inc., et al*., 437 S.W.3d 754 (Mo. 08/19/14). Plaintiff filed a class action suit against defendant Starwood and Giant Labor Services ("GLS"), a housekeeping contract services company, who hired plaintiff to clean rooms at a Starwood Hotel, the Westin Crown Center for alleged violations of the Missouri

Minimum Wage Law. Plaintiff's final pay check had deductions for visa fees owed to GLS leaving him with a zero balance for take home pay. GLS was subsequently indicted on federal charges and convicted of labor racketeering. Starwood moved for summary judgment arguing that it did not employ plaintiff. The question revolved around whether GLS and Westin were joint employers. Summary judgment was initially granted to Starwood then the case was remanded for further determination of whether Westin could be classified as a joint employer since Westin did have input as to the cleaning and inspection standards and the determination of rate and method of payment to housekeepers.

Evidence

59. *Passer v. Golden Nugget Hotel & Casino,* 2014 WL 6680690 (Sup Crt., Nev., 11/24/14). In this wrongful death action, plaintiff's decedent plunged to his death from the second story of the Golden Nugget's parking garage after plaintiff misapplied pressure to the gas pedal instead of the brake pedal when parking his rental car. He was the second person to go through a cement barrier at defendant's garage. A subsequent motorist did the same, prompting the hotel to reinforce the parking barriers. As a general rule of law, evidence of subsequent repairs is inadmissible. However, if defendant "opens the door" by eliciting testimony during trial about the repairs, the jury can hear the evidence. In this matter, defendant presented at trial testimony about a feasibility study for retrofitting the garage. On appeal the court held the feasibility study evidence "opened the door" and thus omission at trial of testimony about subsequent repairs was error. However the court found the error was harmless and affirmed the verdict in favor of the hotel.

False Imprisonment

60. *Luck, et al., v. Mount Airy #1, et al*., 2014 WL 4792590 (M.D. Pa. 08/19/14). Plaintiffs, two union organizers, filed a complaint against defendant casino alleging false arrest and false imprisonment. They were held in the casino offices for violating the casino's eviction rules. Two weeks prior to the alleged false imprisonment visit, the men visited the casino to discuss union organizing and were approached by casino employees who asked for identification. Their request was refused by the two men so they were asked to leave. The complaint was dismissed by the district court as to plaintiffs' claims for conspiracy and intentional infliction of emotional distress but the court denied the casino's summary judgment motion on the remaining charges of false imprisonment and false arrest. State trespass laws allow for verbal directive or warning not to trespass but there is a question of fact for the jury as to whether the casino employee did direct the men to never return to the casino.

61. *Houck v. Ferrari*, __F.Supp.3d__, 2014 WL 5410610 (D.NJ, 10/22/14). Plaintiff sued defendant Borgata Hotel, Casino & Spa for false imprisonment and related charges because plaintiff was constrained and questioned by a state trooper at the direction of the Casino. The court dismissed the claims, finding that the constraint of plaintiff was legally justified. The plaintiffs used false names on players' cards, and were suspected of participation in a "hole card" team involving illegal conduct in blackjack. Additionally, while plaintiff

attempted to cash out more than $10,000 in chips, he refused to provide proof and was thereafter suspected of engaging in "structuring" to avoid the $10,000 threshold requiring identification.

Federal Communications Act

62. *G&G Closed-Circuit Events, LLC v. Houston Hobby Investments, Inc.,* 2014 WL 4956505 (ND Texas.10/03/14). Plaintiff sued defendant restaurant for violations of the Federal Communications Act. Specifically, plaintiff contends defendant was not authorized to broadcast the event in question. Defendant moved to dismiss pursuant to 12(b) of the Federal Rules of Civil Procedure. Defendants assert that its broadcast of the subject event was received via standard cable to which defendants lawfully subscribe. The court dismissed the accusatory instrument finding it too broad and not sufficiently detailed. It alleges in a conclusory way that defendant intercepted or received a "communication" of unspecified nature. Plaintiff was granted time to file an amended complaint.

Federal Jurisdiction

63. *Wall v. Hard Rock Hotel & Casino,* 2014 WL 6629475 (D. Nev., 11/21/14). Plaintiff was injured at defendant's resort when an intoxicated patron jumped on him while plaintiff was swimming in defendant's pool. Plaintiff claims defendant was negligent in the operation and maintenance of the pool. The case is pending in federal district court based on diversity of citizenship jurisdiction which requires $75,000 in controversy. Plaintiff, who lives in a state other than Nevada, seeks $32,516.55 for medical expenses incurred, and the possibility of future lost wages if his symptoms reoccur. There was no evidence in the record to show a likelihood of a relapse or the amount plaintiff might seek to recover if symptoms did return. The amount plaintiff seeks is "far below" the $75,000 minimum required for diversity jurisdiction. The court thus remanded the case to a state court.

Forum Non Conveniens

64. *Wenzel v. Marriott,* 2014 WL 6603414 (S.D.N.Y, 11/17/14). Plaintiff was injured while a guest at defendant's Aruba Surf Club when an improperly secured television and turntable fell on her. Plaintiff sued in New York, her state of residence. Defendant sought to move the case to Aruba, claiming NY was a forum non conveniens. The court agreed and dismissed without prejudice noting that the proof relevant to establishing liability (premises, equipment, employees, etc.) are all located in Aruba. Although plaintiff received medical treatment in New York, this is not determinative. The court also noted that the court chosen by plaintiff is one of the busiest in the country, and it would be burdensome to require New York's citizens to serve as jurors in an action "so devoid of local interest."

65. *Pooniwala v. Wyndham Worldwide, Corp.,* 2014 WL 4659643 (D. Minn., 09/17/14). Plaintiffs are franchisees of defendant. One of the hotels was the Grant Rios. Its roof collapsed, the hotel closed, and the bank repossessed the building. Defendant franchisor is seeking $57,737 in unpaid franchise fees. Plaintiffs claim defendant is retaliating against

them at other franchised properties, all located in Minnesota. Particularly, plaintiffs claim defendant's quality assurance inspections and resulting reports reflect unfair, retaliatory treatment. Plaintiffs sued in Minnesota for retaliation. Defendant, headquartered in New Jersey, moved to transfer the case to New Jersey based on a forum selection clause and forum non conveniens. The court denied the motion noting that the forum selection clause was expressly "non-exclusive", and the witnesses relevant to the inspections are located in Minnesota.

66. *Wechsler v. Four Seasons Hotel, Ltd.,* 2014 WL 2604109 (S.D.NY, 06/10/14). Plaintiff, a New York resident, was injured by an employee of defendant hotel in Nevis, a small Caribbean island. The injury occurred while plaintiff was traversing a walkway from the hotel's Garden Pool to the Cabana Restaurant. Plaintiff sued in New York for $10,000,000. The hotel moved to dismiss for forum non conveniens. The court noted that the site of the accident was in Nevis, defendant has many more witnesses and documents than plaintiff, and transporting them to New York would be cumbersome. Further, Nevis courts would be more familiar with the applicable law (the law of the place where the accident occurred). The balance of convenience suggests trial in Nevis is the significantly better forum. Case was dismissed on the ground of forum non conveniens.

Forum Selection Clause

67. *Driftwood Hospitality Management, LLC v. Centimark Corp.*, 2014 WL 4825274 (S. D. Fla., 09/25/14). Plaintiff Crowne Plaza Hotel in Denver, Colorado, entered a contract for the replacement of the hotel's roof. After the new roof was installed, it began to leak. An investigation revealed that defendant violated the contract by failing to remove the pre-existing roof surfaces. The contract was negotiated in Colorado and the work was performed there. Most of the witnesses are in that state. The case was brought in Florida where defendant maintains an office to which plaintiff sent payments. A forum selection clause in the parties' contract required that any claim arising out of the defendant's warranty be pursued in Pennsylvania where defendant's headquarters are located. The court determined that the dispute did not arise from a breach of warranty and so the clause was not binding in this circumstance. The court further found that Florida was a reasonable venue under the circumstances and so denied defendant's motion to transfer.

68. *Pappas v. Kerzner International Bahamas Ltd,* 2014 WL 46227785 (C.A.11, Fla, 09/17/14). Plaintiff, who lives in Florida, suffered head and brain injuries at defendant's Paradise Island resort when she was pushed by defendant's employee at the top of a water slide before she had properly positioned herself. She sued in a Florida court for negligence. As part of the on-line registration process and the check-in procedures when plaintiff arrived at the hotel, she signed a form agreeing that all claims from her resort stay would be brought exclusively in the Bahamas Supreme Court. The court held that this forum selection clause was enforceable. Said the court, "Failure to read documents is not excused by the documents' length." Therefore, the complaint for negligence filed in Florida was dismissed without prejudice to re-file the case in the Bahamas Supreme Court.

Franchise

69. *Funderburk v. Choice Hotels, International, Inc.,* 2014 WL 5781831 (D. Md., 11/5/14). Plaintiff was a guest at the Clarion Inn Hotel in Pocatello, Idaho. Plaintiff alleges that the housekeeping staff entered her room, took photographs of her property, and showed them to another member of the housekeeping staff. Plaintiff discovered the alleged facts because she had installed hidden cameras in her room (!). Proceeding pro se, she claimed invasion of privacy, stalking and breach of contract, and sued only the franchisor, Choice Hotels. It moved to dismiss, denying liability for the actions of a franchisee's employees. Per the court, Choice Hotels does not own or operate the Clarion Inn Hotel, and does not employ or control the personnel working there. As a result, the court granted Choice Hotel's motion to dismiss.

70. *Travelodge Hotels, Inc. v. Budget Inns of Defuniak Springs, Inc., 2*014 WL 1806931 (D.NJ, 05/07/14). Defendant hotel had a franchise from plaintiff, Travelodge Hotels. The parties had signed a license agreement, detailing the obligations between them. Defendant repeatedly breached the agreement by failing to pay recurring fees, and by violating system standards required by the agreement. Plaintiff terminated the license agreement and sued. Defendant defaulted. The court entered a default judgment having determined that a contract existed between the parties, defendant breached it, plaintiff lost money as a result of defendant's nonperformance, and plaintiff had performed its part of the bargain.

71. *Pooniwala v. Wyndham Worldwide Corp.*, 2014 WL 1772323 (D. Minn., 05/02/14). Plaintiffs own numerous Wyndham franchises. Plaintiff claims that because it sued defendant involving one property, defendant has retaliated against plaintiff at some of plaintiff's other properties. Defendant claimed plaintiff violated several quality assurance requirements and sent plaintiff a termination notice for one of the properties. Plaintiff sought a preliminary injunction which was denied. The court however acknowledged that the case was a close one, and opined that plaintiff had sufficient evidence to withstand a motion to dismiss. The court ordered the parties to mandatory settlement.

72. *Massey Inc., et al., v. Moe's Southwest Grill, LLC, et al*., 565 F.Appx. 821 (11th Cir. 05/09/14). Three franchisees sued Moe's alleging that defendant's suppliers provided defendant's CEO with undisclosed kickbacks. Summary judgment was granted in Moe's favor because the court found the lawsuit was not timely. The statute of limitations was one year from when the franchisee discovers the facts giving rise to the claim. On appeal, the court reversed the ruling, stating that there remain questions of fact as to when the franchisees became aware of the alleged kickback scheme.

Franchisor Liability

73. *Patterson v. Domino's Pizza, LLC, et al*., 60 Cal.4th 474, 333 P.3d 723 (Cal. 08/28/14), *rehearing denied* (09/24/14). Plaintiff's supervisor allegedly sexually harassed her and she reported the incidents to her father and the franchise owner. A complaint was filed against the franchise owner and the franchisor on the basis of vicarious liability arguing that since

the franchisee was an agent of the corporate franchisor, Domino's Pizza is responsible for the supervisor's misconduct. Defendant argued that it was not the employer of the supervisor or the employee and therefore it is not liable for the supervisor's misconduct. Summary judgment was granted to Defendant at the trial court level but the appellate court reversed the decision. On a further appeal to the Supreme Court of California, the court reversed again affirming the trial court's decision in favor of Domino's Pizza stating that there was no employment relationship between plaintiff and Domino's Pizza to support plaintiff's claims.

Insurance

74. *Fa Management, Inc. v. Great American Insurance Co. of NY*, 2014 WL 2515040 (N.D. W Va. 06/04/14). Plaintiff hotel was insured by defendant. It submitted a claim for interior damage caused by a storm, and roof damage caused by hail. The insurance company's investigator found that much of the damage was due to lack of maintenance and deterioration. The hotel sought $900,000; the insurance company paid $7,750. The inn sued for the balance, and the insurance company moved for summary judgment. Two experts for the hotel testified that the damage could have been caused by hail, wind or other rain damage. Thus, a question of fact exists; summary judgment was denied.

75. *Siloam Springs Hotel, LLC v. Century Surety Co*., 2014 WL 1924106 (W.D. Okla., 05/14/14). Carbon monoxide poisoning escaped from defendant hotel's indoor swimming pool heater into the air. Several guests suffered injury due to the poisoning. The hotel sought insurance coverage from defendant insurance company. The policy expressly exempted ". . . bodily injury arising out of or caused by toxic, hazardous, noxious . . . qualities or characteristics of indoor air regardless of cause . . . ". The court ruled this exclusion was unambiguous and applies to situations involving toxic indoor air caused by a one-time sudden infiltration of a toxic gas such as carbon monoxide. Therefore, the court granted summary judgment for the insurance company.

Jurisdiction

76. *DeLeon v. Radisson Hotels International, Inc.,* 2014 WL 2829934 (D.NH, 06/23/14). Plaintiff, a resident of New Hampshire, suffered injuries while parasailing at the Radisson in Freeport, Grand Bahama Island. Plaintiff commenced a lawsuit for damages in New Hampshire. The hotel management company – Harbour Plaza Hotel Management – moved to dismiss for lack of personal jurisdiction. The company is a Hong Kong corporation with a principal place of business in Kowloon, China. It has no property interests in New Hampshire and has never transacted business there, has no registered agent in the state and has not regularly solicited business there. The motion to dismiss was granted for lack of contacts with New Hampshire.

77. *Trei v. AMTX Hotel Corp. d/b/a Holiday Inn,* 2014 WL 2894908 (NM App., 06/24/14). Plaintiff, a resident of New Mexico, was a guest at a Holiday Inn Hotel in Amarillo, Texas. She was injured while using exercise equipment at the inn. She sued the hotel in New

Mexico. Defendant moved to dismiss for lack of jurisdiction. The court granted the motion noting that defendant has no facilities, hotels, offices or employees in New Mexico, does not advertise there, has no agent there and does not conduct any business in that state. Plaintiff sought to base jurisdiction on defendant's national advertising on television and radio which reached Amarillo. However the court held that an out-of-state franchisor's national advertising does not provide a basis to establish personal jurisdiction in New Mexico over a nonresident franchise.

Litigation Costs

78. *Bracken v. Okura,* 2014 WL 6694300 (D. Hawaii, 11/26/14). Plaintiff entered defendant's restaurant on New Year's Eve allegedly unaware that it was closed to the public for a private event. Security officers stopped him. Plaintiff claims he was illegally attacked, restrained and injured by the restaurant's employees, and faulted a special duty police officer for not interceding and stopping the incident. Plaintiff sued the guards and the officer. The latter moved to dismiss and the motion was granted. The officer then sought costs including $2,523.09 for deposition transcripts and $168.75 for copying. The court awarded the deposition costs noting that the depositions were relevant and necessarily obtained for use in the case. The copying costs however were denied because, although the relevant state statute permits recovery for certain copying costs, it excludes cost of copies obtained for the use and/or convenience of the party seeking recovery and his counsel.

Negligence

79. *Finkle v. Regency CSP Ventures LP*, 2014 WL 2767374 (D.SD, 06/18/14). Plaintiffs were travelling together on a motorcycle on Wildlife Loop Road in a state park. They were injured when they took defensive action to avoid colliding with a jeep which crusted a hill with all four tires on the pavement in the middle of plaintiffs' lane. The jeep driver was conducting a safari tour for her employer, Buffalo Safari Jeep Rides. Defendant requires that all drivers have clean driving records but does not otherwise train the motorists. Plaintiff sued claiming negligent training of defendant's employees. Drivers on the wildlife loop road often make frequent stops to view wildlife. Plaintiffs allege defendants should have instructed its drivers not to stop on the roadway and to utilize pullouts (specially designated areas) when viewing animals. The court noted that wildlife to be viewed on a ride through the park is often not conveniently at one of the 53 turnouts or other lookouts. A question of fact exists whether failure to train for this type of driving was negligent.

80. *Gallant v. Hilton Hotels, Corp*., 42 Misc.3d 1231(A), 2014 WL 866258 (NY Sup. 03/05/14). Hilton Hotel hosted a class on kettlebells, a device used in strength training and weight lifting. Plaintiff attended and was hit in the back of the head by another attendee swinging one of the devices. Plaintiff sued the school and the hotel for negligence. He had signed a waiver of liability but the court ruled it ineffective because it did not mention the term "negligence" or other words of like import. The court nonetheless dismissed the case against the hotel since it did not participate in teaching the course but merely leased space to the company that taught the class.

Negligence/Alcohol Consumption

81. *Moranko, et al., v. Downs Racing LP, d/b/a Mohegan Sun at Pocano Downs*, No. 192 MDA 2013 (Pa. Super. Ct. 06/24/14). Plaintiff's son was killed in a car accident after drinking alcohol at defendant's casino. Plaintiff sued defendant for wrongful death and negligence for allowing the valet to hand over the decedent's car keys while decedent was visibly intoxicated. Summary judgment was granted to defendant and affirmed on appeal. The casino had a policy for dealing with noticeably intoxicated patrons while on the casino floor but no policy about valets withholding keys from patrons who are intoxicated. The court said there are no Pennsylvania cases that specifically address valet liability and once the car owner requested his keys, the valet lost the right to control the car. Since defendant had no right of control, the court said it could not be found liable for the decedent's actions.

Negligence/Premises Liability

82. *Tross v. The Ritz-Carlton Hotel Company, LLC,* 2014 WL 1031473 (D. Conn., 03/17/14). A guest at The Ritz-Carlton hotel in St. Thomas, Virgin Islands suffered injuries when a ceiling tile fell on his head. He sued the hotel for his injuries. It claimed that it lacked notice that the tile was in a dangerous condition. Plaintiff failed to prove that defendant had actual or constructive knowledge of the defective condition. No evidence was presented as to how long the defective condition existed, or that it came loose at any time other than immediately prior to when it detached from the wall. Defendant established that it has a "Clean and Repair Everything" team that attends to vacant rooms on a rotating basis. Additionally, housekeeping staff and guests report problems for repair. No report was made about the ceiling tile. Defendant's motion for summary judgment was therefore granted.

83. *Vincent v. Landi*, _NYS2d_, 2014 WL 6803025 (App. Div., 12/4/14). Plaintiff broke his ankle when he fell on black ice on a walkway at defendant's restaurant. The jury awarded a verdict for plaintiff of $15,000 for past pain and suffering, and $37,526 for lost business profits. Plaintiff appealed, arguing that the amount of damages was insufficient. The day of the incident was clear, cold and sunny. Snow had fallen the night before. The eatery's manager had shoveled, sanded and salted the walkway sometime before noon. The accident occurred at 4:00. Employees were aware of a recurring situation – winter sunlight often melted snow that dripped from the roof, and collected on the ground, causing water to collect and freeze. The court declined to set the verdict aside, finding a known dangerous condition for which defendant failed to take sufficient precautions. Additionally, the court ordered a new trial unless defendant stipulated to $75,000 in damages for past pain and suffering, and $43,000 for past lost profits.

84. *McNeilly v. Greenbrier Hotel Corp.,* 2014 WL 1660401 (S.D.W. Va., 04/25/14). Plaintiff, a guest at defendant hotel, slipped in the bathtub, fell outside the tub enclosure, and hit her head on the marble bathroom floor. There were neither bath mats nor rubber strips lining the tub to help prevent falls. Plaintiff testified that, after the fall, she observed residue from

cleaning products. The hotel had recently ended its prior practice of supplying rubber mats in all bathrooms, and bought cheaper chemicals for cleaning. Housekeeping supervisor testified that she examines each room, including wiping for residue on tubs, prior to guest arrival. If any is found, re-cleaning is required. Defendant's expert reported the bottom surface of the tub was textured with abrasive rectangular inlays which comply with industry standards. Plaintiff's expert said the inlays were worn. Defendant sought summary judgment. The court held that compliance with industry standards is not dispositive on the issue of reasonable care, and denied summary judgment. A question of fact exists as to the cause of plaintiff's fall.

85. *Rybas, et al., v. Riverview Hotel Corporation, et al.,* 2014 WL 4271152 (D. Md. 08/27/14). Plaintiff slipped and fell on a portable dance floor at the Riverview Hotel during a wedding reception held in a tent. Bathrooms were located in the hotel's building which was 90 feet of grass from the tent. Due to inclement weather on the night of the event, the walk was wet and muddy. Plaintiff's fall occurred after she had walked to and from the hotel to use the ladies room. The defendant hotel moved for summary judgment which was denied. The court said even though plaintiff failed to show that the hotel and caterer had actual knowledge of the wet conditions, plaintiff did provide enough evidence to survive a summary judgment as to whether the defendants had constructive knowledge of the slippery conditions on the dance floor.

86. *Jones v. Sheraton Atlantic City Convention Center Hotel,* 2014 WL 3375524 (07/11/14). Plaintiff was injured when an elevator door closed on her while she was a guest at defendant Starwood Hotel. She suffered serious injuries requiring surgery and two months in a rehabilitation center. Prior to the accident defendant contracted with Schindler Elevator Corporation to maintain the lift. The hotel claimed Schindler was liable, not the hotel. The court ruled that hotels have a non-delegable duty to maintain a reasonably safe premises. If Schindler was negligent, the hotel is liable. The hotel can however pursue indemnification from Schindler. Additionally, the court held res ipsa loquitur applies even though the hotel did not have exclusive control of the automatic door. When an instrumentality causing injury is jointly controlled by two defendants, res ipsa can apply against both defendants.

87. *Lawrence, et al., v. La Jolla Beach and Tennis Club, Inc., et al*., 231 Cal.App.4th 11, 179 Cal.Rptr.3d 758 (Cal. Ct. App. 10/31/14). A five year old boy fell from an open window of a guest room and suffered serious injuries. The parents sued the hotel for negligence and the court granted defendant's motion for summary judgment. On appeal, the decision was reversed since there were issues of triable fact and a jury could find that it was reasonably foreseeable for a guest of the hotel to open guest room windows to take in ocean breezes and a young child may not realize that a screen is to keep out bugs and is not a safety device. Defendant argued that this type of incident had never happened before, and a certified building inspector testified the window complied with building codes. The court noted that defendant had installed protective bars on other windows and that the hotel installed window opening control devices after the incident.

Negligence/Security

88. *Racine v. PHW Las Vegas, LLC, et al.,* 2014 WL 4354111 (D. Nev. 09/02/14). Plaintiff alleged she was sexually assaulted in her hotel room at the Planet Hollywood Resort. Video footage of the hotel's surveillance system shows a male who followed women to their rooms shortly before plaintiff's attack. The court said that knowledge of a pattern of incidents would normally place an innkeeper on notice and impose a duty of care to take reasonable precautions. In this case, the court said plaintiff's alleged attack was considered a part of the circumstances surrounding the incident and was not considered as "prior incidents of similar wrongful acts." Hindsight cannot be considered here because only 12 minutes had passed between the initial act and plaintiff's alleged assault. Plaintiff's claim for gross negligence was also denied because plaintiff was not able to so show that the resort failed to exercise even a slight degree of care.

89. *Crocker v. The Dresden Restaurant, et al*., 2014 WL 3387948 (Cal. Ct. App. 07/11/14) *review denied* (09/14/14). Plaintiff was pepper sprayed and stabbed near defendant's restaurant and sued claiming that defendant breached its duty of care to prevent the attack. Defendant argued that the attack was not foreseeable and the court agreed. The court said there was no indication that violence was likely. Affirmed on appeal.

90. *Josue Castellanos v. Tommy John, LLC*, 2014 UT App. 48, 321 P.3d 218 (Utah Ct. App. 02/27/14). Plaintiff was forcibly removed from defendant's bar and restaurant by an independent contractor company's employee hired by defendant. The eviction occurred when plaintiff and the employee, a security guard, became involved in a physical altercation. Plaintiff sued for negligence and vicarious liability arguing that defendant had a nondelegable duty to keep the premises safe. The court disagreed and granted defendant's motion for summary judgment which was affirmed on appeal. The court stated that Utah courts have generally held that the employer of an independent contractor is not liable for physical harm caused by an act or omission of the independent contractor or its workers.

91. *Tallerico v. EZ-CR Corp., d/b/a CR Restaurant, et al*., (N.Y. 04/02/14). Plaintiff and his friend were attacked in defendant's bar and they were escorted out of the bar, along with a group of people. A fight occurred in the parking lot and plaintiff sued for negligent security as well as violations of the Dram Shop Act. The owner of the bar lived upstairs and when he heard the noise he came downstairs. There were no bouncers on duty that night. The court held that the first act of violence in the bar was not foreseeable as it was sudden, but there remains a question of fact as to whether the parking lot fight was in fact foreseeable. Defendant was not entitled to a summary judgment ruling on negligent security. The Dram Shop Act charge was dismissed as there was no testimony that the fighting individuals appear intoxicated or that the fight was a result of alcohol consumption.

Negligence/Duty of Care

92. *Rieloff v. Club Mediterranee, et al.,* 42 Misc.3d 1207(A), 984 N.Y.S.2d 634 (N.Y. 01/02/14). Plaintiff, a guest at defendant's resort, was bitten by a barracuda while sitting on the dock and sued for defendant's breach of duty of care for failing to warn plaintiff of the danger. Defendant's motion for summary judgment was denied. Another guest had suffered a barracuda bite with injuries just one week prior to plaintiff's injury so it was undisputed that defendant was aware of the potential danger. Defendant argued that plaintiff was aware that the surrounding waters are attractive to barracudas; however the court said that plaintiff was not aware that the barracudas were living under the dock. The court held that issues of fact remain as to whether defendant breached its duty of care to warn guests of this danger.

Restaurant Seating Time Limits

93. A McDonald's restaurant in Queens, New York has called the police several times to eject a group of Korean senior citizens who make camp in the eatery from morning 'til night. They buy coffee but not much more. And when the police come, the sippers leave, walk around the block, and return. Other customers are often unable to find an open table. To add insult to injury, the seniors leave at lunchtime for a free meal at a nearby senior citizen facility, and return for more coffee. McDonald's management claims a 20 minute time allotment for eating or drinking. With the help of a state legislator, McDonald's and the seniors have resolved their differences. McDonald's will relax the 20 minute seating limit during off-peak hours, and the seniors will give up their seats when other diners are looking for a place to sit. *New York Times*, 1/15/2014, p. A18.

Statute of Limitations

94. *Farley v. Granite City Hotels and Suites, LLC*, 2014 WL 811839 (S.D. Ill, 03/03/14). Plaintiff was living at the Econo Lodge in Granite City, Illinois. He alleged he heard a loud noise in the adjacent room and called the police. A hotel employee had called law enforcement and the police responded. Ultimately the police forcibly evicted plaintiff from his hotel room. Plaintiff sued claiming a violation of 42 USC Section 1983, defendant moved for dismissal because the statute of limitations is two years and the complaint was not filed with the court until two years and three days after the incident. Plaintiff countered that he emailed it to the Court Clerk's office before the expiration of the two years. The relevant state statute provides that a civil action is commenced by filing a complaint with the court. Plaintiff next argued that a "technical error" in filing ought not to defeat the suit. The court rejected this argument finding the problem was not a technical error, but rather inaction by plaintiff.

95. *Cheyenne Hotel Investments, LLC v. Colorado Casualty Ins. Co.,* 2014 WL 2207082 (D. Colo., 05/28/14). Plaintiff hotel's roof was damaged by a wind and hail storm. Plaintiff seeks insurance coverage in the amount of $140,000 to replace the roof of the hotel. The insurance contract requires that any lawsuits based on the policy must be commenced within

two years. State law provides a statute of limitations of three years. Plaintiff began the suit two and a half years after the storm. The court held the contract between the parties controlled and thus the lawsuit was brought too late. Summary judgment was granted in favor of defendant.

Tenancy

96. *Olley v. Extended Stay America,* __SW3d__, 2014 WL 5140303 (Tex. App., 10/14/14). Plaintiff moved into Extended Stay America in May, 2012. He stopped paying on April 23, 2013. Two days later he was served with a notice to vacate by May 2nd. Plaintiff failed to leave and defendant quickly obtained a court order in an expedited proceeding, awarding it possession and monetary damages. A constable executed the writ of possession. Plaintiff appealed claiming he was a tenant and therefore had the right to occupy the room, subject only to an eviction proceeding. The court determined plaintiff was a licensee, not a tenant, notwithstanding plaintiff's extended stay. The court also rejected plaintiff's other arguments, concluding he had no arguable right to possession of the hotel room.

Tipping/Tip Pooling

97. *Ichiban Japanese Steakhouse, Inc. v. Rocheleau, et al.,* 2014 WL 5859536 (N.H. 11/13/14). Two former employees of defendant's restaurant sued alleging that the tip pooling arrangement violated New Hampshire Department of Labor law. The court held for the employees and defendant appealed. Even though the defendant argued that the employees were not coerced into signing the tip pooling arrangement agreement, the Supreme Court disagreed with the restaurant noting that defendant admitted that the tip pooling arrangement was not voluntary and the restaurant's attorney admitted that one would not be hired into a wait staff position if they failed to sign the agreement.

98. *Montano, et al., v. Montrose Restaurant Associates, Inc.,* No. 4:12-153 (S.D. Tex. 02/04/14). Plaintiffs, a captain and a waiter at defendant's restaurant, sued defendant because they were forced to share their tips with the barista. Plaintiffs argued that baristas do not customarily receive tips and that they stay in the kitchen making drinks. Defendant argued that payment of a $10 tip per station to the barista helps to motivate the barista to provide good customer service. The court granted defendant's summary judgment motion stating that the Department of Labor does allow some workers to participate in tip pooling who are not tipped by diners or who don't interact with diners. Service bartenders are good examples and baristas are similar to service bartenders except they work with coffee instead of alcohol. Since baristas directly support waiters, defendant may require its waiters to share tips with baristas.

99. *Belghiti v. Select Restaurants, Inc., d/b/a Top of the Hub Restaurant & Skywalk*, 2014 WL 1281476 (D. Mass. 03/31/14), *reconsideration denied* 2014 WL 5846303 (D. Mass. 11/12/14)). Plaintiff sued the restaurant alleging that defendant violated the Massachusetts Tip Statute and for retaliation. Plaintiff alleged he was not paid the proper tips when he was directly servicing customers and that he was fired for complaining about the wages.

Defendant argued that plaintiff was terminated for disruptive behavior. The court dismissed the allegations about the tip statute but allowed plaintiff to continue with his claim for retaliation. The court said there is a material dispute as to whether defendant fired plaintiff for his complaints, and plaintiff's employment file did not show any record of disciplinary behavioral issues. Plus plaintiff was fired in close temporal proximity to when he complained about his pay.

100. *Carpaneda, et al., v. Domino's Pizza, Inc., et al*., 991 F.Supp.2d 270 (D. Mass. 01/09/14). Plaintiff filed a complaint against defendant alleging a violation of the Massachusetts Tips Act and the Minimum Fair Wage Act since defendant retains a delivery charge collected from customers but not paid to pizza delivery drivers. Defendant moved for summary judgment which was denied. Defendant claimed that the website and the pizza boxes provide notice to customers that the delivery charge is not a tip but this information is not communicated if a customer orders food over the phone. The question is whether the notice is sufficient to comply with the safe harbor requirements under the law. The court held that an ambiguity remains about whether customers who order by phone are informed about the service charge not being a tip and many customers do not tip the pizza delivery drivers assuming that the delivery charge is a tip.

Trademark/Copyright Infringement

101. *Boyd Gaming Corp. v. B Hotel Group*, LLC, 2014 WL 3421550 (D. Nev., 07/09/14). Plaintiff owns various trademarks using the letter "B" meaning "Be". For example, B CONNECTED, B RELAXED, B ENTERTAINED, etc. Defendant filed an intent to use trademark application for B PAMPERED, BE SOCIAL AND B HAPPY. Plaintiff alleges infringement, dilution and unfair competition, and seeks cancellation of defendant's marks and a preliminary injunction. Two of plaintiff's marks were used by defendant – B RELAXED and the word QUENCH. While the court acknowledged that plaintiff might be entitled to an injunction based on those two marks alone, plaintiff failed to show a likelihood of irreparable harm if the requested injunction was denied. Therefore the motion for the injunction was denied.

102. *Carlo Bay Enterprise, Inc. v. Two Amigo Restaurant, Inc*., 2014 WL 6886053 (M.D. Fla., 12/8/14). Plaintiff owns and operates a Latin-themed bar, nightclub and restaurant in Tampa, Florida named Club Prana. Plaintiff owns the trademark to the name, and has been in business 13 years. Defendant opened Prana Restaurant and Lounge which is a Spanish-themed bar, nightclub, and restaurant located less than an hour away in Sarasota. Defendants advertised in Tampa on the radio, at festivals and on Facebook. Plaintiff sued for trademark infringement. The court found likelihood of confusion based on the similarity of the name and services offered, geographic proximity of the businesses, and defendant's apparent intention to mislead. The court issued a permanent injunction and awarded $30,000 in damages plus attorney's fees.

103. *Duck Dive v. Heydari, et al.*, 2014 WL 1271220 (C.D. Cal. 03/27/14). Duck Dive, a gastropub located in San Diego, sent defendant a cease and desist letter when Duck Dive,

which had filed for trademark registrations for the name and logo but had not received them yet, learned that Heydari opened a Duck Dive Gastropub in Malibu. When defendant failed to respond, plaintiff successfully sought an injunction against defendant alleging trademark infringement, unfair competition, unfair business practices and unjust enrichment. Defendant claimed others use the name Duck Dive around the country in some form, but the court held that even though others may use it thousands of miles from California, it has no bearing on the local market. Both of these establishments were located in Southern California in beach communities and use of the logo and name by defendant is confusing to patrons.

104. *Ewe Group, Inc., d/b/a Sweet Hut Bakery & Café v. The Bread Store, LLC, d/b/a Sweet Talk Bakery & Café,* 2014 WL 4702575 (N.D. Ga. 09/22/14). Sweet Hut Bakery filed for injunctive relief against Sweet Talk Bakery alleging trademark and trade dress infringement. The district court held in favor of Sweet Hut and granted the injunction even though Sweet Talk alleged that there are 8 other bakeries in Atlanta that use the word "sweet" in their names. The court noted that none of these other bakeries are Asian nor do they serve bubble tea. Plaintiff alleged that public confusion between the two brands entitled plaintiff to relief. The court noted Sweet Talk's bad faith was not as bad as plaintiff alleged; however, there was sufficient evidence to support a finding that Sweet Talk's marks were causing confusion between its marks and those of Sweet Hut's marks.

105. *Mr. Chow, et al., v. Philippe Restaurant Corp., et al.,* No. 12-15994, 555 F.Appx. 842 (11th Cir. 01/10/14). Plaintiff operated Chinese restaurants in Beverly Hills, New York, and Miami Beach. All three are upscale with a unique décor, signature dishes and a "noodle show" which includes hand made fresh noodles. Defendant worked for plaintiff for 25 years and left plaintiff's restaurant to start his own restaurant close to plaintiff's restaurant. Defendant's restaurant had a similar theme, a "noodle show" and signature dishes similar to plaintiff's restaurant. Plaintiff filed a complaint alleging trademark and trade dress infringement, false advertising, misappropriation of trade secrets and unfair competition. The jury found in favor of plaintiff and the decision was affirmed on appeal.

Unemployment Benefits

106. *Tekle v. Nevada Employment Security Division,* 2014 WL 2740412 (06/13/14). Plaintiff was terminated from his job at MGM Hotel and Casino for making a false statement during an internal investigation. He was denied unemployment benefits because he was discharged for misconduct. The statutory filing period for an appeal is a very short; 11 days. Defendant's appeal was filed seven months later, explaining he was waiting for the result of an employment grievance he had filed to challenge his termination. While his explanation might have justified the late filing, he waited five weeks after the grievance was resolved to file the appeal. Nothing in the record explains that tardiness and so there was no good cause for the delay. Appeal denied.