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

Fourteenth Annual
Hospitality Law Conference
February 22-24, 2016
Houston, Texas

Karen Morris, J.D., LL.M. Diana S. Barber, J.D., CHE, CWP

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

KAREN MORRIS
2670 Highland Avenue
Rochester, NY 14610
(585) 256-0160
Judgekaren@aol.com

Karen Morris is an elected 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 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 weekly 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. Her newest hobby is magic. She performs for Rotary and Kiwanis events for youngsters, and the soup kitchen.

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DIANA S. BARBER
5925 Masters Club Drive
Suwanee, GA 30024
(404) 413-7616
dsbarber@gsu.edu

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, a perspectives course in hospitality freshman orientation classes and this May she will be teaching human resource management.

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.

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ADA/Attorney Fees

1. *Rogers v. Claim Jumper Restaurant*, 2015 WL 1886709 (ND Ca. 04/24/2015). Plaintiff requires a wheelchair for mobility. On several occasions he visited Defendant Claim Jumper Restaurant in Concord, California. While there, he encountered several architectural barriers including accessing the restaurant entrance from the parking lot, excessively heavy entrance door, and accessing the dining area and restroom. He sued seeking an injunction mandating Defendant to comply with the Americans with Disabilities Act. The case was ultimately settled requiring the restaurant to remove the barriers and pay attorney's fees. The parties however could not agree on the amount of fees. The court awarded an hourly rate of $525 finding that rate "is within the bounds of reason." The lawyer had been practicing as a civil litigator for nearly 20 years; he spent the last eight years litigating approximately 80 ADA claims, and provided affidavits showing that his rate was comparable or lower than other hourly figures awarded by courts in ADA cases in the same district.

ADA/Facility

2. *Brooke v. Econo Lodge Phoenix Airport*, 2015 WL 5444286 (D. Az., 09/16/2015). Plaintiff is disabled and confined to a wheelchair. She contacted Defendant hotel to book a room and inquired whether the pool had a lift or other means of access for disabled people. She was told the hotel had no lift. An independent investigation verified this fact. Plaintiff alleges that she intends to travel to the Phoenix area in the future and stay in hotels there, and Defendant's barriers to pool use deters her from staying there. Defendant contested Plaintiff's standing. The court held for Plaintiff, noting that violations of the ADA that deter access to places of public accommodation constitute the necessary injury. Defendant's Answer stated the hotel had ordered a pool lift and it is "scheduled for installation immediately" following delivery. The hotel thus argued mootness. The court denied dismissal because the lift's compliance with the ADA as well as its actual installation has not been established. Note: Plaintiff has filed in excess of 50 ADA cases, a fact the court notes as "not relevant to the instant motion."

ADA/Gluten Allergies

3. *Phillips v. P.F. Chang's China Bistro, Inc.,* No. 5:15-cv-00344-RMW (N.D. Cal. 08/06/2015). Plaintiff filed a complaint against P.F. Chang's alleging that it discriminated against her and other guests with celiac disease or gluten intolerance by charging $1 more for

some gluten-free menu items, but accommodates those with other dietary requests at no extra charge. She argued that Defendant adds the additional charge to gluten-free items despite the fact that the difference in cost it incurs between providing regular menu items and their gluten-free counterparts is negligible. She claimed that the additional $1 charge constitutes discrimination under California's Unruh Civil Rights Act and the Disabled Persons Act, as well as violations of the state's Unfair Competition Law. Plaintiff sought class certification and Defendant moved to dismiss the complaint. Defendant argued that the special gluten free meals were different menu items that the non-gluten-free items and thus was justified in the $1 surcharge. The court noted that under the ADA, an individual must show that a condition "substantially limits" a major life activity, whereas the Unruh Act merely requires that a plaintiff show that a condition "limits" a major life activity. The court held that Plaintiff failed to show that Defendant discriminated against customers with gluten allergies by adding the $1 surcharge stating that even if Defendant accommodates other dietary requests without charge was true, Plaintiff still failed to support the conclusion that "those dietary requests involve alterations to menu items similar to what is required to provide gluten-free meals." The court dismissed her Unfair Business Practices claims and claims under the California Disabled Persons Act.

Call Centers/Disclosure of Recordings

4. *McCabe v. Six Continents Hotels*, 2015 WL 3990915 (ND Ca. 06/30/2015). Plaintiffs alleged that Defendant hotels – including Holiday Inn Express, Crowne Plaza, Staybridge Suites, Candlewood Suites and Hotel Indigo -do not give notice to callers who phone call centers that the conversation will be recorded. The parties reached a settlement in which the hotels agreed to pay $11,700,000.

Casinos

5. *Damico v. Harrah's Philadelphia Casino & Racetrack a/k/a Chester Downs and Marina, LLC, et al.,* No. 14-06091 (E.D. Pa. 02/20/2015). A casino attendee alleged that he was "stopped, detained, and arrested for use of suspected counterfeit dollars without any explanation …"According to the criminal complaint, the couple attempted to exchange a $100 bill at the casino cage and had other $100 bills that looked suspicious. The cage supervisor checked the government's dollar note search website and all of the bills came back as known counterfeits. The police were called and the patron was arrested where it was then determined that the bills were not counterfeit so the criminal charges were dropped. However, the man's record had not been expunged. Plaintiff sued the casino alleging that Harrah's violated his constitutional rights. Defendant's moved for dismissal of the lawsuit, alleging that the man failed to state a claim against Defendant, alleging that the man failed to allege any relationship or agreement between Defendant and the state that would "clothe Harrah's with the authority of the state or suggest that the state ceded any authority to Harrah's to act on the state's behalf." The court stated that private actors do not act under the color of state law simply by calling law enforcement or detaining a suspected individual until police arrive. The court dismissed the charges against Harrah's.

Condominium Hotel Parking Lot

6. *Arizona Biltmore Hotel Villas Condominium Association, Inc. v. The Arizona Biltmore Hotel Master Assoc.*, 2015 WL 4599897 (Ariz. App. 07/30/2015). Plaintiff condominium development is located next to Defendant hotel. The two are separated by a parking lot. The condo association had a contract with the owner of the lot for exclusive use of the southern part of the parking lot. It sought a declaratory judgment giving the Plaintiff association exclusive parking-use rights to that portion of the lot. While the case was pending, the owner cancelled the joint use agreement with the Plaintiff and granted a license to the Defendant. The court thus dismissed the case as no longer justiciable.

Contracts/Fraudulent Inducement

7. *Siena Hotel Spa and Casino v. IGT,* 2015 WL 7575352 (Sup Crt. Nev., 11/24/2015). The parties had a contract requiring Defendant to deliver certain slot machines to Plaintiff's casino, and Plaintiff to pay for them. Siena Hotel failed to pay the amounts due under the contract. It admitted nonpayment but asserted that IGT fraudulently induced it to enter the contract by falsely representing that the machines were compatible with the casino management system that the casino had already purchased from another vendor. The court dismissed the case, noting limited evidence connecting IGT's product to the data corruption problems experienced by the casino, and a failure to adequately account for other variables that could have caused the problems. Further, IGT's machines were used with the casino's management system in other casinos without any problems.

8. *Tomaydo-Tomahhdo, LLC, et al., v. Vozary, et al.*, No. 1:14 CV 469 (N.D. Ohio 01/29/2015). This case involves an alleged copyright of recipes developed by Plaintiff. Plaintiff and Defendant jointed owned to restaurants including Tomaydo-Tomahhdo. In 2004, Plaintiff bought out Defendant's interest in the restaurants including all originals and copies of design files, videos, menus, recipes, etc. Defendant subsequently opened a restaurant called Caterology restaurant with a former employee of Tomaydo-Tomahhdo**.** Eight years later, Plaintiff created a recipe book using recipes from Tomaydo-Tomahhdo and attempted to copyright the recipe book. Plaintiff sued Defendant for copyright infringement and Defendant moved for summary judgment which was granted by the district court. The copyright claim must fail because Plaintiff had no protectable interest in the recipes. The court said that perhaps copyright protection may be afforded as to artistic embodiments in the book and design elements, but recipes are statements of fact and copyright protection does not extend to recipes. Defendant wins as Plaintiff doesn't have supporting evidence to allege copyright infringement on the book's design elements or artistic embodiments. Affirmed on appeal, Case No. 15-3179 (Ct. App. 6th Circuit (10/20/2015).

Cyber Security

9. *Federal Trade Commission v. Wyndham Worldwide Corp., et al.*, No. 14-3514 (3d. Cir. 08/24/2015). Plaintiff FTC filed a lawsuit against Defendant Wyndham claiming that

Defendant was deficient in their attempts to protect customers from hackers in cybersecurity. In 2008-2009, Wyndham's PMS system was hacked and personal, as well as financial information was compromised to the tune of $10.6 million in fraudulent charges. FTC stated that Defendant was engaged in unfair cybersecurity practices and the case lists numerous reasons such as failure to use firewalls, storage of credit card numbers without encryption, easily guessed passwords to access PMS systems and a whole host of other deficient cybersecurity practices. Defendant said they only learned of the attacks in 2010 when it began receiving notices from customers. Wyndham said the FTC could not bring an unfairness claim against it because conduct is only unfair when it injures consumers by using unethical behavior. The court disagreed with Defendant's interpretation and said Wyndham cannot act equitably after publishing a privacy policy and failed to make good on promises of adequate cybersecurity. Defendant also argued that the FTC didn't give fair notice of specific standards to address to be in compliance. The court said that the allegations raised by the FTC does not allege that Wyndham used weak security measures, but that it didn't do any security measures, as outlined in the opinion. The court said that it would not decide whether Wyndham's security measures failed but that it was on notice of the possibility that a court could find that the practices failed. Defendant could not argue that Wyndham should be told with ascertainable certainty the cybersecurity standards required by the FTC to conform within the law.

Declaratory Judgment

10. *Gary Dear v. Q Club Hotel, LLC*, 2015 WL 4273054 (S.D. Fl., 07/14/2015). Plaintiff is one of 333 owners of condominium units owners located in the same building in Fort Lauderdale, Florida as a Hilton Resort Hotel. The condo owners and hotel guests share use of common facilities such as the fitness center and parking garage. The Condo Declaration allocates the expenses between the owners and hotel, and requires the hotel to maintain records of payments and expenditures. Plaintiff alleges that the Defendant hotel failed to maintain the records and charged inflated costs to owners. Plaintiff sued for breach of contract and declaratory judgment prohibiting the hotel from violating the Declaration in the future. The court granted the hotel's motion to dismiss the declaratory judgment action, finding that it was repetitious of the breach of contract claim. Further, Plaintiff failed to establish that money damages would be inadequate to compensate Plaintiff for alleged harm.

Discrimination/Public Places

11. *Barnes v. Liberty Restaurant Group, LP*, 2015 WL 1800532 (E.D. Mo., 04/16/2015). Plaintiff is an African-American male, age 70, who went with a friend to a Burger King. The manager asked Plaintiff's friend to leave. Plaintiff asked why and the manager then told Plaintiff that he too had to leave or the manager would call the police. Plaintiff sued claiming a violation of 42 USC 1985(3), conspiracy between the police and the restaurant to violate Plaintiff's rights. A necessary element is an agreement between the Defendants. Here, the complaint contains no allegations of a prearranged agreement between the police and the restaurant to discriminate against Plaintiff. Absent a meeting of the minds of the Defendants

to pursue specific discriminatory acts, a complaint alleging a section 1985 violation will be dismissed. Therefore, the complaint was dismissed.

Dram Shop

12. *Mindykowski v. Olsen & CWB Property Management, Inc. & Alpena Hotels, LLC*, 2015 WL 1120901 (Mi. App. 03/10/2015). Plaintiff was assaulted in the parking lot of Defendant's hotel. Plaintiff claimed the hotel was liable based on the dram shop act and premises liability. Plaintiff proved that his assailant drank between 12 and 15 beers at Defendant's establishment during six to seven hours. The court rejected this testimony as sufficient proof the attacker was visibly intoxicated, a necessary element in a dram shop case. The court held that visible physical manifestations of intoxication are required. Plaintiff failed to provide such evidence. The court therefore granted the hotel's motion for summary judgment. The court also granted Defendant summary judgment on Plaintiff's premises liability claim, noting there is no obligation for a facility to anticipate unforeseeable criminal acts of third parties.

Employment/Arbitration

13. *Shatteen v. Omni Hotels Management Corp.*, _F.Supp.3d_, 2015 WL 4090098 (DDC, 07/06/2015). Plaintiff was the banquet coordinator at the Omni Shoreham Hotel in Washington DC. Due to a stroke, she was granted medical leave under the Family Medical Leave Act. While she was on leave her position was terminated. She sued and the Defendant hotel moved to compel arbitration. When hired, Plaintiff signed an arbitration agreement that requires disputes to be submitted to arbitration. It also states: a) the party requesting arbitration must pay the filing fee of $125; the costs of the first hearing day are split between the parties; the arbitrator cannot award punitive damages. Plaintiff disputed the motion claiming the clause was unconscionable. The court rejected this argument and granted the motion, noting, and "The mere fact that the Agreement was presented to plaintiff as a condition of her employment and without further negotiation does not render it void. . . . Bargaining disparity exists in nearly every employment contract." Further, the arbitration agreement was conspicuous and very clearly stated.

14. *Arnold v. Burger King, et al*., No. 101465 (Ohio Ct. App. 04/30/2015). Plaintiff filed a lawsuit after she was raped by her supervisor in the men's bathroom of a Burger King restaurant owned by a franchisee, Carrols, Inc., which owns 500+ franchises in 13 states. Her claims included sexual harassment, negligent retention, emotional distress, assault and intentional tort. The franchise Defendant filed a motion to compel arbitration under the employment arbitration agreement. Plaintiff alleged that the arbitration agreement was overly broad and attempted to cover all claims related to events outside the scope of employment. The court agreed and Defendant appealed claiming the agreement was not unconscionable. The appeals court affirmed the lower ruling finding that the verbiage was in fact unconscionable. Some of the terms of the arbitration agreement were conflicting and gave the employer "significantly greater bargaining power" than employees. The court said the agreement was too broad and Plaintiff can have her day in court.

Employment/Discrimination/ADA

15. *Graves v. Mid South Waffles, Inc. d/b/a Waffle House, Inc*., No. 3:12-cv-0414 (M.D. Tenn. 03/06/2015. A 20-year server employee at a Waffle House restaurant in Tennessee injured herself on the job while unloading a dishwasher. She was instructed to see a physician and returned six days later requesting accommodations for her disability, which were granted. A couple of months later, the district manager was going to suspend Plaintiff for gossiping and said that Plaintiff had been written up twice before for gossiping, although no documentation exists to prove these write ups. Because the district manager felt threatened by Plaintiff, she terminated the employment relationship. Plaintiff sued for alleged disability discrimination. Defendant argued that the temporary shoulder injury was not qualified as an impairment under the ADA that substantially limited a major life activity. The court agreed with Defendant when Plaintiff could not show that her injury substantially limited her thus being a qualified disability and said that although Defendant terminated Plaintiff due to a non-discriminatory reason, i.e. gossiping, the court did say that Plaintiff could proceed on a retaliation charge for engaging in protected activity under the ADA. The termination could have been pre-textual and this precluded the court from awarding summary judgement to Waffle House.

Employment/Discrimination/ADEA

16. *Soto-Feliciano v. Villa Cofresi Hotels*, Inc., _F.3d_, 2015 WL 727968 (1st Cir, 02/20/2015). Plaintiff was the head chef at Defendant hotel, a beachfront, family-run establishment. He was fired and sued claiming age discrimination and retaliation. The district court granted summary judgment for Defendant. On appeal, the decision was reversed. At the time of the firing, the hotel had a continuing need for Plaintiff's former duties, as shown by the fact the functions were absorbed by other employees. He had never received a formal written complaint from hotel management. The human resources director and Plaintiff's direct kitchen supervisor commented negatively numerous times about his age. The court held these facts constituted a prima facie case of discrimination. Defendant responded that Plaintiff used profanity with regularity generating complaints from co-workers, he was insubordinate on a handful of occasions, he was frequently late, threatened a supervisor, disrespected a co-worker's religion, and had been warned about the conduct. This constitutes, if proven, a nondiscriminatory reason for the suspension and firing. But issues of fact still exist. Complaints about Plaintiff's conduct were never documented in writing or placed in his personnel file. Further, the hotel had a progressive discipline policy but did not follow it. The court found "inconsistencies in defendant's case sufficient to support an inference of pretext."

17. *Mercantanti v. WCI Operations LLC*, No. 13-cv-3814 (E.D. Pa. 04/01/2015). Plaintiff, a 54 year-old banquet manager was terminated for her objections to new management initiatives, including the directive that Plaintiff could not bring her dog to work and she had difficulties

with the new system for recording phone calls as well as a new dress code, and Plaintiff filed suit for age discrimination when Defendant hired a replacement banquet manager 32 years younger than Plaintiff. Summary judgment for Defendant was granted because even though the manager did establish a prima facie case of age discrimination, Plaintiff did not offer any reason for her termination being pre textual for age discrimination.

18. *Ferguson v. Fairfield Caterers, Inc.*, No. 3:11-cv-01558 (JAM) (D. Conn. 05/20/2015). Plaintiff and her father were long-time employees of a wedding catering company. The father was 71 when he was terminated, allegedly due to age and not being able to relate well with the clients. He then sued Defendant for age discrimination. Plaintiff said she was asked to get her dad to drop the suit and she was ultimately terminated for protecting her father and for receiving payments of $200 from vendors which Plaintiff claimed were tips and Defendant said were in violation of the law and company policies. Plaintiff then sued Defendant based on termination by retaliation for her father's complaint and because she was pregnant. Plaintiff prevailed in the district court when the district court denied the motion by Defendant for a new trial. On appeal, the court would not second guess the lower court's decision and ruled in favor of the Plaintiff claiming that there was insufficient proof that the vendor payments were in fact in violation of law or company policy (another business manager had accepted similar payments without discipline) and that Defendant zealously tried to find evidence about the payments in order to have a reason to terminate Plaintiff. Since a reasonable jury could have inferred Defendant's motives, judgment upheld for Plaintiff.

19. *Palomino v. Concord Hospitality Enterprises Company, et al.,* No. 6:14-cv-01363-HMH-JDA (D. S.C. 07/30/2015). Plaintiff was terminated from her 8 year job as a general manager of Defendant's South Carolina hotel. The hotel had consistently met and exceeded its operational goals; however Plaintiff was diagnosed with multiple sclerosis and became hostile and threatening to employees. Plaintiff did not ask for ADA accommodations for her disability. After two written complaints and multiple verbal warnings, Plaintiff was terminated for inappropriate and unprofessional behavior thus leading to a lawsuit by Plaintiff for the termination being a pretext for discrimination. The court held that Plaintiff did not offer enough evidence to show a pretext for discrimination and granted Defendant's motion for summary judgment. Plaintiff was terminated in accordance with company policies.

20. *Bernuy v. Chipotle Mexican Grille, Inc.*, No. 8:14-cv-1430-T-24TBM (M.D. Fla. 07/27/2015). A former employee of Defendant's restaurant was terminated for poor performance and sued for age discrimination based on comments made by the manager who referred to the 54 year old Spanish employee as "Viejo" which means "old man" in Spanish. Plaintiff agreed that the term "Viejo" can also be a term of respect or endearment. The manager also referred to him as "Papi" which Plaintiff believed was disrespectful. The district court granted summary judgment for Defendant which was upheld on appeal since Plaintiff didn't offer any testimony that showed Defendant's manager's reasons for termination were pre-textual for discrimination. The court said that Plaintiff's complaint centered on him being called another name rather than any adverse action based on his age.

21. *EEOC v. Darden Restaurants, Inc., et al*., No. 15-20561-CIV-LENARD/GOODMAN (S.D. Fla. 11/09/2015). Plaintiff EEOC filed a complaint against several Season 52 restaurants owned by Defendant claiming alleged discrimination based on age. EEOC alleges that Defendant's application procedure denies employment to applicants over 40 years of age stating that hiring officials have told age 40 and older applicants that they were too experienced and that Seasons 52 is looking for fresh employees with a youthful image. Injunctive relief and damages were sought. The court denied Defendant's motion to dismiss when Defendant argued that the EEOC does not have the requisite authority to pursue disparate-treatment or pattern-or-practice claims. The court disagreed with Defendant and stated that the EEOC was authorized to bring such a claim against Defendants. The court also said that Defendant's hiring data shows that hiring applicants over 40 years of age was significantly below the expected hiring of applicants in the protected age group.

Employment/Discrimination/Gender

22. *Li v. Trendwest Resorts, Inc., et al*., Nos. A130971, A131468 (Cal. Ct. App. 07/23/82015). Plaintiff, a former employee of Defendant's company, sued for gender discrimination, among many other claims, due to her termination for failure to return to work, but claims she was retaliated against due to her gender. Plaintiff contended that Defendant's workplace created a hostile work environment and there was a constant turnover of male supervisors even though Plaintiff alleges she was ready for the appointment as supervisor. Plaintiff claims she suffered from heart palpitations due to the workplace environment and asked for medical leave which was granted, but was terminated six months later for not returning to work. A jury found in favor of Plaintiff for emotional distress claims and on appeal, the court upheld the jury verdict stating that Plaintiff showed ample evidence that Defendant was biased against women. The court also noticed that Defendant disapproved of employees who took medical leave.

23. *Viscecchia v. Alrose Allegria*, LLC, _F.Supp.3d_, 2015 WL 4602729 (E.D. NY 07/30/2015). Defendant had a hair policy for workers that barred males from hair longer than their shirt collar, while women were not subject to similar restrictions. Plaintiff's hair exceeded the permissible length. Following a warning and no new do, he was fired. He claimed the varying requirements for the genders constituted sex discrimination. The court rejected this claim noting that the law is well established that grooming policies that vary by gender do not constitute discrimination provided the rules are consistent with general grooming custom of the sexes. Plaintiff also claimed the policy was selectively enforced in favor of women. The court held that uneven enforcement could amount to illegal gender discrimination and denied the hotel's motion for summary judgment on that count of Plaintiff's case.

24. *Castillo v. Allegro Resort Marketing*, _Fed. Appx._, 2015 WL 1214057 (11th Cir. 03/18/2015). Plaintiff was born in the Dominican Republic. She worked for Defendant which oversees marketing for all-inclusive resorts in the Caribbean and Mexico. She was promoted several times and then terminated at age 42 with management citing a reduction in force. She claimed discrimination based on age, sex and national origin. The complaint was

dismissed and Plaintiff appealed. The court affirmed the dismissal of the national origin claim because Plaintiff failed to provide factual allegations to suggest intentional discrimination on this ground. The appeals court reversed the dismissal of the age and sex claims noting that Plaintiff's boss told her he wanted to replace her with a younger man, and he did so. Additionally, the boss had "harassed her relentlessly", in part because she was of child-bearing age and took time for maternity leave following the birth of three children.

Employment/Discrimination/Pregnancy

25. *Ali, et al., v. Jerusalem Restaurant, Inc*., No. 14-cv-00933-MEH (D. Colo. 03/23/2015). Plaintiff was terminated from Defendant's restaurant as a waitress and alleged that she was terminated due to her pregnancy and Defendant states the termination was due to missed shifts, and consistently late to work in violation of company policy. When Plaintiff told Defendant's manager that she was pregnant, Defendant's manager alleged that he pleaded with her to stay on and would reduce her shifts to accommodate Plaintiff's pregnancy. The district court allowed Plaintiff to proceed with her claims since there was a dispute as to whether Plaintiff asked for a change in schedule or simply reduced her shifts. Even though the Defendant provided a legitimate, nondiscriminatory reason for Plaintiff's dismissal, the court said that a jury should decide.

26. *Frey v. Hotel Coleman, et al.,* No. 12 CV 06284 (N.D. Ill. 10/09/2015). Plaintiff, a guest services representative at Defendant's hotel sued Defendant for sexual harassment and claimed that the unwanted sexual advances made toward her by the general manager were raised with her housekeeping manager who said she spoke to the general manager, but the harassment continued. Plaintiff went on maternity leave shortly thereafter and when she returned she was terminated due to an allegation that she had stolen a cell phone of another employee. Defendant acknowledged that Defendant did not have any evidence to support the theft allegation. Plaintiff filed a complaint with the EEOC and sought compensation for being terminated in retaliation of her complaint. The district court found in favor of Plaintiff and said that "a reasonable jury could only find for [the employee]." Also, the court found that Plaintiff presented sufficient evidence to make a clear case that she was subjected to unwelcome sexual harassment and that because of her pregnancy she had her hours cut and was moved to the night shift without adequate compensation.

27. *Crist v. Dorr to Door Pizza, LLC, d/b/a Double D's Sourdough Pizza*, No. 13-cv-02550-RM-MJW (D. Colo. 07/30/2015). Plaintiff, a former general manager of Defendant's pizza store became pregnant with her second child and became very stressed out due to her position as a general manager. She left the store for a two hour period during her shift leaving responsibilities of management with another employee who was unqualified. She returned to the store, and then left again telling Defendant that she was too stressed out to remain at the store. Defendant offered to accommodate Plaintiff's stress by relocating her to another position, at the same pay but with less hours and responsibilities. Plaintiff declined this offer. Plaintiff alleged she received a text message asking her to bring in to the store any property owned by Defendant and Plaintiff assumed that she was terminated. Defendant denies that it ever terminated Plaintiff. Plaintiff sued for pregnancy discrimination and summary judgment

was entered for Defendant. The court pointed out that Plaintiff failed to show sufficient evidence that there was a causal connection between her pregnancy and the demotion/termination.

28. *Gonzales v. Marriott International, Inc., et al*., No. CV 15-03301 MMM (PJWx) (C.D. Cal. 11/05/2015). Plaintiff works as a cashier at the LA Airport Marriott and filed a claim against Defendant for allegedly violating Plaintiff's rights on the basis of pregnancy discrimination. Plaintiff, a surrogate mom, was expressing her breast milk at work for the benefit of her child and Defendant accommodated Plaintiff for the time during her breaks (extended) to do so. Once the obligation to send breast milk to the child's parents had ended, Plaintiff decided she wanted to continue to express her breast milk for health and donation purposes. Defendant objected which allegedly caused Plaintiff to be excluded from company social events and caused a severe emotional toll on Plaintiff. Defendant moved to dismiss and the motion was denied. Defendant argued that the California code limits lactation accommodations for the "employee's infant child" and therefore Defendant no longer had a duty to accommodate. The court said this view was misguided and that the code should be interpreted more broadly. A jury should decide. Plaintiff is allowed to proceed with her claims against Defendant and the court noted that the EEOC recently confirmed a ruling that lactating employees must have the same freedom to address lactation-related needs similarly with other limiting medical conditions.

Employment/Discrimination/Race

29. *Boyer-Liberto v. Fontainebleau Corp*., _F.3d_, 2015 WL 2116849 (4th Cir. 05/07/2015). Plaintiff, an African-American, was an employee of Defendant hotel. She sued claiming a racially hostile worksite and retaliation. She was twice called a "porch monkey" and threatened with the loss of her job by her supervisor. After she reported the incident to higher-ups, she was fired. The hotel moved for summary judgment. The court denied the motion, determining that a genuine issue of material fact existed as to whether a supervisor's use of the referenced term on two occasions directed towards an African-American employee constituted a hostile work environment. Further, the court held an employee is protected from retaliation for opposing an isolated incident of harassment when she reasonably believes that a hostile work environment is in progress.

30. *Clarke v. Leading Hotels of the World, LTD.,* 2015 WL 6686568 (SD NY, 10/29/2015). Plaintiff was employed by Defendant for 14 years and was terminated on August 26, 2014. She is dark-skinned and Jamaican. She alleged claims of disparate treatment and hostile work environment. To prove both requires evidence showing an inference of discriminatory motivation. The mere fact that Plaintiff is a member of a protected class is insufficient by itself to support an inference of discrimination. Here Plaintiff offered no facts to suggest she was subjected to discrimination or offensive conduct motivated by race or national origin. Therefore, Defendant's motion to dismiss was granted.

31. *Graham v. Mirage Casino Hotel,* 2015 WL 5224895 (D. Nev., 09/04/2015). Plaintiff's pleading of hostile environment was insufficient where it failed to allege specific verbal or

physical conduct to which he was subjected or sufficient severity to alter his work environment.

32. *Etienne v. Spanish Lake Truck & Casino Plaza, LLC*, No. 14-30026 (5th Cir. 02/02/2015). Plaintiff was a waitress and bartender at Defendant's casino and filed a lawsuit alleging she was not promoted to a managerial position because of her race. Plaintiff claimed the general manager told the former manager that the Plaintiff was "too black" to perform certain tasks such as handling money. Defendant sought a summary judgment which was granted by the district court but reversed on appeal because the court said the statements made in the affidavit do show direct evidence of discrimination. The comments specifically reference the waitress' skin color. Also, the Plaintiff offered evidence that she was qualified for the managerial position but wasn't even considered due to the bias.

33. *Doxie v. Chipotle Mexican Grill, Inc*., No. 1:13-cv-2611-WSD (N.D. Ga. 09/29/2015). Plaintiff was terminated from her apprentice/supervisor role with Defendant's restaurant for poor performance but Plaintiff sued based on discrimination of her race and gender. Plaintiff claimed that one of the employees made a racial slur remark about a black customer, in Spanish. Plaintiff terminated the employee with HR's approval but subsequently had performance issues in running the restaurant profitably including racial tension. There were inconsistencies and lack of improvement on the part of Plaintiff after counseling. The district court granted summary judgment in favor of Defendant and Plaintiff appealed. The appellate court upheld the summary judgment for Defendant stating that Defendant did possess a legitimate, non-discriminatory reason for terminating Plaintiff's employment; that being poor work performance.

34. *Atkins, et al., v. LQ Management, LLC d/b/a La Quinta Inn & Suites*, No. 3:13-00562 (M.D. Tenn. 09/30/2015). A number of black employees in the housekeeping department at a La Quinta Inn filed a complaint alleging they were discriminated against because of their race and had to deal with a hostile work environment in violation of Tennessee law. One of the Plaintiffs alleged that the general manager made racial comments about black people and President Obama. When Plaintiff complained, the general manager just shrugged it off as a joke. Some of the Plaintiffs contacted the discrimination hotline, but one alleged that she never received a follow up from her complaint. The district court ruled in favor of the Plaintiffs even though Defendant argued that the Plaintiffs failed to take the steps necessary to rectify the harassment by complaining through the proper channels. The court said that an effective harassment policy includes these items: (1) requires supervisors to report incidents or harassment; (2) permits both informal and formal complaints of harassment to be made; (3) provides for a mechanism for bypassing the harassing supervisor when making a complaint; and (4) provides for training regarding the harassment policy. Defendant's policy was too narrow because it stated that the harassed employee should speak to the manager, but it was the manager in this case doing the harassing. The court awarded each Plaintiff $60,000 and attorney fees.

35. *Cosby v. Steak N Shake Operations*, No. 4:14CV308 JCH (E.D. Mo. 12/11/2014). Plaintiff, a 32 year-old black male was hired as a general manager of at Defendant's restaurant and was

demoted to restaurant manager due to documented poor performance. Plaintiff, who suffered from depression, asked for a leave of absence which was granted and was unknown to Defendant until the time of request for the leave. Upon Plaintiff's return to the workplace, he was reminded of his cut in pay and his demotion and he continued to perform poorly. Plaintiff filed a charge with the EEOC alleging race and disability discrimination. A district court dismissed Plaintiff's claims on lack of any evidence to suggest race or disability discrimination. The demotion occurred prior to Defendant knowing about the alleged depression.

Employment/Discrimination/Religion

36. *Brown v. Marriott Hotel,* _Fed.Appx._, 2015 WL 2192540 (10th Cir. 05/12/2015). Plaintiff worked one day a week at Defendant hotel as a stocking clerk. His supervisor hired a friend from church who assumed Plaintiff's responsibilities. The supervisor told Plaintiff that the supervisor would call Plaintiff if he was needed. After three months of no contact from Marriott, Plaintiff was administratively terminated by Marriott's payroll system. Plaintiff asserts discrimination occurred when Defendant's supervisor failed to follow Marriott's own hiring policy regarding conflicts of interest by hiring a friend from church. The court granted summary judgment, finding that Plaintiff's allegations did not provide a basis for a federal employment discrimination claim.

Employment/FLSA

37. *Richardson and Stadler v. Granite City Hotel,* 2015 WL 1944402 (S.D. Ill, 04/29/15). Plaintiffs, property managers of an Econo Lodge in Granite City, Illinois, claim Defendant failed to pay minimum wage and overtime. Defendant moved to dismiss arguing the complaint was not sufficiently detailed. The complaint contained the period of employment, Plaintiffs' work locations and positions, plus a statement that Plaintiffs regularly worked more than 40 hours a week and the compensation fell below federal and Illinois minimum wage. The court determined the complaint was sufficient and denied the motion to dismiss, holding "additional details can be flushed out during the discovery process."

38. *Ruffin, et al., v. Motorcity Casino d/b/a Detroit Entertainment, LLC,* No. 14-1444 (6th Cir. 01/07/2015). Plaintiffs, security guards at Defendant's casino, filed a suit claiming that their meal breaks violated the FLSA since they were required to remain on property and monitor the two way radios during their meal breaks. Under the collective bargaining agreement, the 30-minute meal period was paid but the guards had to remain on property. Plaintiffs claimed that the meal period was used predominately for the benefit of the casino and the district court disagreed. Summary judgment for Defendant was affirmed on appeal and the court held that monitoring the radios was a de minimis activity and found that the Plaintiffs spent their meal periods basically doing what they wanted to do and not just monitoring their radios. The few instances of meal interruptions may have violated the FLSA but that the Plaintiffs regularly enjoyed their meals without interruption and so the meal periods were predominately for the benefit of the guards.

39. *Montijo, et al., v. Romulus, Inc., d/b/a IHOP,* Nos. CV-14-264-PHX-SMM, CV-14-265-PHX-SMM, CV-14-464-PHX-SMM (D. Ariz. 03/30/2015). Plaintiffs working the overnight shift filed complaints against the Defendant, IHOP, alleging violations of the FLSA claiming that the servers did non-tipped work, did not receive the fair minimum wage and were only paid at the reduced tip credit rate for all the work. Defendant countered stating that the employees were always paid the higher Arizona minimum wage for all of their work. The district court granted partial summary judgment for Defendant stating that Plaintiffs failed to state a minimum wage violation under the FLSA because they never alleged that during any particular work week, Defendant paid them less than the Arizona minimum wage. Also the Plaintiffs failed to prove that they had dual jobs, which is required under this type of claim identifying that they had two or more entirely distinct jobs. As servers, doing the non-tipped work in this case is incidentally related to being a server.

40. *Snodgrass, et al., v. Bob Evans Farms, LLC,* No. 2:12-cv-768 (S.D. Ohio 03/18/15). Some of the assistant managers working at Defendant's restaurant filed a collective action stating that Defendant violated the FLSA by misclassifying the assistant manager position as an exempt position. The district court conditionally certified the class action in 2013 and both parties sought summary judgment and a ruling on the law as to the appropriate method for calculating unpaid overtime if the assistant manager position was determined to be non-exempt. The court said a jury will decide the number of hours the manager's salary was intended to compensate which will then be used to determine the rate of pay and any overtime if owed, would be paid at one and one-half times the regular rate and not the fluctuating workweek half-time method proposed by Defendant. The court said that the Defendant's proposed calculation of using the fluctuating workweek halftime method is not used in misclassification cases.

41. *MacKereth, et al., v. Kooma, Inc., d/b/a Kooma, et al*., No. 14-04824 (E.D Pa. 05/14/2015). Plaintiffs were employees in Defendant Kooma's restaurant and filed a class action alleging violations under the FLSA. They claimed that they were not paid the necessary minimum rate according to the law and that Defendant never informed them about taking a tip credit or how much the credit would be. Plaintiffs also alleged that as forced tipped employees, they were required to forfeit a portion of their tips to cover various expenses of the restaurant, such as a delinquent tax bill and to compensate sushi chefs and cooks. A temporary restraining order was granted by the district court allowing Defendant to enforce new rules regarding exemptions for the Plaintiffs which resulted in some of the workers leaving the employment of Defendant. The court said the Plaintiffs produced enough evidence that they were paid a tip credit wage regardless of the number of hours worked and may not have always received the minimum pay. The court also said Plaintiffs could proceed with their retaliation claims against Defendant due to the new work rules implemented as a result of the new work rules.

42. *Murphy, et al., v. Philippe LaJaunie, et al.,* No 13-cv-6503 (RJS) (S.D. N.Y. 07/24/2015). This case involves the granting of a class action certification of former restaurant workers of Defendant's restaurants. Plaintiffs allege that Defendant restaurant owners violated the FLSA by their tip pooling procedure. The conditional collective action certification was

granted in 2014 since there are over 250 members in the action. The court held that the class action raises questions of fact that are all common to the members, including (i) whether the maître d's were eligible to receive tips, (ii) whether the distribution of tips to maître d's and bar managers was lawful, (iii) whether the policy to not pay a spread of hours exceeded 10 hours was unlawful; and (iv) whether the policy of payment employees less than $4.65 per hour was unlawful. Both sides were ordered to submit a letter concerning settlement negotiations.

43. *Karropoulos v. Soup Du Jour, LTD., d/b/a Bistro 44,* No. 13-CV-4545 (ADS) (GRB) (E.D. N.Y. 08/31/2015). The former executive chef of Defendant's bistro filed a claim under the FLSA claiming that his position as executive chef was primarily cooking and not managerial. Defendant filed for summary judgment which was denied because the court said there remain issues of fact as to whether the chef was truly an exempt employee under the FLSA. The court could not conclude that the chef worked in an executive capacity because Plaintiff claimed that 95% of his time was cooking. Defendant didn't refute the position. There were also no job descriptions to go by in making any determination as to exemption or not.

44. *Van Booven v. River City Casino & Hotel*, 2015 WL 3774043 (ED Mo., 06/17/2015). Plaintiff, an employee of Defendant, sued for unpaid overtime, liquidated damages, and attorneys' fees. All matters except attorneys' fees were settled by the parties. Plaintiff sought fees in the amount of $65,211.50 for 175.65 hours by four attorneys. The FLSA authorizes courts to award successful plaintiffs "reasonable attorney's fees to be paid by the defendant". The court identified the "starting point for determining the amount of reasonable attorneys' fees" as the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Other factors to consider include the novelty and difficulty of the issues, the requisite skills needed, preclusion of other employment opportunities, time limitations imposed by the client and by the nature of the work, results obtained, and the reputation and ability of the lawyers. The court reduced Plaintiff's figure by excluding the following: 1) hours spent drafting documents where only minor modifications were made from documents "recycled" from a similar case in the district; 2) hours spent on motions rendered moot due to abandoned strategies; 3) hours for which the explanation provided was incomplete or imprecise; and 4) time spent reviewing documents that had already been filed with the court. Concerning hourly rates, the court determined that $350 for an attorney with more than 25 years' experience in employment and labor law was acceptable, as was a rate of $250 for an attorney with six years' experience. The court rejected hourly rates of $475 and $425.

45. *Souza, et al., v. 65 St. Marks Bistro d/b/a Jules Bistro, et al*., No. 15-CV-327 (JLC) (S.D. N.Y. 11/06/2015). Employees of Defendant's restaurant filed a complaint alleging unpaid minimum wage, unpaid overtime, misappropriated tips and other claims. The parties agreed to a settlement agreement which contained a confidentiality provision stating that Plaintiffs must keep the terms of the settlement in confidence and cannot disclose to anyone other than immediate family members, financial advisors and attorneys. Furthermore, the provision requires that Plaintiffs not provide assistance to any third party with respect to disputes in which Defendants could be implicated or discussed in any way. The settlement agreement

was rejected by the U.S. District Court for the Southern District of New York because the court disapproved the confidentiality clause stating that the provision attempted to curtail Plaintiffs ability to discuss their settlement with others and that other courts have held that the FLSA's primary purpose is to prevent abuses by unscrupulous employers and to limit the disparate bargaining power between the employer and the employees.

Employment/FMLA

46. *Morro v. Resorts Casino Hotel*, _F.Supp.3d_, 2015 WL 3991144 (DNJ, 06/30/2015). Plaintiff was a singing bartender. She took FMLA leave due to throat and lung issues resulting from dust and debris kicked up from renovations at the hotel. When Plaintiff returned from leave, her job had been eliminated. She sued claiming the hotel retaliated against her for taking FMLA leave. The hotel argued that the elimination of the "singing bartender" position was a strategic decision made in conjunction with the casino's plans to update the look and feel of the bar where Plaintiff worked and change its theme. The court granted Defendant's motion for summary judgment on all counts.

47. *Bejarano v. Radisson Hotels International, Inc*., 2015 WL 733584 (DNJ, 02/19/2015). Plaintiff was a full-time Housekeeping Manager at a New Jersey Radisson Hotel. Her nine year old daughter suffered a severe asthma attack requiring her to miss several days of school. Plaintiff sought leave per the Family and Medical Leave Act. Her boss denied the request and terminated her that same day. Plaintiff sued claiming retaliation, but waited two years to file the complaint. The ownership of the hotel had changed in the interim. The new owners denied liability. Plaintiff argues that the agreement between the buyer and seller of the inn includes an assumption of liabilities by the buyer. The wording of the agreement seemingly supports Plaintiff's claim. The court thus refused to dismiss the case.

48. *Sanford v. Tropicana Entertainment, Inc., et al*., No. 14-144-JWD-RLB (U.S. Dist. Ct., MD La, 11/13/2015). Plaintiff, a former employee in the security department of Defendant's casino, filed several requests for FMLA leave over a period of time in connection with the treatment of his high blood pressure and fluid in his legs. Defendant argued that the documentation was unsigned by the physician and the Defendant reached out to the physician for clarification. The physician testified that Plaintiff could perform the functions of his job with no restrictions or reduced hours of work. Ultimately, Plaintiff was terminated from employment and filed an action against Defendant. The district court agreed with Defendant and dismissed Plaintiff's claims stating that Plaintiff failed to provide the proper documentation to support his argument that he was medically eligible for leave under the FMLA.

Employment/Retaliation

49. *Raifsnider v. Lonz Winery, Inc., d/b/a Mon Ami Restaurant*, No. 3:13 CV 2228 (N.D. Ohio 09/09/2015). Defendant's restaurant, Crow's Nest, had a policy in the employee handbook which required employees who have an alleged harassment claim to immediately report it to the company president or the district manager. Plaintiff alleges that she was the recipient of

crude and vulgar behavior by her coworker but decided to handle the matter by herself rather than reporting it. A while later, the comments from the co-worker escalated and Plaintiff shared the allegation with her manager, who in turn, with agreement of Plaintiff, gave the man a warning. Later that evening, the co-worker touched Plaintiff's leg and attempted to hug her so Plaintiff immediately reported the incident as required under the handbook, by contacting the president. The man was demoted and transferred since Plaintiff did not want the man fired, but just didn't want to work with him. Plaintiff was transferred to a more upscale restaurant and subsequently resigned claiming she didn't have enough tables. The district court dismissed her claims for lack of evidence since the Defendant did take immediate action to curb the harassment once Plaintiff communicated the incidents. The court said her resignation at the upscale restaurant had nothing to do with the harassment and she even earned substantially more in tips than prior to her complaint.

Employment/Sexual Harassment

50. *Halaoui v. Renaissance Hotel Operating Co.,* 2015 WL 2250941 (M.D. Fla, 05/13/15). Plaintiff asserts he was sexually harassed while working for Defendant hotel causing psychological and emotional harm. Both parties intend to present an expert witness on the psychological and emotional effects of the events of which Plaintiff complains. Plaintiff challenged the admissibility of Defendant's expert witness, a board-certified forensic psychiatrist. The court ruled the doctor can opine on whether Plaintiff suffers from any psychological condition, and if so, discuss the likely source. Plaintiff also challenged Defendant's doctor's methodology. The court rejected this argument noting that the doctor employed the most widely used and accepted standardized psychological metric for adults If Plaintiff disagrees, he can test the doctor's conclusions via cross-examination, and present contrary evidence. Plaintiff's motion to exclude was thus denied.

51. *Toyama v. Hasaki Restaurant, Inc*., No. 13 Civ. 4892 (AKH) (S.D. N.Y. 12/18/2014). Plaintiff, a server at Defendant's restaurant filed a claim for a hostile work environment. The district court dismissed all her claims. She alleged that the chef was "peeping" at her in the female locker room, but had no evidence and only assumed he had peeped. Plaintiff also said she was offended by other people receiving back massages, and the court said her aversion to other people receiving massages did not constitute a sexually hostile environment. Plaintiff also said she heard catcalls during her employment and the court said the three to five times that it may have happened was not pervasive enough to establish a hostile work environment. An alleged inappropriate touching that occurred by a co-worker was deemed an accident and the co-worker was immediately reprimanded about his action. The co-worker's shift was changed and Plaintiff never saw the man again. Judgment for Defendant.

52. *Pelesky v. Rivers Casino and Holdings Acquisition CO. L.P., et al.,* No. 14cv1542 (W.D. Pa. 02/19/2015). Plaintiff worked as a cocktail server at Defendant's casino and filed a complaint alleging a hostile work environment. She claimed a patron put a casino chip down her bra and then made contact with her breasts. She reported the alleged assault and the patron was subsequently banned from the casino immediately. She did not press charges after he was banned. Forty days later, Plaintiff learned that the ban had been lifted and the

offender was allowed back on the property. Plaintiff felt publicly ridiculed and alleged that the casino violated its' own zero tolerance policy for sexual harassment by lifting the ban. Defendant believed a 40-day ban was sufficient for the alleged offense. The court agreed with Plaintiff stating that Plaintiff has enough facts to proceed with her claim.

53. *Keesler v. Chipotle Mexican Grill, Inc., et al*., No. SACV 14-0405-DOC (J P Rx) (C.D. Cal. 03/03/2015). Plaintiff, a former kitchen manager of Defendant's restaurant, was caught by her general manager doing inappropriate things with a co-worker in a car in the parking lot while on break. Plaintiff then reported that the general manager had sexually harassed her in the past and the following day, at her request, she was transferred to a new store. An investigation revealed that the Plaintiff and her general manager had been in a relationship and the general manager was terminated in accordance with company policy. After Plaintiff was transferred to a new store, her performance declined and she was put on suspension and ultimately terminated. Plaintiff sued for retaliation by her having raised previous complaints of sexual harassment at the old store. The new general manager testified that she was not aware of the previous reasons for Plaintiff's relocation to her store although Plaintiff alleged that everyone knew. There was no evidence so the district court dismissed Plaintiff's claims. The court said that Defendant met its obligation under California law by promptly investigating the claims and taking steps to maintain a discrimination-free workplace. Also, the anti-harassment policy at Chipotle was sufficient as well as training and avenues to report allegations of sexual harassment.

Employment/Wage and Hour

54. *Ochoa, et al., v. McDonald's Corp., et al.*, No. 14-cv-02098-JD (N.D. Cal. 09/25/2015). This is an important case regarding the joint employer issue as to whether a franchisor is responsible as a joint employer for those employed by its franchisees. Several franchisee employees alleged in a class action that McDonald's corporate and the owners of the franchise have labor violations under California state law affecting overtime pay for franchisee workers. It was discussed that McDonald's has the ability to maintain considerable control and pressure on its franchisees and thus the employees of its franchisees. The employees argue that they assumed they worked for McDonald's corporate rather than a franchise operation. Both parties filed for summary judgment and the district court granted McDonald's motion in part, holding that McDonalds did not directly employee the franchise workers or was it negligent in its dealings. But the court held that there are factual disputes that McDonald's might be considered a joint employer under the ostensible agency theory. Summary judgement for McDonald's was denied on that charge and the case will proceed.

Employment/Wrongful Termination

55. *Galle v. Isle of Capri Casinos, Inc., et al.,* No. 2013-CT-00024-SCT (Miss. 07/02/2015). Plaintiff, a former poker room supervisor and at-will employee, filed for an action against Defendant for wrongful discharge claiming he was terminated for reporting Defendant's illegal activity. Plaintiff was promoted to poker room manager and was required to obtain a special license which Plaintiff could not obtain due to a previous burglary arrest. Plaintiff

was demoted to supervisor and when Defendant changed its branding and logos, they issued new identification badges showing that Plaintiff was a supervisor instead of a manager. The gaming enforcement commission agents noticed the badge and ordered Defendant to remove Plaintiff from the position. Plaintiff was terminated a month later for failing "to execute a directive from gaming in an effective manner." Plaintiff sued and the judge dismissed the claim, which was reversed on appeal only to be reversed once again by the Supreme Court of Mississippi. The court stated that Plaintiff's willingness to participate in the activity of allegedly managing the poker room without the proper license barred Plaintiff from bringing a wrongful discharge action against Defendant. Plaintiff was an at-will employee and his claim did not fall into the narrow public policy whistleblower exception. Judgment for Defendant.

Federal Jurisdiction

56. Clark v. Starwood Hotels & Resorts, and Sheraton Vistana Resort, 2015 WL 6163166 (MD Florida, 10/19/2015). Plaintiff was injured in Defendant hotel's parking lot when she tripped over a "misplaced parking bumper". The hotel moved to remove the case to federal court based on diversity of jurisdiction. Both litigants agree the parties are diverse but Plaintiff denies that $75,000 is in issue. The complaint seeks damages "in excess of Fifteen Thousand Dollars ($15,000)." Where the jurisdictional amount is not facially apparent from the complaint, the moving party has the burden of proof. Defendant Starwood provided nothing to substantiate the contention that "a fair reading of the Complaint indicates the amount in controversy exceeds $75,000." No medical bills or a settlement proposal from Plaintiff were provided. The motion to remove the case was therefore denied.

Forum Non Conveniens

57. *Wenzel v. International*, 2015 WL 6643262 (2nd Cir. 11/02/2015). Plaintiff was injured while a guest at Defendant's Aruba facility. She sued in New York. The hotel moved to dismiss on the grounds of forum non conveniens. With such motions the court considers three factors: 1) the degree of deference accorded to Plaintiff's choice (Plaintiff's home forum deserves a level of deference but limited by the fact that the facts underlying the suit did not occur there); 2) the adequacy of the alternative forum; and 3) the balance of interests in the forum choice. Concerning the second factor, Plaintiff claimed Aruba was inadequate because tort cases there are decided by judges, not juries; pretrial discovery is more limited; and the potential recovery is less than in the US. The court rejected these as grounds proving Aruba inadequate. "Some inconvenience or the unavailability of beneficial litigation procedures similar to those available in the federal district courts does not render an alternative forum inadequate." Concerning balance of interest, the court noted the Southern District of NY has a busy docket, applying foreign law is difficult, and "the importance of the hotel and tourism industry to Aruba". For all these reasons, the court affirmed the granting of Defendant's motion to dismiss for forum non conveniens.

Forum Selection Clause

58. *Ramada Worldwide, Inc. v. SB Hotel Management, Inc.,* 2015 WL 75836 (DNJ, 02/23/2015). Defendant was a licensee of Plaintiff and engaged in a guest lodging facility operation. Plaintiff alleges that Defendant breached the agreement, and seeks fees and damages. The case was commenced in New Jersey. Defendant's Ramada Inn is located in Minnesota. The license agreement recognizes New Jersey as a "non-exclusive state" for personal jurisdiction of Defendant and unambiguously provides that Defendants consent to New Jersey as a proper forum." Defendant moved to transfer jurisdiction to Minnesota. Based on these clauses, the court denied the motion to change venue. Additionally, while Defendant will be inconvenienced defending this case in New Jersey, Plaintiffs would be inconvenienced pursuing it in Minnesota.

Franchise

59. *Travelodge Hotels, Inc. v. Shivmansi, Inc.,* 2015 WL 2354027 (D.N.J., 05/14/2015). Plaintiff and Defendant entered into a 15-year license agreement in 2005 for the operation of a 45-room Travelodge facility in Corona, California. The agreement barred Defendant from transferring the property without Plaintiff's written consent. Plaintiff alleges that Defendant sold the facility in March, 2011 without Plaintiff's written authorization. Prior to the sale, Plaintiff had worked with the then-proposed buyer to secure compliance with the license agreement but without success, causing Plaintiff to withhold consent. Following the sale, Plaintiff terminated the License Agreement and sought liquidated damages for early termination per the license agreement in the amount of $90,000 plus unpaid recurring fees of $112,458, interest in the amount of $52,368, and attorney's fees of $3,900. Defendant failed to answer the complaint or oppose Plaintiff's motion for a default judgment. The court granted the motion in the amounts requested after verifying Plaintiff's calculations.

60. *Howard Johnson International, Inc. v. SV Hotels,* 2015 WL 4199280 (D.N.J., 07/10/2015). Plaintiff is a lodging franchise system that owns the trademark to Howard Johnson. It contracted with Defendants who agreed to operate a restaurant for 15 years using the Howard Johnson name and pay certain fees. Defendant breached and failed to cure. Plaintiff terminated the Franchise Agreement and sued for unpaid fees of $104,314.02, liquidated damages in the amount of $177,105.77, and attorney's fees of $9,765.30. The case qualifies for federal jurisdiction based on diversity of citizenship. Plaintiff is a Delaware corporation, Defendants are citizens of Virginia and Plaintiff seeks more than the required $75,000. Plaintiff adequately pled a breach of contract claim – the existence of the contract, violation by Defendant, and resulting damages. Defendant defaulted and was unable to show a meritorious defense. For these reasons, Plaintiff's motion for final judgment was granted in the total amount of $291,185.09. For another case in which the court refused to grant a franchisee's motion for relief from a default judgment, see *Choice Hotels International, Inc. v. Grove*, -F.3d_, 2015 WL 4081169 (7th Cir., 7/7/2015). In this case the basis for the default was lawyer neglect. The court noted the client's remedy is a malpractice action against the lawyer.

61. *Travelodge Hotels, Inc. v. SSB and Associates, LLC,* 2015 WL 4530432 (D.N.J., 07/27/2015). Defendant was a franchisee of Plaintiff. Defendant repeatedly failed to make

payments required under the License Agreement between the parties. Plaintiff therefore terminated the agreement prior to the expiration of its 15 year duration. Plaintiff sued for damages and an injunction. Defendant defaulted. Plaintiff was awarded $207,414.72 in recurring fees plus interest at the rate of 1.5%/month; $76,500 in liquidated damages for termination as provided in the License Agreement plus interest in the amount of $34,711.60; $8,587.32 in attorney's fees and costs; and a permanent injunction prohibiting Defendant from using Travelodge trademarks.

62. *Robinson v. Wingate Inns International, Inc*., 2015 WL 4064654 (D.N.J., 06/30/2015). Plaintiff, an hotelier, entered into a hotel franchise agreement with each Defendant – Wingate and Wyndham. Both hotels failed. In Plaintiff's view, the cause was Defendants' reneging on promised financing. Plaintiff sued for breach of contract, breach of the covenant of good faith and fair dealing, and fraud. Defendants moved to dismiss the latter two claims. The court granted the motion and dismissed the two causes of action. Concerning the good faith and fair dealing count, the court determined that the allegations against Defendants do not provide "a plausible inference that [the hotels] violated community standards of decency, fairness or reasonableness." Concerning fraud, a complaint must state the circumstances constituting fraud with precision, described as a heightened pleading requirement.

Franchisor/Arbitration

63. *Choice Hotels, Int'l v. Swami Krupa, Inc.*, 2015 WL 4430684 (D. Md. 07/17/2015. Plaintiff franchisor sued to confirm an arbitrator's award against Defendant. The Defendant failed to respond to the lawsuit. The court must grant the order to confirm the award if there is a valid contract between the parties providing for arbitration (as was the case here), and none of the following circumstances exist: 1) the award was procured by corruption, fraud or undue means; 2) partiality or misconduct by the arbitrator exists, and 3) the arbitrator exceeded his powers. Mere misinterpretation of a contract or an error of law does not suffice to overturn an award. By failing to respond, Defendants have not demonstrated any ground to vacate. The arbitrator's award was affirmed.

Fraud

64. *Borgata Hotel Casino & Spa v. Ivey;* 93 F. Supp.3d 327, 2015 WL 1137859 (03/12/2015). Plaintiff is an Atlantic City resort hotel and casino. Defendant is a high-stakes professional gambler. Defendant visited Plaintiff's casino and hotel on four occasions. Defendant made five requests involving his play of Baccarat, a card game used in gambling. His explanation for the requests was superstition. One of the requests required an 8-deck shoe be used for the entire play of each session. The hotel agreed. During the four visits Defendant won $9,626,000. In this lawsuit Plaintiff accuses Defendant of fraud by using a scam called "edge sorting' which eliminates much of the chance normally associated with the game, and voids the "fair odds" of the usual play of the game. Defendant moved to dismiss which the court denied. Instead, it found that Plaintiff pleaded a fraud case sufficient to survive the motion to dismiss.

Insurance

65. *Kleinberg v. Nevele Hotel, LLC,* _NYS3d_, 2015 WL 2097612 (NY, 3rd Dept. 05/07/2015). Plaintiff was injured while skiing at Nevele ski resort and sued. The resort's insurance company denied that it was obligated to defend or indemnify the hotel. Nevele sued seeking a declaratory judgment that Defendant Lexington Insurance Company is obligated to Defendant and indemnify the resort. The policy required that the hotel give the insurer notice of claims "as soon as practicable." Nevele generated an incident report on the day of the accident, February, 2006. Plaintiff sent a notice of the injury to the hotel in March, 2006. The insurance company was not notified of the incident by Nevele until ten months later. The court ruled that the insurance company has no duty to defend or indemnify the hotel given the lack of prompt notice.

66. *Colorado Hospitality Service, Inc. v. Auto-Owners Ins. Co.,* 2015 WL 6098639 (Colorado, 10/16/2015). The Ramada Englewood in Englewood, Co. hired Southeast Hospitality, LLC to manage the hotel. The contract obligated Southeast, among other things, to maintain and repair real property, and obtain and maintain insurance coverage for the property. Southeast's interests were assigned to Plaintiff. The hotel experienced damages from a hail storm in 2012. The insurance company offered to pay $137,149. Plaintiff claimed a loss of $2,423,632. Plaintiff sued; the insurance company denied the management company had an insurable interest. The court held Plaintiff's lack of an ownership interest in the hotel is not dispositive. Further, Plaintiff's contractual obligation to maintain insurance and make repairs created a question of fact on insurable interest sufficient to withstand a motion to dismiss.

Jurisdiction

67. *Skyers v. MGM Grand Hotel, LLC,* 2015 WL 1268254 (D.N.J., 03/18/2015). Plaintiff, a guest at Defendant hotel, twisted her ankle on a step, and fell on her right side. This occurred while walking from the parking garage to the hotel. Plaintiff claimed the reason she tripped was a large hole in the stair. Plaintiff seeks $400,000 in compensatory damages and $100,000 in punitive damages. Jurisdiction is based on diversity of citizenship but Plaintiff alleged only that Defendant is a *resident* of NJ but does not say Defendant is a *citizen*. The latter is necessary. The court thus directed the parties to file amended pleadings enabling the court to determine if federal jurisdiction applies.

68. *Stern v. Four Points by Sheraton Ann Arbor Hotel,* 2015 WL 7289293 (NY, 1st Dept. 11/19/2015). Plaintiff, resident of New York, made on her computer a reservation for a room at the Sheraton Inn in Ann Arbor, Michigan. While a guest there, she tripped over a walkway in the hotel lobby and fractured her knee. She sued the hotel in New York; the hotel contested jurisdiction. The court said that the hotel's participation in the interactive website for Sheraton hotels may demonstrate that it transacted business in New York. In this case, however, the relationship between the hotel's website activities and Plaintiff's negligence action relating to an allegedly defective condition on the premises in Michigan is too remote to support the exercise of long-arm jurisdiction. Therefore, the motion to dismiss was properly granted.

Negligence/Alcohol Consumption

69. *Williams v. The Cheesecake Factory Restaurants, Inc.,* 2015 WL 8316033 (D. Md, 12/08/2015). Plaintiffs in this case are a father and nine-year-old son. While dining at a Cheesecake Factory Restaurant, the child was served a beverage containing alcohol. Apparently the child became ill and so is suing the eatery. The case turns on a technical point, but the facts earn the case a place in the top 100. Protocols for serving both youngsters and alcohol should be adopted to help ensure a child does not get access to alcohol by a server.

Negligence/Premises Liability

70. *Wood v. Rodeway Inn & Choice Hotels International, Inc*., 2015 WL 994855 (Del. Super., 03/04/2015). Plaintiff was a guest in Defendant's hotel. He slipped and fell in the bathtub, injuring his spine, and sued based on negligence. Defendant contests the sufficiency of the accusatory instrument. Negligence cases must be pleaded with some specificity including what acts constituted the breach of duty. The court found the complaint in this matter was "bare-boned and sparse, dangerously toeing the line of imprecision and incompleteness but nonetheless sufficient." The court thus denied the motion.

71. *Fazio, Jr. v. Fairbanks Ranch Country Club*, No. D063147 (Cal. Ct. App. 01/29/2015). Plaintiff, a musician at Defendant's country club, suffered injuries when he fell into a hole on the stage due to the assembling of the risers. Defendant argued that Plaintiff assumed the risk of his injuries and that the country club had no duty to configure the stage in any particular way. Plaintiff alleged Defendant was negligent and Defendant moved for summary judgment which was granted. On appeal, the case was reversed stating that there are issues of triable fact because the stage may have posed risks beyond those inherent in performing on a stage. The court also dismissed Defendant's position that the stage was not a dangerous condition and that Plaintiff could have avoided the risk of falling by using due care himself. The court said reasonable minds could differ as to whether the stage condition posed a substantial risk of injury justifying the use of due care.

72. *Carlson, et al., v. BRGA Associates, LLC, et al*., No. CV 213-170 (S.D. Ga. 01/22/2015). Plaintiffs, a couple from the northeast, were traveling to Florida and stayed overnight at a hotel in Georgia where they have stayed in the past. Plaintiff alleged that 95 % of all her jewelry was stolen from her hotel room and sued Defendant failure to take appropriate measures to safeguard Plaintiff's valuables. In the room, the man inspected the guest room safe provided by the hotel and tried to open it without success several times. Before leaving the property to go to dinner, the couple realized they had forgotten the jewelry in the room but chose not to go back to retrieve the unsecured jewels as it was inconvenient. When they returned to the room, they noticed the jewels were missing from the room. The district court granted summary judgment in favor of Defendant and said the couple assumed the risk thus barring their claim. The court noted that the Plaintiffs tested the danger and they should have known that a safe provided in a hotel room may indicate the need to safely store items of

value and that theft was a conceivable risk. Plaintiffs argued they did not have knowledge of prior thefts, but the court agreed with Defendant.

73. *Lackey, et al., v. Disney Vacation Development, Inc., et al.*, No. 2:13-cv-2074-HRH (D. Ariz. 04/01/2015). Another brown recluse spider bite case. This one occurred in Hawaii and Plaintiff noticed a small red mark on his right middle finger on the morning of his departure. The bite got worse so he had it checked out with a doctor and he found out he had a staph infection which ultimately resulted in the loss of his finger. He sued the hotel for premises liability. Defendant's filed for a summary judgment which was granted. The hotel had monthly treatments for pests, housekeepers were trained to spot and report any pest activity and there were no guest complaints about pests logged into the maintenance reports for several months leading up to Plaintiff's stay. The court held that no reasonable jury could find that the resort had any actual knowledge of any specific dangerous condition on property regarding pests. Plaintiffs did not offer any evidence that the spider problem was prevalent in the area or extensive at the resort. Also, the resort could not have reasonably anticipated venomous spiders would be found in the guestrooms. Verdict for Defendant.

74. *Clark v. Darden Restaurants, Inc., et al.*, No. 14-22810 (3d. Cir. 05/27/2015). A patron at Defendant's restaurant sustained an eye injury when a dropped shattered plate threw pieces of the plate into his eyes. The server who dropped the plate noticed that the plate felt a little slippery and greasy. The jury awarded Plaintiff $300,000 in damages denying Defendant's argument that the dropped plate as an accident. Affirmed on appeal, the court said Defendant merely argued that the server could have accidentally dropped the plate rather than taking the position that negligence was not the proximate cause of the damages. Defendant argued for a new trial based on information provided to the court about Plaintiff's unpaid student loans when determining his damages (Plaintiff couldn't get a job to repay his debt because of injuries) and the court said there was no abuse of discretion. The court never instructed the jury that the student debt should be considered in determining damages.

75. *Purcell v. Tropicana Casino & Hotel*, 2014 WL 8891191 (N.J. Super. A.D., 06/01/2015). Plaintiff was injured when a Tropicana Hotel elevator descended 34 floors and landed on a safety buffer in the elevator pit in the lower levels of the hotel. Plaintiff sued the hotel for negligence. The court rejected Plaintiff's proposed expert because he did not engage in proper diagnostic procedures to prove the link between the elevator's failure to stop and Defendant Otis Elevator's negligence. The expert failed to test the elevator, did not weigh the elevator, and did not perform a load differential test. The court thus affirmed judgment in favor of Defendant Otis.

Negligence/Security

76. *Green v. Logan's Roadhouse, Inc*., No. 2:13-CV-238-KS-MTP (S.D. Miss. 12/16/2014). Plaintiff, a patron at Defendant's restaurant got into an altercation with another customer in connection with Plaintiff's sister having in her possession another customer's wallet that was left on the table when the customer left. The customer came back and the police were called. The officer took the money from Plaintiff's sister and gave it to the customer. Plaintiff and

the customer got into a fight about the incident and Plaintiff was injured. Plaintiff claimed that Defendant breached its duty to exercise reasonable care and protect Plaintiff from foreseeable harm. Summary judgment for Defendant was denied because there was enough evidence to support a claim that the physical confrontation was foreseeable. Plaintiff's sister said that the customer was intoxicated and loud, all the while challenging Plaintiff to go outside. Defendant's bartender also testified that the parties were going back and forth and the Plaintiff's sister asked Defendant's employees to call the police. The Defendant's failure to call the police about the fight could lead a jury to conclude that Defendant's actions could have contributed to Plaintiff's injuries.

77. *Sawvell v.Gulfside Casino, Inc.,* No. 2013-CA-01617- COA (Miss. Ct. App. 02/24/2015). Plaintiff, a casino patron, was exiting her car in the parking lot of Defendant's casino when she was injured as a result of being struck by an unknown attacker with a gun. Plaintiff sued the casino claiming that Defendant failed to implement reasonable security measures to protect patrons from harm. Plaintiff acknowledged that there was no atmosphere of violence occurring when she entered the casino premises. She also acknowledged that Defendant could not have been aware of the violent nature of the unknown attacker. The court granted Defendant's motion for summary judgment which was affirmed on appeal. Even though the woman was an invitee of Defendant and the casino did have a duty of care to protect her, the protection only extends to injuries reasonably foreseeable.

78. *Beckwith v. Interstate Management Company, LLC,* No. 14-00214 (RC) (D.D.C. 03/04/2015). Plaintiff, a guest of Defendant's hotel, suffered physical and emotional injuries after another patron touched Plaintiff on the crotch when he was entering a restroom on the lower level of the hotel and again when he was in the restroom. Plaintiff told the man to stop and the assailant left the restroom. The incident was reported to management. Security tapes located the man in the hotel's dining room and he was subsequently arrested by police. A complaint was filed and Defendant moved for summary judgment which was granted. The court stated that facts failed to establish the foreseeability of the alleged assault to indicate that Defendant had a duty to conform to a certain standard of care. Plaintiff's argument of the number of violent crimes in the area within a half-mile radius of the hotel was not compelling to convince the court that the assailant was an intruder. Plaintiff also argued unsuccessfully that the standard of care should be to have security guards patrolling the lower level of the hotel, but only offered expert testimony instead of presenting any evidence of national standards for security guards.

79. *Crill v. WRBF, Inc., et al.,* No. 319121-III (Wash. Ct. App. 09/03/2015). A patron at Defendant's Denny's restaurant was injured when another customer got into a fight around 2:00 a.m. after drinking at a local bar. The restaurant did not have written procedures for how to deal with troublesome guests but it did train employees on how to handle disruptive guests and the employees were instructed to call the police if need be. When the parties started being loud, the manager arrived at the table to see if there was a problem and ordered the aggressor's table to quiet down or leave. Plaintiff stood up and was struck by the aggressor causing injury. Plaintiff sued for Defendant's breach of duty of care to maintain safe premises and Defendant filed for a summary judgment. The summary judgment was

granted and affirmed on appeal. The court found that the incident was not foreseeable even though the law generally imposes the same duty on a business in protecting a customer from acts of another regardless of whether the acts are intentional or not. There had never been an assault inside the premises and therefore Defendant could not have reasonably anticipated that one patron would assault another. Verdict for Defendant.

80. *Heimberger v. Zeal Hotel Group, Ltd*., _NE3d_, 2015 WL 5555244 (Oh. App., 09/22/2015). Plaintiff's purse was stolen from the hotel lobby. Plaintiff sued the hotel, alleging negligence. The court determined that theft of a pocketbook from the lobby was not foreseeable despite a youth hockey team's presence at the hotel and despite a suspicious person observed on video in and around the lobby. Although the hotel police log included 15 calls during the prior eight months, none was similar in nature. Plaintiff's claim that the security protocols were inadequate was irrelevant without a duty created by foreseeability.

Negligence/Vicarious Liability

81. *Mannion v. Rosewood Hotel & Resorts, LLC*, 2015 WL 1005017 (D. Virgin Islands, 03/04/2015). Plaintiff and her husband visited Defendant's resort. They inquired about a charter boat trip, specifying one that would move slowly and avoid rough waters. Defendant's concierge recommended a charter through Nauti Nymph Company (NNC). When boarding, Plaintiff and her husband advised the captain that they did not like speed or rough waters. En route the vessel encountered waves from passing boats. Plaintiff was thrown into the air and landed hard. She was seriously injured leading to great pain and suffering, lost income, and lost enjoyment of life. She sued the hotel. It denied liability because the excursion took place outside of its "sphere of control." The hotel did not own any of NNC's boats, and it did allow the boating company to use the hotel's dock for pick up and discharge of customers. The court dismissed the case noting the hotel did not know the trip would be dangerous and had no negative information about the captain's handling of boats. Nor did the hotel control any part of NNC's business. Therefore the hotel had no duty to warn or alter the concierge's recommendation.

82. *Anderson, et al., v. Mandalay Corporation, et al.,* No. 61305, 61871 (Nev. 10/15/2015). Plaintiff, a guest of Defendant's hotel, was staying at the hotel while attending a trade show, had been out drinking with coworkers, and ended up in her hotel room with an employee of the hotel who raped Plaintiff. The employee was found and pleaded guilty to sexual assault. Plaintiff filed a complaint against Defendant for vicarious liability. The employee had a key card that allowed him access to guestrooms. The district court granted Defendant's summary judgment motion which was reversed on appeal. The Supreme Court of Nevada stated that there are questions remaining as to whether the employee's actions were foreseeable and remanded the case. The court mentioned that there were at least five prior employees who had sexually assaulted guests before Plaintiff's attack. Defendant had notice that its employees with key card access were capable of sexual assault.

83. *Lind, et al., v. Domino's Pizza, LLC, et al.,* No. 14-P-928 (Mass. Ct. App. 07/29/2015). An employee of a Domino's Pizza franchise was delivering a pizza in the early morning when

the driver was kidnapped, robbed and murdered. The family of the driver sued Defendant, the franchisor, claiming vicarious liability for the death of the driver, and negligent supervision and training. The jury found in favor of Defendant and the ruling was affirmed on appeal. The court said that Defendant set standards for safety but that the Plaintiff did not show that Defendant controlled a specific policy or practice that resulted in the harm to the driver. Defendant does mandate that delivery be available until 1:00 a.m. but it was the franchisee's decision to remain open until 3:00 a.m. and it was also the franchisee's duty, in its discretion, to decide if an area is too dangerous for deliveries. Plaintiff argued that Defendant's policy prohibiting weapons and carrying more than $20 in cash were an attempt to control, but the court didn't agree by saying these measures were for security and employee safety and not the reason for the driver suffering the harm.

Pleadings

84. *Brooklyn Downtown Hotel, LLC v. NY Hotel & Motel Trades Council, AFL-CIO*, 2015 WL 779441 (EDNY, 02/25/2015). Federal Rules of Civil Procedure Section 8 (a) (2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Here the complaint contains 163 paragraphs and is "neither short nor plain." The court stated this "outsized complaint" conjures up an address by a former Lord Chancellor of England noting "one counsel who had offended the court by preparing a needlessly long and prolix pleading on parchment. He was ordered to have his pleadings taken, a large hole to be cut in the middle, he was to have his head pushed through it, and he was to attend the first day of the term of every court with his head through the pleadings." Lord Buckmaster, "The Romance of the Law," 11 ABA J 579, 581 (Sept., 1952).

Public Money/Private Convention Hotel

85. *Wells v. City of Wilmington*, _SE2d_, 2015 WL 3777373 (N.C. App. 06/16/2015). Hotel owners moved to hold Defendant city in contempt for allegedly violating consent judgment that prohibited use of public funds to subsidize a privately owned hotel as part of a planned convention center complex. Appeals court affirmed trial court's ruling that city did not violate the Consent Judgment. The judgment prohibited public funds to be used to "acquire, build, equip, operate or otherwise underwrite or subsidize the [convention] hotel or its operations . . . ". Two appraisals were done of the property, one in 2007 for $475,000, and one in 2013 for $1,320,000. The appraiser of the latter figure used certain incorrect assumptions that proved untrue. The city had trouble finding a developer but was ultimately able to sell the site to a hotel company in 2014 for $578,820. Plaintiffs claimed the difference between the price and the second appraisal constituted a subsidy in violation of the Consent Judgment. The court rejected this argument finding the second appraisal flawed, and noting the Consent Judgment referred only to the hotel, not the land for the inn.

RICO (Florida Act)

86. *Burgese, et al., v. Starwood Hotels & Resorts Worldwide, Inc., et al*., No. 11-cv-03341 (D. N.J. 04/14/2015). Plaintiff, a frequent guest of the W Hotel in South Beach was attacked in

the lobby of the hotel by a group of women, allegedly prostitutes running prostitution activity in the hotel and known by hotel staff. While Plaintiff was leaving in the ambulance, Plaintiff's husband asked the hotel to detain the women until the police arrived. Plaintiff states that the staff assisted the aggressive women by obtaining taxis for them so they could escape and so that their identities would not be known to police, all in an attempt to be complicit with the prostitution activity on Miami Beach. Plaintiff filed a claim under Florida's RICO Act alleging that their injuries were proximately caused by the acts. Defendant filed a motion to dismiss and it was denied by the court. The court said the Florida RICO Act is different than the federal RICO statute and that it does not restrict injuries to "business or property" injuries but states that any person "who proves by clear and convincing evidence that he or she has been injured by reason of any violation" of the statute has a valid cause of action for damages. The court also said that although the Plaintiffs may not be able to prove that the hotel participated in the prostitution activity, it held that the allegations were sufficient enough to proceed.

Service Charge

87. *Kawakami v. Kahala Hotel Investors, LLC d/b/a Kahala Hotel and Resort*, No. SCWC-11-0000594 (Hawaii 12/22/2014). Plaintiff held his wedding reception at Defendant's hotel and the hotel collected 19 percent service charge but didn't give the entire amount to the tipped staff. Defendant retained 15 percent to help pay for wages for the staff. Plaintiff sued in the circuit court for violations of Hawaii's regulations relating to unfair or deceptive acts or practices and unfair method of competition. The court held that customers are entitled to know that a portion of the charge would not be paid to employees as tip income, but the appellate court disagreed stating that no disclosure was required under Hawaii law. The Hawaii Supreme Court weighed in and said the appeals court erred and remanded the case. Under the law in Hawaii, a hotel or restaurant must either give the full amount of the service charge as a tip to employees or disclose to the customer that the service charges are not fully being distributed as tip income. The court said that withholding 15 percent to help offset wages was really to pay administrative costs and offset the Defendant's obligations to pay salary.

Service of Process

88. *Burch v. Bellagio Hotel & Casino,* 2015 WL 5445018 (Nev., 09/15/2015). Plaintiff sued claiming wrongful termination, discrimination, retaliation, and intentional infliction of emotional distress. The summons and complaint were served on Bellagio's attorney for labor and employment. Counsel was not an officer, managing or general agent, or any other authorized agent for Defendant. Therefore, service of process was insufficient and so was quashed.

Statute of Limitations

89. *Mathews v. Westin Washington Dulles Airport*, 2015 WL 4290182 (3rd Cir. 07/16/2015). Plaintiff, a travel agent, planned a winter getaway tour at the Westin Hotel in Herndon,

Virginia in February, 2012. More people came on the tour than the hotel had planned for. When food ran out before everyone was served, guests became disgruntled. Plaintiff had a heated exchange with hotel staff. Plaintiff claimed that the workers defamed him in front of his customers and thereby jeopardized his business. He also complained he was forced to reimburse guests who paid out-of-pocket for meals that were supposed to be included. Plaintiff sued for defamation, interference with business, and intentional infliction of emotional distress, all of which have a one year statute of limitations. Plaintiff filed his complaint in April, 2013, a year and two months following the events underlying the lawsuit. The court dismissed the case as untimely.

90. *Almeda Hotel v. City of LA*, _Fed. Appx_, 2015 WL 2168360 (CA9, Cal., 05/01/2015). Plaintiff, owner of the Almeda Hotel in Los Angeles, objected to the inn's designation by the City of Los Angeles as a residential hotel. Two years later Plaintiff sought to challenge the determination. The statute of limitations for challenging a local agency's decision is 90 days from notification of the designation. Plaintiff's challenge is thus time-barred.

91. *Steele, et al., v. Perry's Restaurant, LLC, Et al.,* No. H-09-2789 (S.D. Tex. 02/24/2015). Defendant's restaurant deals primarily in accepting payment from customers in credit card payments, yet pays servers in cash for tips. Defendant states it withholds an amount given as tips to offset the swipe fees, charge backs, void fees and manual entry fees charged by credit card companies. The court found that the aggregate amount paid for such fees was no more than 2.5 percent on average. Defendant was withholding close to 3.25 percent. Plaintiffs, a group of servers at Defendant Perry's restaurant, alleged that Defendant's withholding of funds was willful and illegal, thus extending the statute of limitations for filing claims. The court found that Defendant's actions were not willful as Plaintiffs didn't show that the practice was willful, and that the statute of limitations for this case was two years starting when each server joined in on the lawsuit

Tipping/Tip Pooling

92. *NYS v. Per Se Restaurant*, July, 2015. The NYS attorney general sued the high-priced restaurant Per Se for failing to pay service charges to employees. A 2011 New York ruling requires that service charges imposed at restaurants be treated as gratuities and paid to workers. For the first 21 months following the adoption of this rule, Per Se used service charges to help pay for restaurant expenses such as rent, marketing, utility maintenance, inventory, wages, etc. The tony eatery settled the case by agreeing to pay $500,000 to employees who worked there during the relevant time period.

93. *Chowdhury, et al., v. GK Grill LLC d/b/a Le Marias Restaurant, et al*., No. 153996/14 (N.Y. 02/03/2015). Plaintiffs, a group of about 40 employees at Defendant's steakhouse in New York filed for a class action against Defendant alleging that allowing the restaurant's maître d's in the tip pool invalidated the legality of the tip pool. Defendant filed for summary judgment but the court denied the motion stating that Plaintiffs may proceed because there are questions that exist as to whether the maître d's were management employees. The

records held by Defendant were weak and not definitive. The court also held that Plaintiffs could proceed with their spread of hours charges claim.

94. *Lozano, et al., v. Rugfrit 1350 LLC d/b/a Bistro Milano, et al.,* No. 159570/2014 (N.Y. 04/27/2015). Plaintiff, a former busboy at Defendant's restaurant sued Defendant for violations of wage and hour laws. The court granted Defendant's motion for summary judgment dismissing some of Plaintiff's claims. The court did allow Plaintiff to proceed on his claim that Defendant failed to pay him a "call in" premium wage. On the claims dismissed, Plaintiff argued that the tip pool was not properly communicated to him although he signed off on the tip pool notice he received. The court said that although the notice may not have been in the form that Plaintiff would have liked, it still met legal requirements for notice. Plaintiff also claimed he was owed overtime pay and the court dismissed that claim noting that his calculations were not correct.

95. *Montano, et al., v. Montrose Restaurant Associates, Inc., et al.,* No. 14-20202 (5th Cir. 08/28/2015). Plaintiffs are two waiters at Defendant's restaurant who claimed that Defendant should not have included baristas in the tip sharing pool. Defendant argued that baristas customarily and regularly receive tips and should be included. The district court granted Defendant's motion for summary judgment but was reversed by the circuit court stating that the Department of Labor guidelines on whether baristas or "coffee men" should customarily receive tips is not easy to determine; but a DOL opinion letter states that those who receive tips should "have more than a de minimis interaction with customers." The court reversed the motion in favor of Defendant so the lower court could decide whether baristas are eligible to participate in the mandatory tip pooling arrangement.

Unemployment Benefits

96. *Coleman v. Spa Hotels*, LLC, 2015 WL 1237304 (NY, AD 3rd Dept. 01/20/2015). Claimant was a housekeeper at Defendant hotel. She had a verbal dispute with a co-worker during which she threatened the coworker with physical harm. Following the argument, claimant took unspecified overt steps to follow through with the threat of physical harm. She was terminated and sought unemployment benefits. Her request was denied because her behavior constitutes misconduct that disqualifies her from unemployment insurance benefits.

Union/NLRB Activities

97. *Chelsea Grand, LLC v. NY Hotel & Motel Trades Council,* 2015 WL 6717373 (2nd Cir. 11/04/2015). Defendant union sought to organize Plaintiff's workers. Plaintiff refused to provide a list of hotel employees. The union sought and received an arbitrator's finding that the hotel was obligated to provide that information. The court affirmed based on an "accretion clause." The hotel hired a management company to operate the hotel. The management company had signed a memorandum of agreement (MOA) with the union in 2004 obligating the management company to provide the name if an organizational effort was ever begun. The management company's MOA bound the Defendant hotel based on theories of joint employer and agency.

98. *Soaring Eagle Casino and Resort v. National Labor Relations Board*, No. 15a0134p.06 (6th Cir. 07/01/2015). Interesting case about whether or not the National Labor Relation Board rules extend to tribal activities when it comes to union matters. A former housekeeper of the Soaring Eagle Casino and Resort ("Resort") was suspended and subsequently terminated for solicitation related union activities against the policies in the Resort's employee handbook which had a no-solicitation policy. The union filed a charge with the NLRB accusing the Resort (owned by the tribe) of violating the National Labor Relations Act by banning employee discussion of union activities. An administrative law judge held that the NLRB did have jurisdiction over the Resort and that the Resort did violate the NLRA. The NLRB and the 6th Circuit Court of Appeals affirmed the NLRB's ruling. The Resort argued that the NLRA did not apply and the court disagreed saying that Congress did not give explicit direction as to the applicability of the NLRA's rules to tribal entities, but determined that the NLRA does apply. The court based its decision on another recent holding in *NLRB v. Little River Band of Ottawa Indians Tribal Government,* No. 14-2239 (06/15/2015) and affirmed the NLRB's decision.

99. *Venetian Casino Resort, LLC, v. National Labor Relations Board,* Nos. 12-1021, 12-1076 (D.C. Cir. 07/10/2015). The road in front of the Venetian hotel was being expanded soon after it was built in 1999 and the sidewalk was being replaced. A temporary walkway was installed. The Nevada Dept. of Transportation issued two labor union permits allowing a demonstration on the temporary walkway. The Venetian objected on the grounds of trespass claiming the walkway was on private property. When the demonstrators arrived, the Venetian requested police assistance. The NLRB accused the Venetian of committing unfair labor practices. The 9th Circuit Court of Appeals held that the walkway was a public forum and subject to 1st Amendment protections and that the Venetian did not have a right to impede access to the walkway. The NLRB affirmed a ruling that the demonstration was in fact a protected activity. The Venetian argued that the *Noerr-Pennington* doctrine immunizes the Venetian from liability under the Act. The U.S. Circuit Court of Appeals in Washington agreed with the Venetian and granted the petition for review.

Unreasonable Search and Seizure

100. *City of Los Angeles v. Patel, et al*., No. 13-1175 (U.S. 06/22/2015). The city of Los Angeles municipal code requires that hotel operators keep details about their guests and provide them to law enforcement upon request or face a criminal misdemeanor charge. Details such as names, addresses, number of people in the party, the make, model and license plate of any vehicles on the hotel property, arrival date and time, room number and rate charged, among other details. A group of hotel operators filed a complaint against the city stating that the rules violated Fourth Amendment rights and that they would be subjected to mandatory record inspections without consent or a warrant. The district court ruled that the hotel operators lacked a reasonable expectation of privacy but the circuit appellate court reversed. The case then proceeded to the U.S. Supreme Court. The Supreme Court affirmed the circuit court's position holding that the searches were unreasonable. The court stated that the ruling doesn't change the record keeping requirements of the municipal code for record-

keeping but states that hotel operators have an opportunity to have a neutral decision maker review the officer's demands for records before facing criminal penalties for non-compliance.

Venue

101. *Gendrikos-Bayer v. Bellagio Hotel & Casino,* 2015 WL 2383380 (D.N.J., 05/15/15). Plaintiff, a New Jersey resident, was cut in the back of her right leg while going through a revolving door at Defendant's Las Vegas hotel and "almost fully severed" her Achilles tendon. She sued in a New Jersey federal court. Defendant moved to transfer venue to Nevada. The court considered the convenience of the parties, the witnesses and the interests of justice. After listening and considering 12 factors and considering the rule that the moving party bears the burden of proving a need for the transfer, the court granted the motion. The court noted that the only connection New Jersey has to the case to New Jersey is Plaintiff's residence and her treating physicians. All proofs regarding liability (the revolving door, the Bellagio employees who witnessed the incident, the entity responsible for maintaining the door and its employees) are located in Nevada.

102. *Abromowitz v. Tropicana Casino and Resort, Atlantic City,* 2015 WL 1014511 (EDNY, 03/06/2015). Plaintiff describes himself as a "high roller." Plaintiff claims that Defendant Atlantic City casino offered to "comp" him match play coupons worth $25,000 plus other incentives if he stayed at the hotel. He agreed. However, when he attempted to redeem the match play coupons, he only received $10,000. Unhappy, Plaintiff returned the coupons. A second New Jersey casino allegedly offered Plaintiff $5,000 for shopping but also reneged on the deal. Plaintiff, a New York resident, sued both hotels in a New York claiming fraud and breach of contract. Defendants moved to transfer venue to New Jersey. The court granted the motion, in part because the location of the operative events was New Jersey, plus convenience of the witnesses favored New Jersey since most witnesses were there. The court also discussed nine factors to be considered, rendering the decision very informative for anyone studying changes of venue.

Warranty of Merchantability/Food

103. *Findlay v. Krispy Kreme (*Glasgow, United Kingdom, 06/28/2015) A woman purchased a caramel doughnut from Krispy Kreme. As she was enjoying the snack, she bit into some "blue stuff" and quickly realized it was part of a latex glove. She posted a copy of the doughnut on Instagram prompting a response from Krispy Kreme saying, "Hi Ria, please accept our apologies. Please can you send full details over to us so we can investigate and contact you? Our customer care team will be in touch with you tomorrow." (email address omitted) Anticipate a lawsuit but credit Krispy Kreme with good use of social media.

Workers Compensation

104. *Lache v. Bal Harbor Hotel,* _F.Supp.3d_, 2015 WL 2381337 (S.D. Fla, 05/12/2015). Defendant is a full-service luxury resort in Miami Beach. The resort offers patrons valet

parking services. The hotel contracted with USA Parking Systems, Inc. to provide the valets. USA Parking hired Plaintiff as a valet parking attendant. Shortly after being hired, he slipped on water while retrieving a car and suffered injuries. He received almost $100,000 in workers' compensation benefits from USA Parking. He thereafter sued the hotel, and the court granted Defendant's motion for summary judgment. An employee who receives workers compensation payments foregoes the right to sue in a civil case. The purpose of workers compensation is to "assure the quick and efficient delivery of disability and medical benefits to an injured worker at reasonable cost to the employer, and based on a mutual renunciation of common law rights and defenses by employers and employees alike."

105. *Mattos v. Starwood Hotels & Resorts*, 2015 WL 4068648 (Ariz. Appls. 07/02/2015). Plaintiff was employed in the laundry room of an Arizona Starwood resort. He slipped and fell during work, injuring his left elbow and shoulder. Per his doctor's report, Starwood insurance carrier agreed to pay a scheduled permanent partial impairment (26%) of the left upper extremity. Three years later, Plaintiff sought to reopen his claim because a new doctor's report indicated the condition was deteriorating. The court denied Plaintiff's petition to reopen based on res judicata. The court noted that res judicata is "concerned with finality, not correctness." Both claimant and the carrier could have objected to the finding of injury within 90 days after it was made. But after that time period, the finding cannot be avoided by "simply claiming it is erroneous."