TOP HOSPITALITY CASES OF 2021-2022
by Karen Morris, Esq.

ARBITRATION

1) *Choice Hotels Intern'l v. Megha Hotels, LLC,*2021 WL 6126286 (D. Md, 12/28/2021). Court review of arbitration awards. Defendant was a franchisee of plaintiff. Defendant fell behind in required payments and failed to cure the default. Plaintiff thus terminated the franchise agreement and initiated arbitration proceedings. Defendant did not appear or otherwise participate in the arbitration. The arbitrator issued an award to plaintiff for $100,59.11 for outstanding and unpaid monthly fees, interest, liquidated damages, and arbitration-related expenses. Plaintiff now seeks a court order confirming the arbitration award. Defendant was served with process but failed to respond. Review of an arbitration award by a court is "severely circumscribed" because a more expansive review would frustrate the purpose of arbitration-the quick resolution of disputes and the avoidance of the expense and delay associated with litigation. The court determined the award was not procured by corruption, fraud or undue means, the arbitrator exhibited no partiality or misconduct, and the arbitrator did not exceed his powers. The award was therefore affirmed.

2) *Fox Valley Hospitality, Inc. d/b/a/ Doubletree Appleton v. Hotel Connections, Inc.*, 2021 WL 1910717 (E.D. Wisc., 5/12/2021). Arbitration clause enforced. Plaintiff hotel contracted with defendant pursuant to which plaintiff would provide hotel rooms and related services at a reduced rate to pilots and other contract personnel flying into and out of the airport in Appleton, Wisconsin. In exchange, defendant was required to make prompt payments. The agreement contained a dispute resolution provision requiring arbitration if negotiations were unsuccessful. Defendant was delinquent in payments, owing $76,000. Plaintiff sued for the money. Defendant moved for dismissal based on the arbitration clause. The court so ordered.

ATTORNEYS FEES

3) *Sarwar v. Lake Placid Hotel Partners, LLC*, 2022 WL 833374 (N.D. NY, 3/21/2022). Attorneys hourly fee. Plaintiff was the prevailing party in an ADA case involving insufficient information on defendant's website concerning available facilities for guests with disabilities. The plaintiff sought attorney's fees calculated at $425/hour. The court found that fee to be unreasonable and reduced the award to $350/hour.

CLASS ACTION

4) *Spagnuoli v. Louie's Seafood Restaurant,* 2022 WL 657411 (E.D. NY, 3/4/2022). Delayed opt-out. A wage-and- hour class action suit against defendant restaurant was concluded with a settlement. Class member Musa Liman, who did not opt out, sought to pursue an individual wage-and-hour claim. Linman therefore moved to opt out of the class settlement. His motion was made

sixteen months after the opt-out deadline, and defendant moved to enjoin Linman from doing so. A class member seeking permission to opt out late must show excusable neglect. Liman claimed he did not receive a Class Action Notice, and did not learn of the class settlement and opt-out requirement until seven months after the court approved the settlement. Records show Liman was twice mailed a copy of the class action notice, and the collective action notice once. The court referenced the presumption that a properly mailed letter reaches its destination. Further, Liman worked at the restaurant when the class action notice was sent and throughout the opt-out period. Said the court, "It is very unlikely that Liman never heard any other employees mention the class settlement." The court determined that Liman's sworn denials of receiving notices "are simply not credible." Liman's motion to opt out was therefore denied.

CONDOMINIUM HOTELS

5) *Beaver v. Omni Hotels Management Corp.,* 2021 WL 1174719 (S.D. Calif., 3/29/2021). Alleged preference in renting out villas. Plaintiffs husband and wife own a villa in the Omni La Costa Resort and Spa (the resort). Like 98% of villa owners at the resort, plaintiff rent their villa. Per a rental management agreement, LC Brokerage managed the rental program. Per rules of the condo association, if an owner opts not to use LC Brokerage as the managing agent, the owner must pay the condo association 20% of the villa owner's nightly rental revenue. This discouraged owners from using other brokerage firms. Plaintiffs claim that LC Brokerage abdicated its rental responsibilities to Omni which abused its power to intentionally steer guests into its own hotel rooms at the resort rather than the villas, causing plaintiffs and other villa owners to lose millions of dollars. Plaintiffs claimed L.C. Brokerage violated the management contract by deferring to Omni to manage rentals. The court denied LC Brokerage's motion to dismiss. Plaintiff also sued for breach of fiduciary duty. LC Brokerage denied the existence of a fiduciary duty. The court rejected LC Brokerage motion to dismiss. The court also declined to dismiss plaintiff's RICO claim.

CONFESSION OF JUDGMENT

6) *Choice Hotels International, Inc. v. 5954 Brookhill Blvd, LLC,* 2021 WL 5955819 (12/16/2021). Confession of judgment. Defendant was a franchisee of plaintiff. Per the franchise agreement, plaintiff lent defendant $545,000 to use for hotel operations in exchange for a promissory note and related agreements. Per the franchise contract, if defendant sold the hotel to a new owner, the sale would constitute a default. Defendant sold the hotel and the new owner did not operate it as a franchise. The promissory note clearly stated in boldface font that defendant voluntarily, knowingly, and intelligently forfeited its right to notice and hearing prior to entry of judgment and agreed to confession of judgment. The court here determined that the contract contained an enforceable agreement to confess judgment. Terefore the court entered a confessed judgment against defendant.

CONTRACTS – DAMAGES FOR BREACH

7) *Travelodge Hotels, Inc. v. Huber Hotels, LLC.,* 2022 WL 44634 (D. N.J., 1/5/2022). Franchise contract, liquidated damages. Defendant was a franchisee of plaintiff. Defendant made substantial renovations to the hotel required by Travelodge before it could operate as a Travelodge facility.

The renovations were completed in January 2018. Per the franchise contract, Travelodge was required to integrate defendant into its reservation system. Travelodge failed to do so until May, 2018. By June defendant could no longer sustain the business and returned it to Travelodge. Plaintiff sued seeking liquidated damages for terminating the contract. Defendant claimed Travelodge breached the contract in a significant way by not incorporating defendant's hotel into Travelodge's reservation system for five months. The court denied Travelodge's motion for summary judgment, finding a genuine issue of material fact existed whether Travelodge's delay was a material breach. If so, defendant would be relieved of its obligation to pay liquidated damages.

DEFAMATION

8) *Tuomela v. Waldorf-Astoria Grand Wailea Hotel*, 2021 WL 233695 (D. Hawi., 1/22/2021). False police report. Plaintiff was a 20 year employee with defendant hotel when she was accused of theft. To avoid arrest she paid the hotel $900, the amount she was accused of stealing. In return, the hotel agreed to keep the circumstances of her termination confidential. The hotel's human resources representative told a hotel restaurant manager that plaintiff was fired for theft, and the restaurant manager told others.
Further, a false police report made by the hotel surfaced when she was applying for a job and she did not get it. She sued the hotel for defamation. The court recognized a qualified privilege, but not an absolute privilege, for comments made to police about the commission of a crime. The court thus denied defendant's motion for judgment on the pleadings.

DISCRIMINATION IN EMPLOYMENT – AGE, DISABILITY, AND FMLA LEAVE

9) *Morrison v. Millennium Hotels*, 2021 WL 1534203 (S.D. NY, 4/19/2021). Termination after FMLA leave. Plaintiff was a stewarding manager for defendant hotel, having worked there for forty plus years. Plaintiff took a medical leave at the age of 70. When he attempted to return to work the doctor imposed some restrictions that impacted his job, While he was on leave, the Hilton Management Company undertook negotiations to acquire the Millennium. Per the negotiations, Millennium was required to terminate all non-union employees. The hotel thus terminated plaintiff. He sued claiming age and disability discrimination. The hotel smoved for summary judgment claiming that plaintiff was terminated for non-discriminatory reasons. In addition to the transition to Hilton management, the hotel noted it had not suffered any adverse effects from plaintiff's 24 weeks of leave. The court granted defendant's motion for summary judgment.

DISCRIMINATION IN EMPLOYMENT– GENDER

10) *Lindsley v. Omni Hotels & Resorts, et al*, 2022 WL 824834 (N.D. Texas, 3/18/22). Dismissal of comparators. Plaintiff was the food and beverage director at the Corpus Christi Omni Hotel. She sued claiming, inter alia, pay discrimination in violation of Title VII. It was undisputed that she was paid less than her male counterparts. The court denied the defendants' motion for summary judgment when comparing plaintiff's salary to her three predecessors. However, the court held comparators at other facilities were not relevant because their job responsibilities were not substantially the same. Further, the court noted that different education and experience

qualifications were required, the comparators reported to the hotel's general manager whereas plaintiff reported to the director of operations, and the number of food outlets and employees varied significantly, While the job descriptions had common denominators, the court noted, "All the responsibilities, complexities, and nuances of each hotel cannot be included in the job description."

DISCRIMINATION IN EMPLOYMENT – NATIONAL ORIGIN

11) *Thomson v. Little America Hotel, Co.,* 2022 WL 62438 (D. Utah, 1/6/2022). Discrimination not served Plaintiff was terminated after 18 years working for defendant hotel, first as a server and eventually as a salesperson in the fine gift store. In numerous job performance evaluations, various problems were noted including difficulties with coworkers and "other negative work behaviors" including speaking a foreign language when not permitted by company policy, being on the phone constantly, and breaking various company rules. Several employees were planning on leaving the defendant because of plaintiff. Following her termination plaintiff sued for national origin discrimination. In the lawsuit plaintiff did not dispute that she has no knowledge of anyone at defendant hotel saying anything derogatory about Russia or Russians. The judge granted summary judgment for defendant.

DISCRIMINATION IN EMPLOYMENT - PREGNANCY

12) *Bueno v. Eurostars Hotel Co.,* 2022 WL 95026 (S.D. NY, 1/10/22). Termination soon after pregnancy announcement. Plaintiff was employed for thirteen years by defendant at its NYC Front Street Hotel. Her last position was chief operating officer. She was terminated from her employment five days after telling her boss she was pregnant. Her termination letter provided no basis for the termination and plaintiff received no oral explanation. She never received any warnings or bad reviews. The court denied the hotel's motion to dismiss. Said the court, "The short temporal proximity between the time plaintiff disclosed her pregnancy and her termination – only five days – more than suffices to establish an inference of unlawful discrimination.

DISCRIMINATION IN EMPLOYMENT – RELIGION

13) *Pizarro v. Euros El Tina Restaurant, et al,* 2022 WL 484851 (S.D. NY, 2/16/2022). Religious discrimination not found. Plaintiff, a manager at defendant restaurant, sued the restaurant and the owners for discrimination based on religion and gender. The religious claim was based on a single incident in which the owner of the restaurant thew plaintiff's bible in the garbage and told her it was "bad luck." The court held this one incident was insufficient to establish a prima facie case for a hostile work environment based on religious discrimination. That portion of the complaint was thus dismissed. Additionally, the court dismissed plaintiff's Title VII claims against individual owners of the business because Title VII does not create a cause of action against individual defendants.

DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION - ADA

14) *Langer v. Music City Hotel, LP,* 2021 WL 591825 (N.D. Cal., 12/15/2021). Disability information on website. Plaintiff uses a wheelchair for mobility and suffers from partial hearing loss. He requires an accessible guestroom when staying at a hotel. He consulted

defendant's website to determine if the facility was sufficiently accessible for him but found the information incomplete. Defendant hotel was built in 1907, long before the adoption of the ADA in 1991. The website clearly states that the hotel lacks an elevator and is not accessible for persons with mobility disabilities. The website also includes an invitation to contact the hotel or reservations service if questions arise regarding accessibility specifics. Said the court, "Plaintiff's contention in his boilerplate complaint that the website does not provide sufficient information for him to determine whether any of the guestrooms would work for him is demonstrably inaccurate: it does and they would not."

15) *Disabled Patriots of America, Inc. v. Hotel Lincoln,* 2022 WL 226026 (N.D. Ill, 1/26/2022). Standing to sue. Plaintiff is a non-profit organization with a mission of ensuring places of public accommodation are accessible to, and usable by, disabled individuals. Defendants own and operate the Hotel Lincoln in Chicago. Non-party Betancourt is a member of plaintiff and uses a wheelchair for mobility. Betancourt was a guest at defendant hotel and encountered various architectural barriers and other conditions that violate the ADA. Plaintiff lacks standing since it was not subjected to discrimination, but rather one of its members was. Therefore, the complaint was dismissed.

EXPERT WITNESSES

16) *Dunlap v. Choice Hotels International, Inc.,* 2021 WL 6126154 (W.D. Ky, 12/28/2021). Proposed expert witness rejected. Plaintiff was a guest at defendant hotel. After he checked out, housekeeping observed physical damage to the room and missing linens. The hotel notified the local police department and a warrant of arrest issued. A year later plaintiff was stopped for a traffic offense and then arrested on the warrant. Plaintiff sued the hotel for false arrest. Plaintiff sought to submit the testimony of an expert witness. The hotel contested the need for an expert. To admit an expert's testimony, the witness' scientific, technical, or other specialized knowledge must be helpful to the trier of fact in understanding the evidence or determining a fact in issue. Plaintiff sought to introduce the supposed expert's professional opinion regarding the "impropriety of defendant's practices and procedures". Stated differently by the court, the witness would testify that the hotel was negligent and that its negligence caused plaintiff's injuries. The court determined these are matters within the competence of jurors to understand and decide. Said the court, "It does not take an expert to know that checking surveillance tapes and keypad information would help corroborate any accusations and speculations. That's not industry know-how, it's just common sense." Therefore, the hotel's motion to exclude the witness' testimony was granted.

17) *Toledo v. MGM Resorts International dba Borgatoa Hotel Casino and Spa,* 2021 WL 5861283 (3rd Cir., 12/10/2021). Expert witness rejected. Plaintiff tripped while walking through a retail area of defendant hotel. Upon examining the area, she observed a metal expansion joint raised above the tile. She sued in negligence for failing to repair or warn about a dangerous condition, and hired a retired general contractor and high school carpentry teacher to inspect the floor and file an expert report. The report focused on a grout joint between the tile surface of the floor and the metal expansion joint in the area where plaintiff fell. He wrote that the grout joint created a tripping hazard because the grout in the joint had deteriorated to an unacceptable depth as deep as ½ inch. In his deposition testimony the contractor said the grout joint was not

"up to standard" because it was wider than 1/8 of an inch. When questioned, he referenced the standard as an industry standard. But he could not locate a source for the purported standard or anyone in the industry who would acknowledge the standard. The court ruled the testimony should be excluded because it was not based on sufficient facts or data, and was not the product of reliable principles and methods.

FAIR LABOR STANDARDS ACT

18) *Kiang v. Yummy Oriental Restaurant, Inc.,*2022 WL 504465 (E.D. NY, 2/18/2022). Applicability of the FLSA. Plaintiff sued defendant take-out food restaurant for alleged violations of the FLSA including failure to pay overtime wages and spread-of-hours compensation, failure to provide meal periods, failure to maintain adequate records, and failure to provide wage notices or wage statements. Defendant denied that the FLSA applied to it, because its annual income based on tax returns for the years involved did not exceed $253,000. To be covered by the Act, a business must be engaged in commerce which is defined as including annual gross sales of not less than $500,000. 29 USC Section 203(s)(1). Plaintiffs argued the defendant understated its income on its tax return. The court ruled that plaintiff did not prove that defendant understated its sales by enough to make up the difference between its reported income and $500,000. The court thus granted defendant's motion to dismiss.

19) *Texas Restaurant Association v. US Dept. of Labor*, 2022 WL 526243 (W.D. Tex., 2/22/22). Duel jobs rule. Plaintiff challenged the new "dual jobs" rule, effective 12/28/2021, concerning the tip credit for employees who perform both tipped and non-tipped tasks. Among the new provisions is a clarification that the non-tipped work is subject to a thirty-minute limitation. 29 C.F.R. 531.56(f). Plaintiff seeks a nationwide preliminary injunction to prohibit enforcement of the rule. Plaintiff claimed the rule is unworkably burdensome. The court ruled plaintiff's claim did not establish irreparable harm. Instead, plaintiff's claims were "rough generalizations" about harm, "wholly uncredible" and "unsupported". Plaintiff's motion for a preliminary injunction was therefore denied.

20) *Hoenninger v. Leasing Enterprises, Ltd,* 2022 WL 340593 (5th Cir., 2/4/2022). Calculating attorneys fees. This case involved an appeal of attorney's fees. Plaintiffs had successfully sued defendant restaurant for various violations of the FLSA. Attorneys fees were awarded by the district court. The amount was challenged on appeal. The court explained that the starting point when calculating attorney's fees is the "loadstar" which is the product of the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly billing rate. A district court can adjust it upward or downward in exceptional cases. In this case the loadstar was not calculated. The appeals court thus ruled the district court abused its discretion, and remanded the case for recalculation of the fees.

21) *Galvez et al v. Ginza Japanese Restaurant,* 2022 WL 748286 (S.D. NY, 3/11/2022). Numerous violations of the FLSA. Plaintiffs were delivery workers and a dishwasher for defendant NYC Japanese restaurant. Plaintiffs allege various FLSA violations including nonpayment of overtime pay, nonpayment of minimum wage, inappropriate use of the tip credit, notice and record keeping violations, and failure to pay for the delivery workers' bicycles or repairs, On the issue of interstate commerce, the court held it was "inconceivable that a restaurant with

over $500,000 in annual sales did not use materials originating from out of state." The court rejected defendant's argument that displaying a minimum wage poster was sufficient notice to workers that defendant intended to take the tip credit. Concerning nonpayment of overtime wages, defendant's conclusory statements of compliance with the law "cannot ward off summary judgment. . .". Summary judgment was granted on liability for nonpayment of minimum wage, overtime pay, tools of the trade, and spread of hours claims.

22) *Stewart, Acting US Secretary of Labor v. Exeter Family Restaurant,* 2021 WL 794936 (E.D. Penn., 3/2/2021). Executive Employee. Plaintiff accuses defendant restaurant of various FLSA violations. One involves the restaurant's treatment of its sous chef as an executive employee and therefore did not pay him overtime. The sous chef's primary duities are to supervise line cooks, manage the kitchen while working under the executive chef, and run the kitchen when the Executive Chef is absent. The sous chef does not create the menu, order ingredients, or participate in the overall management and operation of the restaurant. He is paid by the hour and his pay is reduced when he leaves a shift early or takes vacation time. The court ruled the hotel failed to meet its burden of proving the sous chef is an exempt executive employee. Therefore the restaurant is liable for past overtime hours. Further, the court ruled the violation was willful, entitling the DOL to liquidated damages equal in amount to the unpaid wages. Additionally, the court issued an injunction to prevent further violations of the FLSA.

23) *Pimpanit v. Thai Gourmet Restaurant*, 2022 WL 866290 (5th Cir., 3/23/2022). Res judicata. Plaintiff was employed at defendant restaurant as a server. She and other employees sued the restaurant claiming violations of the FLSA, a case that was ultimately settled. While preparing for the lawsuit plaintiff obtained restaurant pay records and took them home to review without authorization. In response, plaintiff was terminated. Following settlement of the FLSA case, Plaintiff sued for retaliatory termination. The restaurant claimed res judicata and moved for summary judgment. The court denied the motion. While the two suits involved related facts, those facts are not the basis for the retaliation complaint. Instead, the two cases involved different causes of action based on different operative facts.

FORUM SELECTION CLAUSE

24) *Synergy Hotels, LLC v. Holiday Hospitality Franchising, LLC,* 2021 WL 5979297 (S.D. Ohio, 12/17/2021). Ambiguous contract clause. Plaintiff is a franchisee of defendant and operates a hotel in Orbitz, Ohio. Plaintiff seeks to bring a class action lawsuit against defendant for its alleged unlawful scheme requiring franchisees to use certain mandatory vendors for a majority of essential goods and services needed to run and maintain a hotel. Plaintiff commenced the lawsuit in Ohio. Defendant claims the license agreement contains a mandatory forum selection clause requiring that this litigation be brought in the northern district of Georgia. The court determined the clause was ambiguous and so applied rules of contract construction to resolve the ambiguity. The court concluded that the forum selection clause limited the forum for the lawsuit to the northern district of Georgia and so dismissed the case brought in Ohio.

FRANCHISES – JOINT EMPLOYERS

25) *McArdle-Bracelin v. Congress Hotel, LLC, and Embassy Suites Franchise, LLC*, 2022 WL 486805 (N.D. NY, 2/17/22). Joint employers? Plaintiff employee commenced a proposed class action against defendants on behalf of non-exempt servers, waiters, bartenders, room service attendants, and other non-managerial service attendants. Plaintiff alleges that defendants charge banquet service customers a service fee, which customers believe are gratuities, and fail to distribute the proceeds to service employees, contrary to NY law. Embassy Suites Franchise and Hilton Franchise Holding LLC seek dismissal based on plaintiff's alleged failure to show they are joint employers. Plaintiff claims defendants assert sufficient control over the franchisee's business, noting management training mandated by the defendants that requires managers to assert control over working conditions. Additionally, the franchisors require franchisees to use particular hardware, mandating particular training and standards of operation and workers' appearance, and requiring franchisees to conform to all laws and regulations applicable to hotels. Embassy Suites requires use by franchisees of proprietary property software that addresses management programs, a reservation program, a revenue management program, a reservation system, quality control, and more. The court determined plaintiff made a plausible claim for joint employers and denied the franchisors' motion to dismiss.

FRANCHISOR AGENCY LIABILITY

26) *Hersh v. CKE Restaurant Holdings, Inc. et al,* 2022 WL 407124 (E. D. Mo., 2/10/2022). Agency relationship? Plaintiff's minor child died after touching an exposed, electrified wire while playing on a Hardee's restaurant's indoor playground in Amman, Jordan. Plaintiff sued for wrongful death and defendants moved for summary judgment. Defendant CKE is the parent company for a number of restaurant brands, including Hardee's. CKE has no direct license agreements with franchisees. Defendant Hardee's Food Systems, which is wholly owned by CKE, provides management services for the Hardee's brand. Defendant Hardee's Restaurants, also owned by CKE, is the franchisor for Hardee's restaurant franchises. Plaintiff claimed these companies were liable based on agency law. The "touchstone" for liability is whether the defendant has control or the right to control the conduct of the franchisee. The court distinguished between the right to control a franchisee and the franchisor's legitimate right to ensure the property is in compliance with the system standards. Said the court, this latter right of the franchisor does not provide a basis for finding the existence of an agency relationship." The court therefore granted summary judgment in favor of defendants.

FRAUD

27) *Chatteram v. Omni Hotels Management Corp.,* 2021 WL 6755473 (M.D. Fl, 12/27/2021). The cause of an injury. Plaintiff fell on a marble floor in the lobby of the Monteleone Hotel in New Orleans and sued for compensation. A few months later plaintiff was in a car accident. In the lawsuit against the hotel, plaintiff denied seeking medical assistance after the car accident and claimed her injuries were caused only by the fall at the hotel. Her medical records evidenced significant medical treatments necessitated by the car accident. The judge dismissed the case against the hotel due to plaintiff's fraud.

FRAUD IN THE EXECUTION

28) *Munoz v. PL Hotel Group, LLC*, 288 Cal. Rptr.3d 644, 73 Cal. App.5th 543 (Crt Appls. Cal, 1/3/2022). Textbook example of fraud in the execution. The parties negotiated the sale of a restaurant and hotel, with a leaseback to the sellers. Buyer was an 80 year old real estate investor. An online version of the proposed contract was circulated several times among the parties. For the signed version, sellers sent an altered copy that looked like the one that had been circulated. Seller represented it as the circulated one and so buyer signed after a cursory look. Among the changes were that seller became liable for maintenance and repairs, for completion of renovations that had begun, for taxes, and its remedies in the event of default were limited to retaking possession. When buyer discovered the discrepancy buyer sued for fraud in the execution and breach of contract. The court denied seller's motion to dismiss, finding the case a "textbook example" of fraud in the execution.

INFLICTION OF EMOTIONAL DISTRESS

29) *Colizzo v. Highgate Hotels, L.P.*, 2022 WL 225599 (D. R.I., 1/26/2022). Need for physical symptoms. Plaintiff, a white woman, was an employee for defendant hotels for 32 years. Her work assignments included hotel operator, accounts receivable, and payroll. She was terminated and sued for, inter alia, emotional distress. Both intentional and negligent infliction of emotional distress require, per Rhode Island law, that plaintiff allege and prove "medically established physical symptomatology." Plaintiff did not allege any physical injury from her termination. Therefore her claims of emotional distress cannot succeed. Those counts in plaintiff's case are dismissed.

30) *Joyner v. Woodspring Hotels Property Management, LLC,*2021 WL 864764 (M.D.Ga, 2021). Severe emotional distress needed but missing. Plaintiff worked for defendant as a guest services representative. Plaintiff alleges her manager spread a false rumor throughout the workplace and corporate office that plaintiff was not qualified for her job and had been promoted only because she had a sexual affair with her former boss. The rumor was false; plaintiff had no affair with her boss. Defendant seeks summary judgment. Close in time, the same manager who allegedly spread the rumor told plaintiff she needed to improve her work, and plaintiff was placed on a performance improvement plan. Eventually she was terminated. Plaintiff claimed these occurrences caused her stress and anxiety, and crying daily. She did not seek medical treatment. The court noted that infliction of emotional distress requires extreme conduct, so severe that no reasonable person could be expected to endure it. Here, plaintiff did not present any evidence of any serious, prolonged physical manifestations of her stress aside from alleged crying, nor did the stress require medical or psychological treatment. Given the absence of evidence of severe emotional distress, the court granted defendant summary judgment.

INSURANCE – BUSINESS INTERRUPTION DUE TO COVID

31) *St. George Hotel Associates, LLC v. Affiliated FM Insurance Co.,* (NY, 12/2021). Business Interruption Insurance. The plaintiff, St. George Hotel in New York City, like so many hotels,

lost a lot of business during covid shutdowns. The hotel had insurance to cover business interruption loss. It sought to collect on the policy. By the terms of the policy, business interruption loss is covered when caused by physical loss or damage to property at the insured's premises. Since covid did not constitute physical loss or damage to the facility, the court dismissed the hotel's claim. See also *SA Hospitality Group, LLC et al v. Hartford Fire Insurance Co.,* 2022 WL 815683 (2nd Cir., 3/18/2022).

32) *Bradley Hotel Corp. v. Aspen Specialty Insurance Co.,* 19 F. 4th 1002 (9/10/2021). Business Interruption insurance. This case is another covid insurance case. Like the immediate prior case, the insurance policy exempted loss not caused by physical loss or damage to property. The insurance company was thus relieved from coverage. Another provision in the policy excluded "loss or damage caused . . . by enforcement of or compliance with any ordinance or law regulating the . . . use of any property. The hotel acknowledged that the Illinois governor's executive order mandated business closures but argued that the order was not an "ordinance or law" as referenced in the policy. The court noted that the legislature had authorized the governor to take emergency measures to protect public health and therefore the executive order had the force of law. The court therefore ruled that the exclusion applied and decided in favor of the insurance company.

33) *Team 44 Restaurants, LLC v. American Insurance Co.*, 2022 WL 458494 (D. Ariz., 2/15/2022). Business interruption insurance. Plaintiff owns and operates restaurants in three states. Plaintiff sought to collect on its business interruption policy due to lost business during the pandemic. By the terms of the policy, coverage was contingent upon direct physical loss or damage to the restaurants. The restaurants asserted interesting arguments as to why the insurance company should be liable. First, the plaintiff argued the insurance broker did not sufficiently explain the terms of the policy. The court rejected this argument, noting that the "average layperson would correctly understand coverage for physical loss or damage requires actual physical loss or damage to the property." Plaintiffs also claimed alterations made to the property because of the state mandated covid 19 protocols constituted both physical loss and damage. Specifically plaintiff was required to introduce hand-sanitizing stations and disposable menus in their Texas locations, enforce social distancing protocols in their Arizona locations, and rearrange tables and install plexiglass in their Illinois restaurants, to name just a few modifications. The court acknowledged that the covid orders caused the restaurants to change, but nonetheless held that the changes did not effectuate actual physical damage. Plaintiff's case was thus dismissed.

34) *Cadence Restaurant v. Firstline National Insurance Co.,* 2022 WL 657067 (E.D. Penn., 3/4/2022). Business interruption insurance and reasonable expectation doctrine. Plaintiff is a Philadelphia restaurant that had a business loss insurance policy that excluded losses caused by "any virus . . . that induces or is capable of inducing physical distress, illness or disease." During the pandemic, the City of Philadelphia and the Commonwealth of Pennsylvania issued orders requiring restaurants to discontinue dine-in services but permitted carryout and delivery. Plaintiff, a dine-in only restaurant, chose not to offer carryout or delivery service and so lost revenue and suffered business income losses. In this lawsuit it sought coverage for its loss. The court ruled the plain language of the policy bars coverage. Plaintiff argued that it expected the losses to be covered. The reasonable expectations doctrine applies only where the insurer

or its agent makes an affirmative misrepresentation about the policy's coverage. The court found no insurer deception here.

LICENSING AND MUNICIPAL BOARDS

35) *Ember Pizza Inc. and the Port Restaurant v. Town of Harwich, et al,* 2022 WL 267435 (D. Mass., 1/28/2022). Entertainment license revocation during covid. Plaintiffs are two restaurants that were the subject of noise and covid violation complaints. Following hearings, the Port Restaurant's expanded outdoor dining permit was revoked. Further, both restaurants' entertainment licenses were restricted to acoustic-only. The restaurants sued claiming violations of the First and Fourteenth Amendments, Due Process and Equal Protection. Additionally plaintiffs claimed interference with contractual relations, conspiracy, and defamation. The court found for the defendants on all counts and granted defendants' motions to dismiss. The court ruled the noise ordinance was clear and not vague. Defendants' complaints that other like facilities were treated more leniently were not proven. The defamation claims were based on a citizen's report that the restaurants were violating covid mandates. The court held these statements enjoyed a qualified privilege.

NEGLIGENCE

36) *Young v. BL Development,* 2022 WL 422188, (2/11/22). Bathmat issue. Plaintiff, a guest at defendant hotel, fell when a bathmat slipped beneath her feet in the tub. She sued for premises liability, hypothesizing that the hotel staff failed to ensure the mat was properly and securely suctioned when placed in the tub. The court granted summary judgment to the hotel noting that plaintiff did not offer any proof of what caused her fall. To claim that hotel staff improperly secured the mat in her tub is a just speculation.

37) *Collins v. Doubletree Grand Hotel et al,* 2022 WL 426510 (S.D. Fl, 2/12/2022). Duty owed to licensee. Plaintiff sued the hotel pro se claiming its security officers failed to come to his rescue when he was involved in a fight even though at least one hotel officer watched the entire encounter. The fight was with two people who approached plaintiff from inside the hotel. The fight included broken glass and a knife. It began on a driveway outside the hotel, and continued "north away from the hotel" during a chase. Plaintiff failed to allege that the walkway or other areas involved were owned or controlled by the hotel. In a premises liability case, plaintiff must show defendant's possession or control of the premises. Even assuming plaintiff was able to prove the hotel's control, plaintiff was on the driveway merely to avoid the crowded sidewalk while on his way to dinner and was not a guest at the hotel. He was thus only a licensee to whom the duty owed was to avoid willful or wanton harm, and to warn him of any known nonobvious dangers. Plaintiff does not allege a violation of these duties except a general conclusory allegation that the hotel was grossly negligent. The court granted defendant's motion to dismiss.

38) *Matias v. New Yorker Hotel Management Co. v. 34th Street Diner, Inc. (Third Party Defendant),* 2022 WL 243112 (1st Dept, 2022). Plaintiff slipped and fell on a wet floor at defendant hotel after a waste or drain pipe six inches in diameter burst in the restaurant premises leased by the diner. It argues that it had no duty to maintain the subject pipe and therefore owed no duty to plaintiff. The evidence indicated the hotel exercised control over the building including the pipe. Indeed, the

hotel had responded to the diner's call about the leak and dispatched a plumber to address the situation. Control over the property is the "touchstone of liability." Therefore the hotel's substantial control over the pipe creates issues of fact as to its duty to maintain the pipe and therefore precludes summary judgment.

39) *Dingman v. Linchris Hotel, Corp.* 156 NYS3d 865 (NY 2nd Dept, 1/12/22). Trivial defect. Plaintiff fell inside the lobby of defendant hotel. At the time, the lobby floor was being re-tiled, and there were areas where new tiles had been installed, others where the old tiles were still present, and areas where the cement subflooring was exposed. Based on deposition testimony and photographs, the subflooring was approximately one-quarter of an inch lower than the tiled floor. Defendant moved for summary judgment claiming the defect was trivial. A defendant seeking dismissal on the basis an alleged defect is trivial must make a prima facie showing that the defect, under the circumstances, is physically insignificant. There is no minimal dimension test or per se rule that the condition must be of a certain height or depth to be actionable. The court granted defendant's motion for summary judgment noting "the small height differential" between the newly tiled floor and the exposed cement subflooring was physically insignificant such that the risk of injury was not increased by it.

40) *Planchard v. New Hotel Monteleone*, LLC, (La, 12/10/21). Wet Floor Signs. Plaintiff tripped and fell at an Omni Hotel and sued for compensation. Minutes prior to the fall, a hotel employee had mopped the floor and displayed four "wet floor" signs. The court determined the signs satisfied the hotel's duty to exercise reasonable care for the safety of guests and dismissed the case in the hotel's favor.

41) *Barrett v. Best Western Gregory Hotel*, 2022 WL 875209 (3/24/30330. Plaintiff was a guest at defendant hotel. She left for lunch, had three Corrs Light beers, and, upon her return to the hotel, slipped and fell, sustaining injuries. Approximately five minutes before her return, a hotel porter mopped the floor where she fell. When she approached the floor was, per her deposition testimony, "very wet." Video footage shows a yellow "wet floor" sign near the scene of plaintiff's fall. The hotel moved for summary judgment. Denying the motion, the court said, While the evidence by no means compels a verdict in plaintiff's favor, it is sufficient to raise an issue of fact appropriate for the jury."

42) *Haas v. McDonald's Restaurants of Ohio, Inc.,* 2022 WL 764321 (3/14/2022). Open and obvious. Plaintiff, a customer at a McDonald's restaurant, was recovering from a total knee replacement surgery. While at McDonald's he slipped and fell in the bathroom. Immediately prior to plaintiff's use of the bathroom, a McDonald's employee had mopped the bathroom floor. The door was propped open to alert people of the mopping, a sign inside the bathroom announced the wet floor, and the mopper warned plaintiff of the wet floor as he entered and she existed with the mop. The court affirmed the grant of summary judgment to the defendant based on the open and obvious doctrine.

NEGLIGENCE - COMPARATIVE

43) *Louisville SW Hotel, LLC v. Lindsey* (Ky., 12/16/2021). Allocation of liability. A five- year-old drowned in a pool at a Kentucky Country Inn. The hotel's filtration system was faulty, causing the water to become murky. The deceased's mom was watching eight children and lost sight of the five year old. She left the pool area with the other children, not realizing the deceased was missing until she returned to her room. When she became aware and returned to the pool, the child was removed from the water unconscious, and never recovered. A jury allocated 65% of the liability to the mother and 35% to the hotel.

PANDEMIC ISSUES

44) Everest Foods, Inc. et al v. Andrew M. Cuomo and Bill de Blasio, 2022 WL 355553 (S.D. NY, 2/7/2022). Challenge to covid restrictions. Plaintiffs are operators of food businesses in NYC that either closed permanently or suffered loss of business during the pandemic as a result of executive orders and emergency executive orders issued by Governor Cuomo and Mayor de Blasio. The orders limited services restaurants could provide, occupancy rates of restaurants, and hours of operation. There came a time when plaintiffs were required to remain closed to indoor service but other indoor businesses were allowed to open including museums, art galleries, movie theatres, casinos, bowling alleys and gyms. Plaintiffs claimed violation of various constitutional rights including due process, equal protection, takings clause and contract clause. The court granted defendants' motions to dismiss on all counts, noting the following. The restrictions on in-door dining "clearly relate to the public welfare by aiming to curb the transmission of COVID-19 in higher risk settings." Further, "Indoor dining involves unique circumstances likely to facilitate COVID-19 transmission. Patrons must remove their masks to eat, increasing the likelihood of transmission between individuals. Restaurants also bring together individuals from different households, facilitating communal spread. Treating restaurants differently – and indoor dining specifically – logically follows." Concerning the business allowed to re open for indoor operations, "Individuals can remain masked and socially distanced while patronizing such establishments."

45) *AB Stable VII LLC v. Maps Hotels and Resorts One LLC,* 2021 WL 5832875 (Del., 12/8/2021). Defendant contracted to purchase 15 hotel properties from plaintiff. The contract contained an "ordinary course covenant" which required the seller to carry on its business consistent with normal practices between the date the contract was signed and the date of closing. Any significant deviation required consent of the buyer which could not be unreasonably withheld. The pandemic hit during that interim period, and the seller did the following without first clearing it with defendant – closed hotels, laid off or furloughed thousands of employees, and "implemented other significant changes to its business". Defendant refused to close the purchase, arguing the seller violated the ordinary course covenant. Plaintiff seller argued it actions were reasonable, industry-standard responses to the pandemic. The court decided in favor of defendant, ruling that seller had a contractual obligation to secure buyer's consent before making drastic changes to the hotel operations. Having failed to do so, it breached the sales contract which excused buyer's obligation to close.

46) *Hotel and Motel Trades Council, AFL-CIO v. Stanford Hotel,* 2021 WL 1851998 (S.D. NY, 5/10/2021). Enforcing a collective bargaining agreement (CBA) against a closed hotel. Defendant hotel was a party to a CBA with its workers who were members of plaintiff union. Due to plummeting occupancy rates at the defendant hotel resulting from the pandemic, defendant permanently closed and laid off its union workforce. The CBA required the hotel to give union members 30 days notice of closing, pay all wages and benefits for at least 30 days following such notice, and pay all permanently laid-off employees severance based on length of employment. The hotel had not complied. The CBA also contained a broad arbitration provision. The arbitrator found for the union which the hotel did not contest. The hotel contends it has tried in good faith to pay the amounts it owes to former employees but given the permanent closure and financial distress, it has been unable to do so. The union seeks a judgment based on the arbitration award. The court granted summary judgment to the union, holding the hotel is liable for the full amount of unpaid wages and benefits. However, the court denied the union's request for attorney's fees, noting that the hotel was making a good faith effort to pay and had made some payments toward its obligations.

47) *55 Jackson Acquisition, LLC v. Roti Restaurants, LLC,* 2022 Il App. 210038 (3/18/2022). Impossibility of performance and frustration of purpose. Plaintiff landlord sought unpaid rent from defendant restaurant. The lease specified the premises would be used for the operation of a restaurant selling food for on and off premises consumption. Defendant closed the restaurant in response to government orders to protect public health issued during the pandemic. Full operations would have violated the public health orders. Defendant argued as a defense impossibility of performance and frustration of purpose. Plaintiff's witness testified that a nearby Potbelly restaurant and a Starbucks remained open for much of the pandemic. The trial court granted summary judgment to defendant. On appeal, the court noted that the parties did not anticipate the pandemic when they entered the lease, the government's orders were not foreseeable, and defendant did not contribute to the pandemic or the orders. However the court found a question of fact exists as to whether it was impossible to operate the restaurant as provided in the lease in compliance with the public health orders. Therefore, the judgment was reversed and the case remanded.

48) *Stanford Tukwila Hotel Corp. v. GBC International Bank,*2022 WL 279321 (1/31/2022). Ordinary course contract covenant. Plaintiff hotel sued defendant bank for its failure to timely submit plaintiff's application for a second draw with the Paycheck Protection Program (PPP). It was enacted by Congress on March 27, 2020 as part of the Coronavirus Aid, Relief and Economic Stimulus Act. Plaintiff had received from the first round of PPP funding $288,300. Plaintiff sued for the amount of the anticipated second distribution - $403,735.00 and claimed the loan would have been forgiven if properly handled by defendant. The court dismissed the hotel's claim based on negligence, noting a causal connection between the bank's conduct and an injury was missing because not all PPP loans were automatically approved, and even if approved, not all were funded before funds ran out. The plaintiff's breach of fiduciary duty claim was also rejected because, inter alia, a lender is not a fiduciary of its borrower unless a special relationship exists which plaintiff failed to establish.

REMOVAL TO FEDERAL COURT

49) *Bethune v. Beach Hotel Associates,* 2022 WL 765088 (S.D. Fla., 3/13/22022). Amount in controversy. Plaintiff was the Human Resources Director at defendant Miami, Florida hotel for seven years. She was asked to assist at a hotel in the Bahamas owned by defendant which she did for two years. When returning to Miami, she was advised she had been replaced and so was terminated. She sued in state court claiming discrimination based on color, race, and age. The case was removed to federal court. Plaintiff moved to remand the case, arguing that the amount in controversy did not meet the $75,000 jurisdictional threshold. The complaint sought "damages over $30,000". The court determined back pay should be calculated from the date of termination through removal to federal court, not until trial. When calculating that figure, the court will deduct an amount equal to money earned by plaintiff following her discharge from the hotel. Additionally, the court determined amounts for mental anguish, loss of dignity and punitive damages were too speculative to be included. The court ruled that defendant did not establish the requisite amount in controversy, and so granted the motion to remand.

SEX TRAFFICKING

50) *A.B. v. Stone Mountain Inn & Suites* (Ga., 2/9/2022). Indicia of trafficking. Plaintiff, a victim of sex trafficking at the Stone Mountain Inn and Suites, sued the hotel claiming it should have known she was being trafficked and come to her rescue. The hotel denied knowledge. Plaintiff alleges the following circumstances should have alerted the hotel – her behavior, her malnourishment and poor hygiene, the traffickers' activities, the condition of her room, and other signals. The hotel denied culpability and asked the court to dismiss the case. The court refused, so the case will proceed.

SPOILATION – SURVEILLANCE VIDEO EVIDENCE

51) *Posner v. Hillstone Restaurant Group,* 2022 WL 705602 (E.D. Cal., 3/9/2022). Plaintiff slipped and fell on spilled water at defendant's restaurant. She was injured and complained to the restaurant several times over the next few weeks. She ultimately sued for negligence. A key issue in the case was how long the water had been on the floor and whether the restaurant had constructive notice. The restaurant had several surveillance cameras. The manager viewed the video recordings, identified relevant parts, and overwrote the remaining recordings in the normal course. Plaintiff and the court agreed that additional video recordings would have been informative on the spill's duration. The court discussed various sanctions and decided on an adverse inference jury instruction, but less severe than plaintiff requested.

ZONING

52) *Pfister v. Madison Beach Hotel, LLC,* 341 Conn. 702 (Sup Crt, 2/22/2022). Town residents brought a lawsuit against the owner and operator of hotel situated within a residential zoning district seeking permanent injunction against hotel's free weekly concert series in a public park adjacent to the hotel. Zoning regulations prior to 1979 defined type of activities that could occur in parks located in residential zoning districts, and public concerts were indisputably

within the scope of permitted uses. In 1979 the local zoning code was revised to add a requirement that parks in residential zones must obtain a special exception. The park used by the hotel for the concerts was a preexisting nonconforming use. A mere increase in the amount of business done pursuant to a preexisting nonconforming use is not an illegal expansion of the original use. The court thus affirmed the appellate court's decision in favor of the hotel.