FIFTY-FIVE RECENT INFORMATIVE CASES IN HOSPITALITY LAW

By Karen Morris, Esq.[1]

AMERICANS WITH DISABILITIES ACT

1) Brooke v. IWF Hotel Hermos LP, 2024 WL 1136405 (C.D. Cal., 2/15/24). Plaintiff commenced an ADA lawsuit based on construction-related accessibility against the defendant hotel. In the complaint plaintiff added a claim for violation of California's Unruh Civil Rights Act. The federal court refused to take supplemental jurisdiction of the state claim, noting that California has adopted numerous restrictions against serial ADA litigators which are all avoided by bringing the lawsuit in federal court. In so ruling, the federal court cited fairness, judicial economy, and comity.

2) Shelley v. Leisure Hotel Group, LLC, 2024 WL 235218 (N.D. Cal.,2024). Plaintiff is disabled in multiple ways. He uses a service dog. Plaintiff checked into defendant hotel for a one-night stay because his home was being renovated. The front desk attendant asked him about the dog and plaintiff's medical condition. After the first night plaintiff sought to extend his stay due to continued work on his house. The hotel manager refused, allegedly because of plaintiff's dog which the manager called a "pet". Plaintiff sued for violation of the ADA. In its defense, defendant noted plaintiff failed to allege the following: that he has been diagnosed by a medical professional, and that he could not dress and feed himself, do household chores, drive, write and use a computer. The court held no such requirement exists. Defendant further claimed that the dog was an emotional support animal, not a service animal. Plaintiff alleged that the dog is professionally trained to provide physical support, assistance with plaintiff's balance and stability, and help with PTSD, ADHD, anxiety and depression. The court thus denied the hotel's motion to dismiss.

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ARBITRATION

3) Cullum v. Wyndham Hotels & Resorts, Corp., et all, 2024 WL 552494 (S.D.N.Y, 2/12/2024). Plaintiffs, elderly citizens, purchased time shares from defendant. Plaintiffs sued for fraud and various federal and state claims, alleging that defendants committed "falsehoods and trickery", including misrepresentations about the ability to rent and resell the timeshare, and violated disclosure laws. The contract plaintiff signed required that disputes relating to the purchase contract be "resolved by binding arbitration." Defendant moved to dismiss the case; the court granted the motion without prejudice, based on the arbitration clause.

4) Staley v. Four Seasons Hotels & Resorts, et al, 2024 WL 1090816 (2nd Cir., 3/13/2024). Plaintiffs were employed by defendant Four Seasons Hotel. During the pandemic and beginning March, 2020, they were furloughed without pay for an indefinite time. They have not been called back to work. Their employment agreement required that certain disputes be referred to arbitration, including ". . . termination of my employment from the Hotel . . . but not a permanent layoff." A different provision clearly stated, "An employee may not seek arbitration of a permanent lay-off." Plaintiff sued the hotel for breach of contract and violation of the WARN Act. The hotel sought to compel arbitration. The court denied the motion noting that, according to the "plain language of the arbitration provision," a claim regarding a permanent layoff is not subject to arbitration. The court determined the plaintiffs' layoff, two and half years long at the time the lawsuit began and without a definite ending, is a permanent layoff.

5) Paguay v. ESH Restaurant Group, LLC, et al, 2024 WL 1376163 (S.D.N.Y., 4/1/2024). Plaintiff sued for unpaid wages and overtime. Specifically, he alleged he was required to clock out for lunch but work through his lunch break in violation of the FLSA. The restaurant moved to compel arbitration per an agreement plaintiff signed. "Covered claims" requiring arbitration include claims relating to "compensation, promotion, demotion, or other employment action." Plaintiff argues the agreement is unconscionable because it shortens the limitations period to 180 days. The court referred the case to arbitration noting that the agreement plaintiff signed incorporates the rules of the AAA, and those rules provide that arbitrators have the power to rule on their own jurisdiction.

Said the court, "Parties who incorporate AAA rules are assenting to arbitrate issues of arbitrability." Plaintiff sought relief from the agreement because, when he signed, he did not fully understand the arbitration provision. The court refused, noting, a party who signs a written contract is conclusively presumed to know its contents and to assent to them. This conclusive presumption applies also to the terms of a separate document incorporated by reference. This rule applies, said the court, even when the party resisting arbitration contends that he never received the incorporated document.

ATTORNEY'S FEES

6) G&G Closed Circuit Events v. Hunter, LLC., 2023 WL 8933585 (E.D. Calif., 12/27/2023). Plaintiff owns copyrights to boxing tournament podcasts. Defendant restaurant showed in its establishment a pay-per-view boxing match telecast without purchasing the appropriate license. Plaintiff sued under the Communications Act and defendant defaulted. Plaintiff sought statutory damages and attorney's fees. The amount plaintiff asked for was $5,200 in statutory damages, and $25,000 for enhanced statutory damages. Without explanation, the court granted a reduced statutory award of $3,000, and no enhanced damages. Under the Communications Act, a prevailing aggrieved party is entitled to reasonable attorney's fees as determined by the judge. Plaintiff sought $7,106 consisting of 3.5 hours of work at $600/hour, 12.5 hours of work by a research attorney at $325/hour, and work by an administrative assistant at $120/hour. The court did not take issue with the number of hours involved in this case, but reduced the $600/hour rate to $350, and reduced the research attorney's fees from $325 to $225/hour. Thus, the total $7,106 amount requested was reduced to $4,037.

AUTOMATIC GRATUITY – CLASS ACTION

7) Fox v. Ritz-Carlton Hotel Co., LLC, 2024 WL 414924 (S.D. Fl., 1/5/2024). Ritz-Carlton owns 24 restaurants in Florida. They automatically added an 18% gratuity charge to each customer's bill. Plaintiff, apparently a customer of one of the restaurants, claims the practice violates the Florida Deceptive and Unfair Trade

Practices Act. That Act, similar to one in most states, declares unlawful any "unfair or deceptive trade practice." Plaintiff sought certification as a class action. The court denied plaintiff's motion finding that plaintiff's counsel has a conflict of interest, and individualized issues concerning the practices at each of the 24 restaurants predominate over issues subject to generalized proof. The attorney's conflict of interest arose from counsel dropping three other copy-cat lawsuits the day after moving for class action certification in this, more lucrative one. Said the court, "Even the appearance of having divided loyalties or acting without the best interests of the class in mind can render counsel incompetent."

CONTRACTS – BREACH

8) Brown v. Luxurban Hotels, Inc., 2024 WL 761852 (E.D.Va., 2/23/2024). Plaintiff worked as an executive of defendant hotel for three years. Issues she had concerning her departure resulted in a settlement agreement wherein the hotel agreed to pay compensatory damages of $2,200, transfer 50,000 shares of restricted stock units, and $97,800 in attorney's fees. The hotel paid only the compensatory damages so plaintiff sued. That prompted the hotel to transfer the promised stock. However, attorney fees remained unpaid. Despite "ample opportunity and notice to cure," the hotel remained in arrears and did not appear in the litigation. The court ruled in favor of plaintiff on the breach of contract case, and ordered the hotel to pay the original amount of attorney's fees plus an additional $17,297 in lawyer's fees ($425/hour), plus interest and court fees.

CONTRACT INTERPRETATION – INSURANCE

9) Casa Rosa Hotel v. Lloyds and Mt. Hawley Insurance Co., et al, 2024 WL 728890 (S.D.N.Y., 2/22/24). Defendant issued a commercial property policy to plaintiff hotel. It required that the hotel notify the insurance company "promptly" of any covered loss "as soon as possible." A windstorm on October 16, 2021 damaged the hotel's roof. It reported the loss on February 10, 2022. The hotel sought insurance coverage; the insurance company claimed the report was not "prompt" and sought summary judgment. The hotel asserted it was unaware of the damage until awhile after the storm when a guest complained of

leaks. In response to that complaint the hotel hired a roof inspector. His final report was not submitted until January 22, 2022. The hotel gave notice to the insurance company 19 days later. Did that qualify as prompt? The court found questions of fact and denied summary judgment.

CONTRACT -LANDLORD/TENANT

10) Kramer v. Bailey Restaurant Group, et al, 223 AD3d 410 (NY, 1/4/2024). Plaintiff fell while exiting a revolving door at defendant hotel. The fall was caused by a drop in elevation between the door and the sidewalk. The restaurant's lease with the property owner limited the restaurant's duties concerning the door to general cleaning it and ensuring it remained free of obstructions. The restaurant had not made any structural changes or repairs to the door. Further, the landlord had put warning stickers on the revolving door. The court affirmed summary judgment in favor of defendant restaurant.

CONTRACT INTERPRETATION – SERVICE CONTRACT

11) Silvas v. Hilton International Puerto Rico, et al, 2024 WL 404951 (Puerto Rico, 2/2/2024). Plaintiff, a guest at defendant Hilton Hotel, stepped on a paver bordering a jacuzzi pool. The paver "gave way" and plaintiff fell into the jacuzzi, suffering injuries. Co-defendant Pool & Spa Technicians, Corp. (PSTC), which serviced the pool area, moved to dismiss. The court reviewed the wording of the service contract and determined Pool & Spa's duties included cleaning the pool and jacuzzi but does not impose a contractual duty on PSTC to maintain tile adhesive, repair loose pavers, or remove other hazards, and does not impose a duty to report needed repairs such as loose pavers. Therefore, the court granted PSTC's motion for summary judgment.

CONTRACT – MODIFICATION

12) Oakland Family Restaurants, Inc., et al, v. American Dairy Queen, Corp., 2024 WL 1396258 (E.D.Mich., 3/31/2024). Plaintiff acquired protected Dairy

Queen (DQ) franchise territory in which he developed and operated 12 DQ locations. He had a fifty-year-old franchise agreement. Plaintiff decided to retire and contacted DQ about selling parts of the territory and some of the locations to each of three long-time employees. DQ responded that it would consent to the transfers only if the new owners signed new franchise agreements containing less favorable terms. DQ explained that uniformity and consistency in agreements enhances efficiency in managing its brand. Unhappy with this response, plaintiff sued for breach of contract, promissory estoppel and a declaratory judgment stating he can assign his franchise rights freely. The court determined the language in plaintiff's 1965 agreement was unequivocal in requiring DQ's consent to assignments. Plaintiff nonetheless asserted the agreement had been amended over the years through agreement of the parties. The court rejected the argument that those communications evidenced an intention to modify the agreement, and granted DQ's motion for summary judgment.

COVID – INSURANCE

13) Astor Hotel v. Zurich American Insurance Co., 2024 WL 540584 (Superior Court N.J., 1/25/24). Plaintiffs are a group of hotels with "all-risk" insurance from defendant. They were forced to suspend operations during Covid-19. Plaintiff sued to recover insurance for business interruption which the policy covers when the loss results from a "necessary suspension [of business] due to direct physical loss of or damage to property." Consistent with many like cases, the court held the presence of COVID-19 at plaintiffs' facilities, and the mandated shut-down of plaintiff's facilities, did not constitute a direct physical loss of, or damage to, the insured property. Therefore, plaintiffs did not qualify for business interruption insurance coverage. Complaint dismissed.

COVID – VALUATION OF REAL PROPERTY

14) Miller Theatres, Inc., et al v. Utah State Tax Commission, et al, 2024 WL 973858 (Utah Supreme Crt., 3/7/2024). Plaintiffs are various retail and hospitality businesses in Utah which sought to reduce their property tax assessments because of closures resulting from COVID. They sued the Utah State

Tax Commission seeking to benefit from the state's Access Interruption Statute. That law allows a property owner to seek an adjustment to a county's assessment for tax purposes if the property sustains a decrease in fair market value caused by access interruption (AI). AI is defined as an interruption of normal access to and from property due to circumstances beyond the owner's control. The statute lists 13 such circumstances and includes "any event similar to the events described herein as determined by rule of the State Tax Commission." The parties agreed that pandemics were not a listed cause but disagreed on whether they qualified. Plaintiffs argued the statute was broad enough to include COVID-19. The court rejected that argument, noting that the Commission had not adopted pandemics as a qualifying circumstance.

DAMAGES – LOSS OF INCOME

15) Silvas v. Hilton International of Puerto Rico, LLC, et al, 2024 WL 409034 (D. Puerto Rico, 2/2/2024). Plaintiff was injured on a paver bordering a jacuzzi pool while a guest at defendant hotel. Plaintiff seeks lost income, . Her doctor determined she had a 8% impairment, and she can still work but should not work long hours. Before the accident she had a full time job and ran her own business called Silvas Logistics. After the accident, and because of her injuries from the accident, she discontinued that company. Soon after, she was promoted in her full time job. Following the promotion, her income was the same as before the accident. The hotel objects to plaintiff seeking lost income given that her income had not decreased. The court denied the hotel's motion for summary judgment on the lost income claim, noting that there was a time following the accident where she earned less than before (after she discontinued her own business and before her promotion) and perhaps she could be earning more but for the accident.

DEFAMATION

16) Abernathy v. Choice Hotel International, Inc., et al, 2024 WL 1194292 (D.Mont., 3/20/24). Plaintiff was a guest at defendant hotel while on a business assignment. While printing documents in the hotel lobby at 4:30 a.m., he and an

employee had a dispute over the volume and channel of a nearby TV. The disagreement resulted in plaintiff being removed from the property. Another employee contacted plaintiff's employer as a result of which plaintiff was fired. Plaintiff sued for defamation and interference with a business relationship. Plaintiff did not know what was said to his employer but argued that it must have been defamatory since plaintiff lost his job, and argued res ipsa loquitur. The court held res ipsa has no place in defamation claims. Finding the evidence insufficient, the court dismissed plaintiff's case

DISCOVERY

17) In Re Boerne Hotel, Ltd, et al, 2024 WL 630903 (Crt. Appls, Texas, 2/14/2024). A guest at the Boerne Hotel fell on an expansion joint cover and suffered impaired cognitive function. The hotel sought to compel the guest to submit to an examination by a neuropsychologist and a psychiatrist. Plaintiff opposed the examination. The court ordered the guest to submit to the examination, denied the guest's request that the examinations be recorded, denied the guest's request that the neuropsychologist specify in advance the tests he would administer, granted the request that the psychiatrist identify the tests in advance, and restricted the time frame of the tests to five hours.

DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

18) Newkirk v. Four Seasons Hotel Baltimore, et al, 2024 WL 895119 (D. Md; 3/1/2024). Plaintiffs, an African American male and a Hispanic female, sought a room at the defendant Four Seasons Baltimore Hotel on New Year's Eve. Plaintiff's credit card was twice declined because of "Merchant Processing Error." The employee refused to try a third time so plaintiffs went to a nearby bank to get cash. When they returned the employee accused them of stealing the money and using counterfeit money. He also suggested plaintiffs should stay at Motel 6 rather than Four Seasons. During this time, several white customers were able to successfully rent rooms at the Four Seasons. Plaintiffs, upset, decided to go elsewhere and later sued the hotel for racial discrimination. The court dismissed the case, noting that plaintiffs were not denied the opportunity to rent a room,

nor was there any demonstrated connection between their alleged mistreatment and their race.

EMPLOYMENT DISCRIMINATION – GENDER

19) Hill v. Sonic Drive In, 2024 WL 1257415 (N.D. N.Y., 3/25/2024). Plaintiff sued defendant restaurant for discrimination based on gender, and defendant moved to dismiss. The court denied the motion finding plaintiff "narrowly meets the threshold of providing minimal support for an inference of discriminatory intent." The allegations included that the general manager (GM) was aggressive towards men because she was having difficulty with the men she was attempting to date, she was sarcastic and rude to male employees but not female workers, she assigned less work to females and allowed them to choose tasks they wanted but the males did not have similar choices. Additionally, plaintiff alleged that the GM required him to do all the kitchen cleaning while the females were unoccupied, and the GM berated him and then terminated him.

ENVIRONMENTAL REVIEW

20) In Re Reversal of Planning Commission's Decision to Grant the Petition for An Environmental Assessment for a Hotel, 2024 WL 321990 (Appls. Crt, Minn., 1/29/2024). Petitioner objected to the construction of a hotel in Deluth, Minnesota. State law requires an environmental assessment worksheet (EAU)of a project when "material evidence accompanying a petition by not less than 100 individuals demonstrates that . . . there may be potential for significant environmental effects." Petitioner submitted the necessary petition, and the City of Duluth Planning Commission determined an EAU was required. The project developer appealed to the city counsel which reversed the decision negating the need for the EAU. Petitioner appealed, arguing that the court and not the city was the proper appeal venue. The court rejected this argument based on the "plain language" of the relevant city ordinance. Additionally, the court declined to find the city counsel's ruling arbitrary and capricious.

EVERYTHING BUT THE KITCHEN SINK

21) Columbo v. Bryant Park Hotel, LLC, et al, 2024 WL 1138942 (S.D.N.Y., 3/15/24). Plaintiff was employed by defendant hotel for 20 years as Asset Manager and Managing Director. He accumulated in his deferred compensation plan $382,374. Part way through plaintiff's employment, the hotel "loaned" itself money from plaintiff's account to cover the hotel's operational needs. When plaintiff retired, the hotel paid him only $60,000 of the deferred compensation owed. Plaintiff sued for, inter alia, conversion, fraud, international misrepresentation, negligence, negligent misrepresentation, tortious interference with a business relationship, breach of contract, promissory estoppel, unjust enrichment, equitable estoppel, wrongful termination, retaliation, Fair Labor Standards Act violations, COBRA violations, intentional infliction of emotional distress, and negligent infliction of emotional distress. The court addressed each claim individually and, for reasons stated therein, dismissed all but breach of contract and conversion.

FAIR LABOR STANDARDS ACT

22) Garcia v. Three Decker Restaurant, et al, 2024 WL 1311897 (S.D.N.Y., 3/27/24. Plaintiff was a waitress at defendant restaurant for more than a decade. Defendant sued for nonpayment of minimum wage and overtime. The court first found that one of the individual defendants was not an employer because she was not involved with the restaurant's operations. She was thus dismissed as a defendant. Plaintiff claimed the other defendants failed to pay her minimum wage and overtime pay. Defendant disputes plaintiff's figures. However, defendant's payroll records contain lots of errors and do not include the hours she worked, her regular or overtime rate of pay, or what her tip credit rate would be. Therefore, plaintiff is entitled to an inference that her evidence is true and accurate, and defendant has no evidence to negate that inference. The court thus awarded judgment in her favor. She seeks liquidated damages per the FLSA which requires employers to pay an amount as punitive damages equal to the amount of underpayments. The court granted the requested liquidated damages noting the restaurant did not act in good faith, took no steps to learn the

requirements of wage and hour laws, and did not consult an attorney. Said the court, ignorance of the law is no defense

FAIR LABOR STANDARDS ACT – NON-TIPPED WORK

23) Toro v. Rusty Bucket Restaurant & Tavern, 2024 WL 69578 (S.D.Ohio, 1/5/2024). Plaintiff worked as a server at one of defendant's restaurants. She received tips and so the restaurant was able to take a tip credit. Plaintiff complains that defendant requires servers and bartenders to spend more than 20% of their time on non-tip-producing work, like cleaning as well as opening and closing duties, while paying them the below-minimum tip-credit wages. These allegations are sufficient to state a claim under the FLSA. Therefore, defendant's motion to dismiss was denied.

FORUM NON CONVENIENS

24) Olson v. Hyatt Hotels Corp. et all, 2024 WL 1005566 (Superior Crt., Del., 3/7/2024). Plaintiff was a guest at defendant Dominican Republic hotel. Her husband was killed by an electrical shock while in defendant's swimming pool. Plaintiff commenced a lawsuit in Delaware; the defendants sought to remove it to the Dominican Republic. The court reviewed the relevant factors and denied removal. Of significance were the facts that the defendants advertised their resort in Delaware; the autopsy occurred in Delaware; testimony from witness in the Dominican Republic could be presented at trial by deposition; a view of the premises at trial would not portray the condition of the premises on the day of the incident; and the Delaware court is "fully equipped to interpret and apply foreign law."

FORUM SELECTION CLAUSE

25) Rosemont Hotels, Inc. v. Barton Malow Co., et al, 2024 WL 416499 (M.D. Fl., 1/9.2024). Plaintiff, a developer, contracted with defendant for the construction of a luxury hotel. Plaintiff alleges defendant failed to properly perform and

complete the work. Plaintiff sued for, inter alia, breach of contract. The parties' contract contained a forum-selection clause, the forum being ". . . a US court serving the area including Rockville, Maryland." Plaintiff commenced the lawsuit in a Florida district court. It stated that courts should ordinarily transfer a case to the forum specified in the forum selection clause unless plaintiff can show reason to invalidate the clause. Plaintiff failed to do that. So, although Maryland is less convenient for plaintiff, plaintiff contractually agreed to that court when plaintiff signed the contract. The court clerk was therefore directed to transfer the case to the US District Court for the District of Maryland.

FRANCHISING

26) Sonesta RL Hotels Franchising, Inc. v. Patel et al, 2024 WL 457046 (D. Mass., 2/6/2024). Defendant signed a franchise agreement with plaintiff. Additionally, plaintiff loaned defendant $115,000 for renovations to defendant's hotel facility. The day after the money was provided, defendant filed for bankruptcy. It never paid any of the fees required by the franchise agreement or payments on the loan. Plaintiffs sued; defendants defaulted. In addition to upholding plaintiff's breach of contract case, the court held defendant violated the implied duty of good faith and fair dealing. The required conscious wrongdoing and dishonest purpose were established by the fact defendant knew that the company would file for bankruptcy within a day of accepting the loan of $115,000. Concerning attorneys fees, the court concluded plaintiff's request for 75 hours of fees was excessive and reduced the requested fees.

***27) Doe v. Wyndham Hotels and Resorts, Inc.,* 2023 WL 8888836 (C.D.Cal., 11/13/23).** A sex trafficking victim sued a Days Inn and the franchisor Wyndham. She alleged violations of the Trafficking Victims Protection Reauthorization Act. Wyndham denied liability since it is the franchisor, not the hotel operator. The court found sufficient control by Wyndham over the day-to-day operations of the hotel to possibly create a principal-agent relationship. If such a relationship exists, the franchisor could be liable on a theory of vicarious liability. The court therefore refused to grant Wyndham's motion to dismiss.

FRAUD

28) LaForte v. Expedia, Inc. , Hilton Hotels, et seq, 2024 Il. App.3d 230153-U (App. Crt., Ill, 2/6/2024). Plaintiff made hotel reservations through Expedia for six nights totaling $1,708.44. She later tried to adjust the dates through Expedia but Expedia never confirmed the adjustment. Expedia's site informed plaintiff that the cancellation policy, beyond the date of free cancellation, was payment for one night only plus taxes and fees. Yet plaintiff's credit card was charged by Expedia for the full $1,468.44. Unable to resolve the matter with Expedia or the hotel, plaintiff sued. At trial, an Expedia manager testified that the decision whether to issue a refund rests entirely with the hotel. The small claims court judge determined Expedia knew or acted with reckless disregard about the apparent falsity of the statements made on its website, and ruled in favor of plaintiff on the fraud charge. The judge awarded plaintiff compensatory damages of $1,223.70, court costs of $506.62, and punitive damages of $7,822.21. Expedia appealed. The appellate court reversed, finding no evidence that Expedia posted the cancellation policy without intending to apply it. The fact plaintiff did not receive a refund in accordance with the posted policy, without more, is not evidence of Expedia posting a false statement with knowledge of, or reckless disregard for, its falsity.

INDEPENDENT CONTRACTORS – LIABILITY THEREFOR

29) Wendy-Geslin v. Oil Doctors, New Ko-Sushi Japanese Restaurant, et al, 2024 WL 1423741 (2nd Dept, NY, 4/3/2024). Plaintiff tripped and fell over a hose on the sidewalk abutting property owned by defendant restaurant. It happened at 9:15 p.m. when it was dark out. The hose ran from a truck operated by defendant Oil Doctors which was hired by the restaurant to collect oil and clean out the grease trap, which was located in the basement of the property. Generally, a tenant or property abutting a public sidewalk owes no duty to maintain the sidewalk in a safe condition, and liability cannot be imposed for injuries sustained on the sidewalk. An exception exists where the abutting lessee caused the condition to occur because of a special use. The court held cleaning the grease traps could be a special use. Another general rule is that a party is not liable for its independent contractor's negligent acts. However, an exception exists where

the work performed is inherently dangerous. The court held a potential tripping hazard placed across the sidewalk in the dark could be inherently dangerous.

INSURANCE

30) Ramos v. Osseo Family Restaurant v. Grinnell mutual Reinsurance Co., 2024 WL 1299543 (3/27/2024). Plaintiff sued defendant restaurant for failing to pay overtime wages. The restaurant notified its insurance company. It sought a declaratory judgment that it was not obligated to defend or indemnify the restaurant. The policy provided coverage for "bodily injury, property damage, personal and advertising injury, and losses arising out of a wrongful employment act against an employee." It also contained an exclusion in the definition of "wrongful employment act" for claims under the FLSA. Based on these provision, the court ruled the insurance company has no duty to defend or indemnify the restaurant.

31) T.E. v. Wyndham Hotels, et al, 2024 WL 474400 (S.D. Ohio, 2/7/2024). In this sex trafficking case brought by an alleged victim against several hotels (See full write-up herein under Sex Trafficking – TVPRA), Red Roof Inn's insurance company moved to intervene. It sought a declaratory judgment regarding its obligations, if any, to defend and/or indemnify Red Roof Inn (RRI). RRI had made a demand of the insurance company for defense and indemnity for plaintiff's claim against RRI. The court denied the motion to intervene, noting the insurance company's interest was "merely contingent", and its presence in the lawsuit would risk delay and prejudice to the original parties. The language of the insurance policy is wholly separate from TVPRA claims. Additionally, the insurance company can pursue a separate declaratory judgment action.

JURISDICTION

32) Sunset Equities, Ltd & Hershco v. Donald J. Urgo & Associates, LLC, et al, 2024 WL1195414 (S.D.N.Y., 3/20/24). Plaintiffs hired defendants to manage a hotel in the Bahamas seeking branding as a Courtyard by Marriott. The relationship went sour and plaintiff sued in NY claiming defendants

misrepresented their status as licensed to do business in the Bahamas and failed to contribute promised money. Defendant commenced a related lawsuit in the Bahamas claiming plaintiff misrepresented its financial status rendering maintaining the hotel difficult, and plaintiff otherwise obstructed defendants' ability to manage the facility. The New York court decided to stay its proceeding pending the outcome of the Bahama action, noting substantial overlap between the parties and issues in the two lawsuits, the advanced stage of the Bahamian action, the location of witnesses, the adequacy of the Bahamas as a forum, the fact the Management Agreement references Bahamian law will apply to disputes, and judicial economy.

33) Lyons v. Hyatt Hotels Corp., et al, 2024 WL 706040 (N.D. Indi., 2/21/2024). Plaintiff, an Indiana urogynecologist, attended a medical conference at defendant Mexico resort. While riding in a golf cart, the driver, an employee of defendant, sped and hit a boulder, causing plaintiff to be thrown from the cart and suffer serious damages. He sued in Indiana where the applicable negligence rule is comparative negligence. Mexico follows the contributory negligence rule. Further, Mexico does not permit recovery of punitive damages or pain and suffering. The hotel sought a declaratory judgment that the law of Mexico should apply. The court noted the accident occurred there, the hotel's duty to plaintiff was allegedly breached there, plaintiff was initially treated there for his injuries, In holding that Mexican law applies, the court stated, "People do not take the laws of their home state with them when they travel, but are subject to the laws of the state in which they act", unless that place bears little connection to the action.

KEYS (FOR DOORS)

34) Strayer v. Wingate at Wyndham, et al, 2024 WL 207497 (Superior Crt, N.J., App. Div., 1/19/2024). Plaintiff was a guest at defendant hotel. He was there on a work detail in the area, sharing a room with a close friend and colleague. Plaintiff awoke one morning to find his roommate dead. He sued the hotel for negligent infliction of emotional distress. The hotel had given the key to their room to another crew member who entered the room when plaintiff was not there and shot the roommate. Plaintiff returned to the room late at night and,

not wanting to wake his friend, he did not turn the lights on. Plaintiff discovered the friend dead when plaintiff awoke the next morning. The defendant argued the hotel was negligent in its distribution of the guestroom key card , and sued for negligent infliction of emotional distress – one count for his loss of a friend, and one count for his own resulting safety fears. An element of that cause of action for injury to others is "a marital or intimate, familial relationship between plaintiff and the injured party." The court found this element missing. Concerning fear for his own safety, an element is that plaintiff must be in the "zone of danger." The court determined plaintiff could not prove a reasonable fear of immediate personal injury because he was not present when the shooting occurred, and was not aware that the roommate was murdered (as opposed to dying from natural causes), until later in the day. The court thus affirmed the dismissal of plaintiff's case.

NEGLIGENCE

35) Lasseter v. Jackson Hotel LLC, et al, 2024 WL 633132 (Sup. Crt, Miss., 2/15/2024). Plaintiff, a 76 year old man, was a guest at defendant hotel. As he approached the elevators while using a cane and accompanied by his daughter and granddaughter, he tripped and fell on a transition strip adjoining a carpeted area leading to a tiled threshold in front of the hotel. Later that evening plaintiff's wife went to the area of the fall and observed a raise strip not secured to the floor. Plaintiff sued claiming the hotel breached its duty to keep the premises reasonably safe. The general manager testified he walked the area multiple times a day and never noticed a defect. No one else had fallen in the area or reported a defect. There was no evidence that the flooring was installed improperly. The hotel also produced a detailed quality assurance evaluation conduct by the hotel's parent company a month earlier which did not identify a defect. The court granted the hotel's motion for summary judgment finding plaintiff failed to prove the strip was a dangerous condition.

***36) Lyndon-Kelly v. Hilton Hotels*, 2023 WL 8447937 (12/6/2023).** A planter in a covered breezeway at defendant hotel fell and hit a guest. She was injured and sued the hotel. The guest claimed the planter was blown into her by the wind and was not sufficiently anchored. The hotel's expert witness established that the

direction of the wind was such that it would have carried the planter away from plaintiff, not towards her. The hotel argued the guest must have inadvertently leaned against the planter causing it to fall. The court granted the hotel's motion to dismiss.

NEGLIGENCE – SECURITY

37) Adams v. Boomtown Casino & Hotel New Orleans, et al, 2023 WL 890645 (La. Appls Crt., 12/27/23). In a casino parking lot, plaintiff's purse was snatched, and plaintiff was pushed and injured. The hotel denied liability since it had no control over the thief. The court refused to dismiss the case, finding a question of fact for a jury whether the hotel provided adequate security.

SPOILATION

38) Lawrence v. Renaissance Hotel Operating Co., 2024 WL 1091790 (DC Dist. Crt., 3/13/24). Plaintiff was sexually attacked at defendant hotel by a man she met in the lobby bar. Although the hotel was aware of her circumstance, staff did not call the police, did not summon medical assistance, and failed to preserve evidence that might have been available in his room where the assault occurred. Due to lack of evidence, the attacker was not prosecuted. Plaintiff sued the hotel for spoilation. The court denied the facility's motion to dismiss.

PIERCING THE CORPORATE VEIL

39) Columbo v. Phillips Bryant Park LLC, et al, 2024 WL 1138942 (S.D. NY, 3/15/24). Plaintiff was employed by defendant hotel for 20 years as Asset Manager and Managing Director. He accumulated in his deferred compensation plan $382,374. Part way through plaintiff's employment, the hotel withdrew funds from his account and "loaned" itself the money to cover the hotel's operational needs. When plaintiff retired the hotel paid him only $60,000 of the deferred compensation owed. Plaintiff sued, inter alia, the officers of the owner corporation, seeking to pierce the corporate veil. One of the elements of such

cause of action is that "the owner exercised such control that the corporation has become a mere instrumentality of the owner, who is the real actor." The court declined to pierce the corporate veil and dismissed the case against the officers, finding insufficient authority and control over the hotel by the officers.

RESPONDEAT SUPERIOR

40) McKee v. Crestline Hotels d/b/a/ Hilton Singer Island Oceanfront, 2024 WL 105247 (Appls. Crt, Fl., 1/10/24). Plaintiff was injured and her husband killed in a car accident caused by the banquet manager of defendant hotel. On the date of the accident, he managed a quinceanera celebration and left, consistent with his job responsibilities, after food had been served and while guests were still present and before cleanup had started. He assigned remaining duties to the banquet captain. At the time of the accident the banquet manager was on his way home and on his cellphone. The evidence suggested he might have been attempting to place a work-related call. The court determined the employee was not acting within the scope of his employment even if the call had in fact been made to the hotel. The court first cited the "going and coming" rule which holds that an employee is not within the scope of employment when driving to and from work. Additionally, the court noted that "neither driving, nor using a personal cell phone while driving home, was an integral part of the work the banquet manager was hired to perform. . . Even if the worker was motivated to further his employer's interests when he placed the phone call to his employer . . . his decision to do so by using his personal cell phone while driving his personal vehicle on his way home was for his own convenience."

SEXUAL HARASSMENT

41) Portillo v. Wheaton Lounge, et al, 2024 WL 1256265 (D. Md., 3/25/2024). Plaintiff was a server at defendant restaurant for ten months. The two owners condoned and encouraged customers to sexually harass and proposition the female servers. The owners urged plaintiff to accept the offers. They also forbade her from refusing a drink purchased by a customers, thus she often ended her shift "completely inebriated." The owners made sexual comments

about her appearance and groped her on multiple occasions. Plaintiff repeatedly objected. The owners required servers to stay after work and drink with them, threatening negative consequences if they did not. On more than one occasion, one of the owners raped plaintiff after hours. After she threatened legal action she was chastised for something others regularly did, and was fired. She fell into a deep depression, stopped bathing, and gained substantial weight; she started having headaches and panic attacks. She has struggled with relationships and is fearful of enclosed spaces. She sued for sexual harassment which requires severe and pervasive action. Said the court, "Where servers could not go to work without risking sexual assault, the unwelcome conduct was sufficiently severe and pervasive to alter the conditions of employment." Plaintiff also claimed her firing was retaliation for her complaining about the owner's sexual advances. The court agreed. Compensatory damages were awarded in the amount of $200,000. Punitive damages were "amply supported" and also awarded in the like amount of $200,000.

SEX TRAFFICING – DISCOVERY

42 and 43) S.C. v. Wyndham Hotels & Resorts, Inc., et al, 2024 WL 530585 (N.D. Ohio, 2/9/2024). In this sex trafficking case, the court denied defendant Red Roof Inn's motion to seal its brand standards, operations manual, safety and security presentation and training on preventing and reacting to child sex trafficking. The court granted the motion to seal for its franchise fees and royalties. See also ***R.C. v. Choice Hotels International, Inc., et al, 2024 WL 713036 (N.D. Ohio)*** where the court denied Choice Hotels request to seal its franchise agreement, rules and regulations, and quality assurance reports.

44) S.C. V. Wyndham Hotels & Resorts, Inc., 2024 WL 474478 (N.D. Ohio, 2/7/2024). In this sex trafficking case, plaintiff moved the court to compel defendants to conduct certain electronically stored decision maker email searches. Given the large number of hotels Wyndham oversees (9,000+), and the hundreds of thousands of documents involved, the court ordered the parties to meet and confer about whether narrower requested would be sufficient. The court gave a deadline and mandated a joint report identifying any remaining disputes by a specified date.

45) S.C. V. Wyndham Hotels & Resorts, Inc., 2024 WL 693961 (N.D. Ohio, 2/20/2024). In this sex trafficking case, the court ordered sealing of the names of plaintiff's family on all pre-trial filings, noting public access to their names would help the public identify her, and plaintiff's alleged traffickers threatened plaintiff's family. The court granted the motion.

SEX TRAFFICKING – STATUTE OF LIMITATIONS

46) E.C. v. Choice Hotels International, Inc., 2024 WL 1142162 (S.D. Ohio, March 15, 2024). Plaintiff brought this trafficking action based on Trafficking Victims Protection Reauthorization Act and Child Abuse Victim's Rights Act (CAVRA). Defendant sought dismissal of plaintiff's CAVRA case due to the statute of limitations (SL). Plaintiff was allegedly trafficked between 2009 when she was 17, and 2014. Congress revised CAVRA several times including altering the SL. Defendant argues the SL in effect when plaintiff was first trafficked should apply – 6 years after the cause of action accrues. Plaintiff argues the SL in effect when she escaped from her traffickers should apply – 10 years from when the action accrued which plaintiff claims is 2014. Plaintiff also suggests that the current SL should apply which imposes no time limit for filing a complaint. The court declined to apply the latest SL retroactively, and instead applied the rule applicable when her trafficking began. The court noted the SL would toll until her release in 2014. Six years thereafter is 2020. The plaintiff did not bring her claim until October, 2022. The court therefore dismissed plaintiff's CAVRA cause of action.

SEX TRAFFICKING – TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT (TVPRA)

47) P.B. v. Wyndham Hotels & Resorts, Inc., 2023 WL 8890229 (D.N.J., 12/26/2023. Plaintiff alleges she was sex trafficked at defendant hotel and sues both the hotel and the franchisor. The franchisor moved to dismiss the TVRPA claim, arguing it lacked even constructive knowledge of plaintiff's situation. The court noted that general awareness that sex trafficking has occurred at a franchisee's property is not sufficient. Instead, the franchisor must have actual or

constructive knowledge that plaintiff in particular was being trafficked. Therefore the court dismissed the TVRPA action. Plaintiff also claimed the franchisor should be vicariously liable for the hotel's alleged wrongdoing, arguing that the control exercised over the franchisee established an agency relationship. The court reviewed the control identified in the franchise agreement. While stating that a franchise relationship does not necessarily trigger a master-servant relationship, the court held the complaint "plausibly alleges a principal-agent relationship between the franchisor and [the defendant hotel]. Therefore, the franchisor's motion to dismiss the vicarious liability claim was denied.

48) Doe v. Wyndham Hotels & Resorts, 2023 WL 88888836 (C.D.Calif., 11/13/23). Plaintiff alleges she was trafficked at the Days Inn by Wyndham Anaheim West. Plaintiff further alleges that the hotel is branded by Wyndham, and sued, inter alia, the franchisor for violation of the TVPRA. The court held the evidence that the franchisor knew or should have known plaintiff was a victim of trafficking was insufficient. Specifically, the complaint failed to allege that the hotel staff who witnessed signs of plaintiff's sex trafficking reported these signs to the franchisor. Had the complaint so stated, such allegations "could plausibly indicate defendants' knowledge that plaintiff was being sex trafficked at its franchisee hotel." Plaintiff alternately alleged vicarious liability of the franchisor under an agency theory per 18 U.S.C. 1595. Wyndham argued plaintiff failed to allege that Wyndham exercised the necessary control. The complaint alleged sixteen mandates imposed on franchisees contained in the franchise agreement. Included are requirements relating to reservations, marketing, wages, job descriptions, staffing levels, influencing employment decisions, training, undertaking inspections, monitoring, auditing, and more. The court ruled the allegations were enough to survive a motion to dismiss.

49) L.M. v. Hilton Hampton Inn, 2024 WL 631482 (E.D. N.C., 2/13/2024). Plaintiff sued defendant hotel for violations of TVPRA. While plaintiff stated she was forced to have repeated visit from sex buyers, no facts were alleged from which the court could find any inference of force, threats, fraud or coercion, as required by TVPRA, section 1591. Other cases where the complaint was found sufficient included allegations of visible injuries, and/or desperate pleas and screams for help, and/or staff heard constant and loud assaults of the victim by traffickers. The court further noted that plaintiff's allegations were consistent with

prostitution but not sufficient for sex trafficking, and "knowledge of prostitution is not necessarily knowledge of sex trafficking by force or fraud as required by TVPRA. The court also rejected the argument that general knowledge of the prevalence of sex trafficking in hotels imputes constructive knowledge of sex trafficking to particular defendants. The court also found plaintiff's allegations of actual or constructive knowledge of trafficking was insufficient, noting that the standard requires that the hotel "should have known" about sex trafficking, not that it "might have been able to guess.". The court also rejected plaintiff's claim that defendant hotel should have "exercised reasonable diligence to proactively investigate and prevent possible sex trafficking." The court however ruled "the TVPRA imposes no such duty, as courts routinely recognize." For these reasons, the court dismissed the complaint.

50) T.E. v. Wyndham Hotels & Resorts, Inc. et al, 2024 WL 474400 (S.D. Ohio, 2/7/2024). Plaintiff alleges she was sex trafficked as a minor in several hotels including Wyndham. Plaintiff alleged that Wyndham had at least constructive knowledge of her plight because staff interacted with her daily and were aware she was bruised, starved and drugs; she was beaten by her trafficker in public spaces; she was forced to drink alcohol at the hotel bar; hotel staff called police because of "violent incidents". Further, a Wyndham hotel closed due to, inter alia, human trafficking." In response, Wyndham franchisor alleges it is too far removed from the claimed harm to have participated in trafficking or profited from it. Plaintiff responds that the franchisor controls every aspect of the day-to-day operations of its branded hotels. As such, plaintiff argues Wyndham was "intimately aware" that sex trafficking was occurring based on incident reports, customer reviews, police reports, and online data. The court further found that defendant participated in a venture with the traffickers by renting them rooms, thereby profiting. The court also noted the expansive control the franchisor has over franchiesees. The court therefore denied defendant's motion to dismiss.

SOLID WASTE DISPOSAL

51) New Mexico Environment Department Resource Protection Division v. HRV Hotel Partners, LLC, 2024 WL 776048 (2/26/2024). Defendant hotel appealed a finding against it of having committed four violations of the New Mexico Solid

Waste Act – failure to register as a hauler of special waste, failure to manifest special waste, failure to sufficiently characterize special waste, and improperly disposing of special waste at an unpermitted location. Specifically, plaintiff was convicted of removing sludge from existing wastewater retention ponds, and disposing of that sludge on land of the Pueblo Tribe, and misinforming the truckers hired to haul the sludge about its true nature. The court determined that substantial evidence supported the hearing officer's findings and conclusions of liability, and so affirmed. The compliance order required the hotel to pay a civil penalty and arrange with the tribe for removal and remediation of the sludge, and arrange for proper disposal. The court affirmed both the civil penalty and the remediation requirement, having failed to find they were arbitrary and capricious.

STANDING

52) Shelley v. Leisure Hotel Group, LLC, 2024 WL 235218 (N.D. Calif., 1/22/2024). Plaintiff was a guest at defendant hotel. He is disabled in numerous ways and uses a service dog. He intended to stay for one night only while construction on his house was disruptive. When the workers required additional time, plaintiff tried to extend his hotel stay. The hotel refused, disputing whether the plaintiff was disabled and whether the dog was a service dog. Plaintiff sued for discrimination and the hotel challenged his standing based on his alleged inability to show he will suffer a real and immediate threat of future injury. Defendant claims plaintiff's stated desire to return to the hotel is vague, and he doesn't allege plans for further work on his house or a reason for a need to stay at a hotel near his residence. The court rejected these arguments and held plaintiff had standing. The court noted plaintiff pleaded an intent to return, and the hotel being near his home, provides a great option for short-term lodging.

TRADEMARKS

***53) Loew's Hotels, Inc. v. Dimitrov Iliandar,* 2023 WL 6586232 (National Arbitration Forum, 9/17/2023).** Loew's Hotels, Inc. (Loews) sued the owner of the domain name loewshotelswashington.com for trademark infringement. Loew's operates hotels and resorts across the United States and Canada. It owns

various related trademarks including Loew's and Loews Hotels. Defendant is not an agent nor a licensee of Loews. The arbitrator ruled defendant's domain name was confusingly similar to Loew's trademarks. Further, defendant registered its mark several years after Loew's acquired its marks. The arbitrator thus ordered that defendant's domain name be transferred from defendant to Loew's.

UNIONS

54) Unite Here Local 11 v. W Hotel Management, Inc., 2023 WL 9004989 (C.D. Calif., 11/13/23). A contract dispute arose between defendant hotel and a group of unionized employees called Welcome Ambassadors. Per the parties' collective bargaining agreement (CBA), the Ambassadors have access to four designated parking spots for use for temporary parking. The spots generate approximately $100 per shift in tips. The hotel unilaterally reassigned those spots to valets and the Ambassadors objected. There being no resolution, the matter was referred to arbitration. The arbitrator determined the hotel violated the CBA, and directed the hotel to return the spots to the Ambassadors, and pay $162,000 in compensatory damages. For five months, the hotel resisted and the union pursued enforcement. When the hotel finally paid, the union sought additional compensation for its lost income for the five months of delay. The case has been remanded to the arbitrator on that issue.

WORKERS COMPENSATION

55) IHG Hotels & Resorts v. Alexander, et al, 2024 WL 994582 (Ky Cr. Appls., 3/8/24). A housekeeper at appellant hotel fell while working and suffered injuries to her spine, wrist and left knee. She sought compensation benefits. Several doctors evaluated her condition for purposes of determining her compensation. The doctors reached different conclusions concerning the dates appellee reached maximum medical improvement for each of her injuries. The ALJ determined which doctor she found persuasive and decided the case accordingly. The hotel challenged the ruling. On appeal the court noted that determination of the persuasiveness of the evidence is within the exclusive purview of the ALJ and can only be set aside where controlling law was

misconstrued or a flagrant error occurred. Finding neither, the decision was upheld.