TOP RECENT HOSPITALITY CASES 2024

Diana S. Barber, J.D.

Americans with Disabilities Act

1. **Brooke v. IWF Hotel Hermos LP**, 2024 WL 1136405 (C.D. Cal., 02/15/2024). Plaintiff, a disabled person who has one leg and uses a wheelchair, filed a claim for injunctive relief alleging violations of ADA based on the defendant's disabled parking area not being the shortest possible route to the hotel lobby entrance. Plaintiff included a claim for violation of California's Unruh Civil Rights Act. The federal court refused to take supplemental jurisdiction of the state law claim, noting that California has adopted numerous restrictions against ADA litigators who file numerous ADA claims, which are all avoided by bringing the lawsuit in federal court. The federal court cited fairness, judicial economy, and comity. Update: In April of 2024, a US District Court ordered a dismissal of the case, with prejudice.

2. **Arogant Hollywood vs. Marr, Keaton, Cubesmart LP, et al,** No. 22-2270 (U.S. District Court, E.D. PA (03/28/2024). In this case, Arogant Hollywood, acting without legal representation, filed a lawsuit against CubeSmart LP, a self-storage facility owner, and its executives, alleging violations of the ADA and retaliation for exercising ADA rights. Plaintiff claimed that defendants' employees intentionally locked the public bathroom at their California facility, thereby infringing upon his rights as a person with urinary incontinence. He alleged that despite notifying CubeSmart employees of his condition, they continued to keep the restroom locked, especially on Sundays. Plaintiff further claimed that after complaining, the defendants retaliated by preventing his access to his storage unit. However, the court granted CubeSmart's motion to dismiss the case because Arogant Hollywood failed to state a plausible claim for relief under the ADA. The court found that Arogant Hollywood's allegations lacked sufficient specificity and failed to establish discrimination under the ADA. Additionally, his actions, including contacting CubeSmart executives on their personal phones and threatening lawsuits, did not constitute protected activity under the ADA. Therefore, the court dismissed Arogant Hollywood's claims for discrimination and retaliation. The court's decision highlights the importance of providing specific and credible allegations when claiming ADA violations and retaliation, as well as the limitations of pro se litigants in navigating complex legal issues.

3. **Shelley v. Leisure Hotel Group, LLC,** 2024 WL 235218 (N.D. Cal., 2024). Plaintiff, a disabled individual who suffers from ADHD and PTSD, among other disabilities, due to dialysis for 11 years and receiving a kidney transplant, uses a service animal, a dog, to assist him and help manage his symptoms. Due to a home renovation, plaintiff and his service animal checked into defendant's Clarion Hotel for a one-night stay. The front-desk attendant asked him about his dog and about plaintiff's medical condition. Plaintiff answered the questions even though not required by law to do so. Plaintiff decided to extend his stay but was denied, allegedly due to his dog's presence. Plaintiff filed a claim for Violations of his ADA rights. Defendant filed a motion to dismiss, stating that the plaintiff had not been diagnosed by a medical professional, that het he could not dress and feed himself, or do household chores, drive, or use a computer. The court said no requirement exists for plaintiff to address these items. Defendant also claimed that the dog was an emotional support animal and not a service

animal. The court also dismissed the defendant's claim stating that the plaintiff alleged the dog was professionally trained to provide physical support and to assist plaintiff with his PTSD, ADHD, and other related disabilities.

4. **Washburn v. Mesquite Gaming, LLC,** No. 2:24-cv-00383-CDS-BNW U.S. Dist. Ct., D. Nevada (06/10/2024). Plaintiff, a guest of the Virgin River Hotel and Casino, owned and operated by the defendant in Nevada, is hearing impaired and relies on a service animal, a dog. The plaintiff claimed that the hotel violated the ADA and Nevada state laws by discriminating against him due to his disability and service animal needs. Plaintiff alleged that the hotel segregated guests with disabilities who have service animals to a specific building on the hotel property and prevented him from using the hotel's pool area while accompanied by his service animal. The plaintiff sought injunctive relief. The court granted the defendant's motion to dismiss primarily on the grounds that the plaintiff lacked standing under Article III of the U.S. Constitution. Although the plaintiff adequately alleged the hotel's actions were discriminatory under the ADA, he failed to demonstrate a real and immediate threat of future injury, which is necessary for standing in cases seeking injunctive relief under the ADA. The case was dismissed without prejudice and the plaintiff will have an opportunity to amend the complaint so long as he participates in a settlement conference before filing any new complaint.

5. **Goodman v. Coolvestment LLC,** No. 3:23-cv-05456-TMC U.S. Dist. Ct. W.D. Washington, Tacoma (05/03/2024). The plaintiff, sued Coolvestment LLC under the Washington Law Against Discrimination (WLAD) for denying her hotel accommodation at a Days Inn in Vancouver, Washington, because she refused to pay a fee for her service dog. The plaintiff, who has impaired hearing and uses a service dog, alleged that the hotel manager, Nirav Patel, insisted on charging a pet fee despite her informing him that the dog was a service animal. When she refused to pay, Patel allegedly became hostile and denied her accommodation. The defendant moved for summary judgment, arguing that the plaintiff could not prove discrimination because she did not actually pay the fee and because there were conflicting testimonies regarding the incident. However, the court denied the motion, finding that genuine disputes of material fact existed, particularly around whether Patel attempted to charge the fee and whether Goodman was denied accommodation as a result. The court emphasized that under the WLAD, discrimination includes both the attempt to impose a discriminatory charge, and the denial of public accommodation based on disability. These factual disputes must be resolved by a jury.

Arbitration

6. **Reid v. Café Habana Nola, LLC,** No. 23-7201 U.S. District Court, E.D. LA (05/07/2024). Chelsea Reid filed a lawsuit against Cafe Habana Nola, LLC, alleging discriminatory termination of her employment. Defendant filed a motion to compel arbitration, arguing that plaintiff was bound by an arbitration agreement posted on its website. Plaintiff opposed the motion. The court denied Defendant's motion, stating that Louisiana law governed the determination of whether a valid arbitration agreement existed. Under Louisiana law, a contract is formed by the consent of the parties through offer and acceptance. The court found that plaintiff did not manifest consent to the arbitration agreement by merely viewing a hyperlink to it on the website and later using information from the website in salary negotiations. Since plaintiff did not submit an online job application containing the arbitration agreement, the court

concluded that there was no manifestation of consent to arbitration. Therefore, the court denied the defendant's motion to compel arbitration and its motion to dismiss the complaint or stay the proceedings pending arbitration.

7. **Cullum v. Wyndham Hotels & Resorts, Corp., et al,** 2024 WL 552494 (S.D.N.Y, 02/12/2024). Plaintiffs, two elderly ladies brought a pro se action against defendants arising out of federal and state law claims regarding a timeshare contract. They alleged substantial harm due to being a victim of defendants' predatory tactics and "falsehoods and trickery." Plaintiffs were told that the presentation at the Wyndham in midtown Manhattan would be ninety minutes but lasted three to six hours or longer. Plaintiffs claimed that defendants violated disclosure laws, and misrepresented the timeshare owners ability to rent and resell times timeshares. The contract plaintiffs signed required that all disputes related to the purchase contract be resolved by binding arbitration. Based on the mandatory arbitration clause in the contract, the court dismissed the case without prejudice and granted defendants motion to dismiss. Update: the court heard plaintiffs' motion for reconsideration, and the case was finally dismissed by order dated June 24, 2024.

8. **Staley v. Four Seasons Hotels & Resorts, et al,** 2024 WL 1090816 (2nd. Cir., 03/13/2024). This case is brought by employees of the defendant Four Seasons hotel in midtown Manhattan who were furloughed without pay during the pandemic at the beginning of March, 2020. They were not called back to work. Plaintiffs sued the hotel for breach of contract and violation of the WARN Act. Their employment agreement required that certain disputes be referred to arbitration including "… termination of my employment from the Hotel… but not a permanent layoff." The defendant sought to enforce the arbitration clause, and the court denied the motion stating that the language in the arbitration provision is clear and a claim regarding a permanent layoff is not subject to arbitration. The court determined that the situation was a permanent layoff.

9. **Paguay v. ESH Restaurant Group, LLC., et al,** 2024 WL 1376163 (S.D. N.Y., 04/01/2024). Plaintiff was employed at defendant's restaurant for approximately 5 weeks. Three weeks after starting work, the plaintiff signed the defendant's arbitration agreement. In the agreement, the plaintiff agreed to "submit any and all Covered Claims arising out of [his] employment with or termination from the Company to the American Arbitration Association ("AAA") for final and binding arbitration by one arbitrator under the AAA's Employment Arbitration Rules." Plaintiff sued defendant for unpaid wages and overtime pay. Plaintiff alleged that he was required to clock out for lunch but worked through his lunch break in violation of the FSLA. Defendant filed a motion to compel arbitration as per the agreement. Plaintiff in return argued that the agreement is unconscionable because it shortens the limitations period to 180 days. The court referred the case to arbitration stating that the agreement signed by plaintiff incorporates the AAA rules and those rules provide that arbitrators have the power to rule on their own jurisdiction. Plaintiff claimed that he did not fully understand the arbitration provision. The court refused plaintiff's motion stating that a party who signs a written contract is conclusively presumed to know its contents and to assent to them.

Attorney Fees

10. **GG Closed Circuit Events v. Hunter, LLC.,** 2023 WL 8933585 (E.D. Calif., 12/27/2023). Plaintiff owns copyrights to boxing tournament podcasts. Defendant's restaurant showed a pay-per-view boxing match telecast without purchasing the appropriate license. Plaintiff obtained a default judgment against the defendant. This case has already been noted in a prior compilation of cases, however, this part of the case is focused on attorney fees. Plaintiff asked for $5,200 in statutory damages and $25,000 for enhanced statutory damages. The court granted a reduction in the statutory award of $3,000 and no enhanced damages, all without any explanation. Under the Communications Act, the prevailing party is entitled to attorney fees, which are reasonably determined by the judge. Plaintiff requested $7,106 in attorney fees consisting of 3.5 hours of work at $600 per hour,12.5 hours of work by a research attorney at $325 per hour, and work by an administrative assistant at $120 per hour. The court did not take issue with the number of hours worked, but reduced the $600 per hour rate to $350 and the $325 per hour rate to $225 per hour. The total amount requested of $7,16 was reduced to $4,037.

Class Actions

11. **Fox v. Ritz-Carlton Hotel Co., LLC.,** 2024 WL 414924 (S.D. Fl, 01/05/2024). Defendant owns 24 restaurants in Florida. They automatically added, without notice to the customers, an 18% gratuity charge to each customer's bill. The plaintiff, apparently a customer of one of the restaurants, claimed the practice violated The Florida Deceptive and Unfair Trade Practices Act. The Act declares unlawful any "unfair or deceptive trade practice." Plaintiff sought certification as a class action and the court denied such motion finding that the plaintiff's counsel has a conflict of interest, and individualized issues concerning the practices at each of their 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 case, a more lucrative one. Plaintiff claimed the cases were not dismissed to avoid an adverse ruling, but plaintiff cannot state the reason due to the attorney client privilege. The court said, "Even the appearance of having divided loyalties acting without the best interests of the class in mind can render counsel incompetent."

12. **In Re: Marriott International Customer Data Security Breach Litigation,** MDL No. 19-md-2879, U.S. District Court, D. Maryland (11/29/2023). This case, In re: Marriott International Customer Data Security Breach Litigation, involves a massive data breach at Marriott International. Hackers accessed guest reservation data, affecting approximately 133.7 million guest records. Numerous consumer lawsuits were filed against Marriott, alleging negligence and breach of contract and statutory duties. These actions were consolidated into multi-district litigation in Maryland. The plaintiffs sought class certification, which was initially granted but later vacated by the Fourth Circuit due to a class-action waiver provision in Marriott's terms and conditions. However, the district court found that Marriott waived this provision due to its actions inconsistent with individual handling of claims. The court also ruled that the provision conflicted with the Federal Rules of Civil Procedure, and therefore, class certification was reinstated for both Marriott and Accenture, the third-party IT service provider.

Contracts

13. **Brown v. LuxUrban Hotels, Inc.,** 2024 WL 761852 (E.D. Va., 02/23/2024). Plaintiff Elizabeth Brown filed a motion for default judgment against the defendant LuxUrban Hotels, Inc. in a straightforward breach of contract case based on defendant's failure to comply with the parties' settlement agreement. The plaintiff worked as an executive for over 3 years with the defendant and was subsequently terminated. Plaintiff had issues concerning her departure which 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 $97,000 in attorneys' fees. When the defendant would only pay the compensatory damages, plaintiff sued. The hotel then transferred the stock, however, would still not pay the attorneys' fees. The defendant had ample opportunity and notice to cure their default, but the defendant remained in arrears and did not appear in the litigation. Plaintiff prevailed on the breach of contract claim and the court ordered the hotel to pay the original amount of attorneys' fees plus an additional $17,297 in lawyers' fees (40.7 hours @ $425 per hour), plus interest and court fees.

14. **Casa Rosa Hotel v. Lloyds and Mt. Hawley Insurance Co., et al,** 2024 WL 728890 (S.D.N.Y., 02/22/2024). The defendant insurance company issued a commercial property policy to the plaintiff's hotel. The policy required that plaintiff notify the insurance company "promptly" of any covered loss "as soon as possible." In October 16, 2021, a windstorm damaged the roof of the hotel. The hotel reported the loss on February 10, 2022. The insurance company claimed the report was not "prompt" and sought summary judgment. The plaintiff asserted that it was unaware of the damage until sometime after the storm when a guest complained of leaks and the hotel hired a roof inspector. The roof inspector's final report was not completed until January 22, 2022; 19 days before notice was given to the insurance company. Summary judgement requested by the defendant was denied as a jury must decide whether notice to the insurance company was "prompt."

15. **Kramer v. Bailey Restaurant Group, et al,** 223 AD3d 410 (NY, 01/04/2024). Plaintiff was exiting The Bailey through its revolving door when she fell and injured herself due to the sudden drop in elevation(approximately six inches) between the door and the sidewalk. Defendant's lease with the property owner limited the restaurant's duties concerning the door to general cleaning and to ensure that the door remained free of obstructions. The restaurant stated it had not made any structural changes or repairs to the door. In addition, the landlord had put warning stickers on the revolving door. The court affirmed summary judgment in favor of the restaurant.

16. **Silvas v. Hilton International Puerto Rico, et al,** 2024 WL 40451 (Puerto Rico, 02/02/2024). Plaintiff was a guest of defendant's hotel and stepped on a paver bordering the jacuzzi pool. Upon stepping on the paver, it "gave way" and the plaintiff fell into the jacuzzi. As a result of the fall, the plaintiff suffered injuries. One of the defendants that serviced the pool area moved to dismiss. The court reviewed the language in the service contract and determined that the service contract with the pool cleaning company did not impose a contractual duty on them to maintain tile adhesive, repair loose pavers, or remove other hazards. Also, it did not impose a duty to report needed repairs such as loose pavers. The court granted the defendant pool cleaning company's motion for summary judgment.

17. **Oakland Family Restaurants, Inc., et al, vs. American Dairy Queen, Corp.**, 2024 WL 1396258 (E.D. Mich., 03/31/2024). The plaintiff acquired protected Dairy Queen franchise territory pursuant to a 50-year-old franchise agreement in which he developed and operated 12 DQ restaurants. When plaintiff decided it was time to retire, he contacted DQ about selling parts of the territory and some of the locations to each of his three long-time employees. DQ responded that it would allow the transfers but only if the new owners signed a new franchise agreement containing less favorable terms than the original franchise agreement. DQ stated that uniformity and consistency in its' agreement enhances efficiency in managing its brand. Plaintiff sued for breach of contract, promissory estoppel, and declaratory judgment stating he should be able to assign his current agreement freely without having to force new franchise agreements. The original franchise agreement unequivocally required DQ's consent to transfers. The court granted DQ's motion for summary judgment rejecting plaintiff's argument that over the years, the original franchise agreement had been amended through agreement of the parties.

Copyright Infringement

18. **Khachatryan, et al v. 1 Hotel W Hollywood, LLC,** Case No. 223-cv-10829 ODW (Ex) (C.D. Cal 06/14/2024). On January 3, 2021, a photo was posted on an Instagram account of @brave_johnson taken at defendant's hotel showing the minor plaintiffs standing by the pool in their 1 Hotel robes. The defendant also allegedly posted the photo on its' hotel website to promote and sell "1 Hotel Signature Kids Jersey Knit Hooded Robe[s]."Two years after the photo was taken, the plaintiff obtained a Certificate of Registration for "Cousins at the pool in bathrobes" from the US Copyright Office and subsequently filed an action in federal court alleging copyright infringement and other causes of action. The hotel argued that they had an implied non-exclusive license to use the photograph due to plaintiffs' consent and that the use of the photo was incidental without any information about the identity of the subjects. The court said although there may be an implied license, it did not encompass the hotel's authority to use the photograph for the purpose of selling the hotel robes and therefore the court denied defendant's motion for judgement on the pleadings.

Covid

19. **Astor Hotel v. Zurich American Insurance Co.,** 2024 WL 540584 (Superior Court N., 01/25/2024). Plaintiffs are customers of defendant insurance provider, and has acquired "all-risk" insurance policies. The hotels were forced to stop operations during the Covid-19 shut-down and plaintiff sued to recover for business interruption coverage which the policy covers when the loss results from a "necessary suspension [of business] due to direct physical loss of or damage to property." The court held that the presence of Covid-19 at the hotels, and the mandated temporary closure of the hotels, did not constitute a direct physical loss of, or damage to, the insured properties. Plaintiffs therefore did not qualify for coverage under the business interruption policy provisions.

20. **Miller Theatres, Inc., et al v. Utah State Tax Commission, et al,** 2024 WL 973858 (Utah Supreme Ct., 03/07/2024). Plaintiffs, various retail, and hospitality businesses in the state of Utah, sought to reduce their property tax assessments due to the closure of the businesses resulting from the shutdown due to Covid-19. Plaintiffs filed a claim against the Utah State Tax Commission pursuant to Utah's Access Interruption Statute. That law allows a property owner to seek an adjustment to the county's assessment for tax purposes if their property

sustains a decrease in fair market value caused by the interruption. Access interruption is defined as an interruption of normal access to and from property due to circumstances beyond the owner's control The statue list numerous circumstances and includes "any event similar to the events described herein as determined by the State Tax Commission." The parties agreed that pandemics were not a listed reason but disagreed on whether they qualified. Plaintiff argued that the statue was broad enough to cover and include pandemics such as Covid-19. The court thought otherwise and rejected this argument noting that the State Tax Commission had not adopted pandemics as a qualifying circumstance.

Damages

21. **Silvas v. Hilton International of Puerto Rico, LLC, et al,** 2024 WL 409034 (D. Puerto Rico 02/02/2024). Plaintiff injured her neck and head when she fell into a jacuzzi pool at defendant's hotel, due to stepping on a paver that gave way which bordered the jacuzzi, where she was a guest. Plaintiff sought compensation for lost income and her doctor determined she had an 8% impairment. She could still work but should not work long hours. Before the incident, the plaintiff worked full time and ran her own business. Subsequent to the accident, plaintiff discontinued her company due to her injuries but continued to work full time. Plaintiff was promoted in the company, yet her income was the same as before the accident. Defendant objected to her seeking lost income since her income had not decreased. The court denied the hotel's motion for summary judgement on the list income claim, stating that there was a time following the accident where she earned less than before (after she discontinued her personal business and before the promotion and perhaps, she could be earning more but for the accident. A jury will decide.

Defamation

22. **Abernathy v. Choice Hotel International, In., et al,** 2024 WL 1194292 (D. Mont., 03/20/2024). Plaintiff was a guest at defendant's hotel while on a business trip. While printing documents in the hotel lobby early in the morning, he and a hotel employee had a dispute over the volume and channel of a nearby television station. The disagreement resulted in the plaintiff being removed from the property. Another employee contacted the plaintiff's employer which resulted in plaintiff being fired. Plaintiff sued for defamation and interference with a business relationship. The plaintiff did not know what was said to his employer but argued that it must have been defamatory since the plaintiff lost his job. The court held *res ispa* has no place in defamation cases. Finding the evidence insufficient, the court dismissed the case.

Discovery

23. **In Re Boerne Hotel, Ltd., et al,** 2024 WL 630903 (Crt. Appls, Texas, 02/14/2024). A guest at the defendant's hotel was injured when she tripped and fell on a dangerous expansion joint cover at the Bevy Hotel in Boerne, Texas. She fell headfirst onto the floor and was unconscious and consequently incurred a traumatic brain injury where she suffered from impaired cognitive function. The defendant sought to compel the injured plaintiff to submit to an examination by a neuropsychologist and a psychiatrist. And plaintiff objected. The court ordered her to submit to the examination, denied her request that the examinations be

recorded and denied her request that the neuropsychologist specify in advance the tests to be administered. The court also granted the request that the psychiatrist identify the tests in advance, and restricted the time from the test to no more than 5 hours.

Discrimination (Public Accommodation)

24. **Newkirk v. Four Seasons Hotel Baltimore, et al**, 2024 WL 895119 (D. Md; 03/01/2024). Plaintiffs, an African American male, and a Hispanic female, sought to rent a room at the defendant's hotel for New Year's Eve. Plaintiff's credit card was declined two times because of a "Merchant Processing Error." The hotel employee refused to try and run the card a third time, so plaintiffs went to a nearby bank to get the cash. When they returned the employee accused them of stealing the money and using counterfeit money. He also suggested the plaintiffs should stay at a Motel 6 rather than defendant's hotel. During this time, several white customer were able to successfully rent rooms at defendant's hotel. Plaintiffs left and went elsewhere but decided to sue the hotel for racial discrimination. The court dismissed the case stating that plaintiffs were not denied the opportunity to rent a room, nor was there any demonstrated connection between their alleged mistreatment and their race.

25. **Mosley v. Marriott International, Inc.** No. 21-cv-10470, U.S. District Court, E.D. Michigan (03/21/2024). Numerous issues are raised in this case**.** The plaintiffs are an interracial couple who made an online reservation through Priceline.com for a room at the Westin Book Cadillac Hotel in Detroit, Michigan for one night to attend a Detroit Symphony Orchestra concert. Two room keys were given to Wagner, one of the plaintiffs, when Wagner checked in, however, the other plaintiff, Mosley, did not have his name on the reservation, but Mosley did show his identification at the time of check-in. After the show, Wagner went to the room and Mosley went to the hotel's restaurant for a glass of wine. He realized he didn't have his room key and called Wagner who said she would leave the room ajar so he could enter. When Mosely entered the elevator to go upstairs to the room, he realized he needed a key to access the floor where his room was located. His phone died so he went to the front desk to obtain a key but was not given a key because his name was not on the reservation. Calls to Wagner from the front desk were not answered. The front desk offered to charge Mosely's phone, but he declined. Mosely wanted a staff member to escort him to the room, but the hotel staff refused. Mosely was escorted out of the hotel when loss prevention officers heard his loud voice, and thought he was a vagrant. Moments later, the local police got involved and walked Mosely to his room and Mosely threatened to sue the hotel. The scene escalated and Mosely was subsequently arrested. Plaintiffs requested a copy of all video recordings within two days of the event, which were not delivered, and plaintiffs filed a motion for sanctions against defendants for spoliation. Plaintiffs claim that the video would demonstrate discrimination against them as an interracial married couple. The video did not have any audio and only showed the back head of the receptionist and not the receptionist's facial expressions. The policy have body cam footage which shows possible intoxication of Wagner, so the hotel video was not necessary. Plaintiff's motion for spoilation was denied by the court. In reviewing the racial discrimination claims, the court held for Marriott and the defendants stating that there was no inference of discrimination based on plaintiffs being an interracial married couple. As for the retaliation claim, plaintiffs were engaged in a protected activity, and the hotel took an adverse action by evicting them. All occurring within closeness of time so a jury should decide.

Summary judgment for defendant on all charges, except the plaintiffs may pursue the claims for false arrest and false imprisonment.

26. **Powells v. 1600 West Loop South, LLC. , et al.,** H-23-3790, U.S. District Court, S.D. Texas (04/23/2024). Willie Powells, an attorney, sued Post Oak Hotel for race and/or sex discrimination and intentional infliction of emotional distress after he was asked to remove his baseball cap at the hotel's bar, H Bar. Powells, who is Black, alleges he was the only Black person asked to remove his headwear, while white patrons wearing cowboy hats were not. Post Oak moved to dismiss the claims. The court granted the motion to dismiss the intentional infliction of emotional distress claim but denied it for the § 1981 claim. To establish a § 1981 claim, Powells needed to show intentional discrimination in the making and enforcement of contracts. Powells alleged that the hotel's dress code was selectively enforced, with Black patrons like himself being turned away while white patrons were allowed to remain with cowboy hats. The court found Powells' allegations sufficient to establish a plausible claim of discriminatory intent and but-for causation. Additionally, the court rejected Post Oak's argument that Powells failed to allege the existence of a contractual relationship, stating that an attempt to enter into a contract was enough to satisfy the requirement. Finally, the court concluded that Powells' claim for intentional infliction of emotional distress was covered by § 1981 and did not meet the standard for such a claim under Texas law. Therefore, the motion to dismiss was granted for the emotional distress claim and denied for the Sec. 1981 claim.

Employment – Discrimination

27. **Hill v. Soar Restaurants II, LLC d/b/a Sonic Drive In**, 2024 WL 1257415 N.D.N.Y., 03/25/2024). Plaintiff claimed he was discriminated against by his employer Sonic Drive In on the basis of his gender. Plaintiff was hired as a cook and was promoted to associate manager. He alleged his employment was terminated when the General Manager, a female, eliminated his scheduled hours. He further alleged she treated him differently than female employees. Defendant sought to dismiss plaintiff's claims, and the court denied the dismissal stating that the allegations narrowly meet the threshold of providing a minimal support for an inference of discriminatory intent. Specifically, the allegation that defendant's female manager did not seem to like men, that she was aggressive toward plaintiff and other male employees at work and because she was having difficulty with men she was attempting to date out of work.

28. **Johnson v. The Westin NY at Times Square/Marriott International, Inc.,** No. 23-cv-1156 (AS) U.S. District Court, S.D. N.Y. (05/08/2024). Plaintiff, representing himself, filed a lawsuit against his employer, Starwood Hotels & Resorts Worldwide, LLC alleging religious discrimination under Title VII. Plaintiff claimed he was consistently harassed from 2015 to 2022 and denied an accommodation related to bad weather conditions in 2023. His complaint included various documents as evidence, such as notes, text messages, and documentation related to a COVID-19 vaccination exemption request. The defendant filed a motion to dismiss the complaint, arguing that Johnson failed to state a plausible claim and did not exhaust administrative remedies. The court, while acknowledging the liberality given to pro se complaints, found Johnson's discrimination claims lacking in sufficient detail and dismissed them. Johnson's complaint did not demonstrate a change in employment conditions or a hostile work environment attributable to the employer's actions. Additionally, his claims related to Covid-19 testing and weather-related accommodation were not convincingly linked

to religious discrimination. The court also noted the plaintiff's failure to exhaust administrative remedies for religious discrimination allegations but did not find enough evidence in the complaint to warrant dismissal on those grounds. Other claims based on criminal and consumer protection statutes were also dismissed for lack of legal basis. Finally, the court criticized the excessive length and lack of clarity in the plaintiff's complaint, warning him to adhere to Rule 8's standards in any subsequent filings. The court dismissed the complaint for failure to state a claim but granted the plaintiff an opportunity to file an amended complaint by a specified date.

29. **Nezaj v. PS450 Bar and Restaurant, et al.,** No.22 Civ. 8494 (PAE) U.S. District Court, S.D. N.Y. (02/27/2024). Plaintiff, a gay New Orleans resident worked for 6 month at the PS450 Bar and Restaurant located in midtown Manhattan as an events and floor manager until she was terminated. She sued for discrimination based on her gender and sexual orientation, along with retaliation. Plaintiff argued that from the start she experienced an openly hostile workplace culture dominated by male managers similar to a Boy's Club. Plaintiff was the only female manager. For example, defendant Miller kept touching plaintiff on her back, shoulders and knees and continued to do so after the plaintiff protested. He asked the plaintiff one morning if she had peed on a stick. Miller's language was misogynistic, and he treated male managers with more favoritism than the plaintiff. After plaintiff reported the misconduct, the male managers shunned the plaintiff. Defendant Miller moved to dismiss the claims, and the court would not dismiss the claims for gender discrimination or retaliation but did dismiss the plaintiff's claims against Miller for sexual orientation discrimination as the plaintiff did not support any evidence to such claim.

30. **Ojeda v. Ian Schrager, et al,** No. 23-cv-8237 (JPO), U.S. District Court, S.D. N Y. (05/13/2024). Plaintiff filed a lawsuit against her former employers, Ian Schrager and IS Chrystie Management LLC d/b/a Public Hotel, alleging violations of Title VII of the Civil Rights Act of 1964 and the New York City Human Rights Law. The plaintiff claimed that she was terminated from her position as Arrivals, Departures, and Guest Experience Manager at Public Hotel because of her pregnancy. The defendants filed a motion to dismiss the case, arguing that plaintiff failed to state a plausible claim. The court granted the motion in part and denied it in part. The court found that plaintiff had adequately alleged a prima facie case of sex discrimination under Title VII, as she demonstrated that she was within a protected class, qualified for her position, subjected to adverse employment action, and that the circumstances suggested discrimination. The court noted the close temporal proximity between plaintiff announcing her pregnancy and her termination, along with other factors indicating possible discrimination. As a result, plaintiff's claim under Title VII survived the motion to dismiss. As to the plaintiff's claim under the New York City Human Rights Law (NYCHRL), the court applied a similar analysis to the Title VII claim, stating that claims under the NYCHRL are viewed independently and more liberally than federal counterparts. Therefore, since the plaintiff had adequately pleaded a sex discrimination claim under Title VII, her NYCHRL claim also survived. However, the plaintiff's claims against individual defendant Ian Schrager under the NYCHRL were dismissed. The court found that plaintiff failed to allege Schrager's personal involvement in the discriminatory acts, as required under the NYCHRL. Allegations regarding Schrager's control over the hotel's decisions and his statements about the hotel's brand were deemed insufficient to establish his direct involvement in the plaintiff's termination. The court granted the motion to dismiss in part,

allowing the case to proceed against IS Development LLC but dismissing Ian Schrager as a party.

Employment – FLSA

31. **Amaya, et al v. La Grande Boucherie LLC, et. al** No. 23-cv-8897 (LJL) US District court, S.D.N.Y. (05/13/2024). The case involves several plaintiffs who worked or are currently working at La Grande Boucherie, a restaurant in New York City. They allege violations of the Fair Labor Standards Act (FLSA) and the New York Labor Law (NYLL) against the restaurant's owners and operator. The plaintiffs claim that the defendants violated FLSA and NYLL provisions by not distributing all the tips collected among the food service workers, as required by law. They allege that the defendants established a tip pool but did not distribute all the tips to the workers, and that two individuals who were acting in managerial roles also participated in the tip pool, which is against the law. Additionally, the plaintiffs allege that the defendants withheld call-in pay from the food service workers, required employees to purchase and maintain their own uniforms, and retaliated against one of the plaintiffs for asserting her FLSA and NYLL rights by issuing pretextual write-ups and terminating her employment. The defendants moved to dismiss the amended complaint, arguing that the plaintiffs failed to state a claim for relief. The court granted the motion in part and denied it in part. Specifically, the court dismissed the minimum wage claim under NYLL but allowed the remaining claims to proceed. The court found that the plaintiffs adequately pleaded their claims regarding unlawful tip retention, call-in pay violations, and uniform costs. Additionally, the court determined that the plaintiff who alleged retaliation had sufficiently stated claims under FLSA and NYLL. The court granted the motion to dismiss the minimum wage claim but denied it for the other claims, allowing the case to proceed.

32. **Garcia v. Three Decker Restaurant, et al,** 2024 WL 1311897 (S.D.N.Y., 03/27/2024). The plaintiff was a server at defendants' restaurant for more than a decade. She sued the defendants for nonpayment of minimum wage and overtime payments. It was determined that one of the defendants was not the plaintiff's employer so that person was dismissed from the case. The remaining defendant disputes the plaintiff's claims. The payroll records of defendant contained many errors and did not include the house that plaintiff worked, her regular or overtime rate of pay or what her tip credit rate could be. Therefore, the plaintiff is entitled to an inference that her evidence is true and accurate, and defendant has no evidence to negate that inference. The court awarded judgment in plaintiff's favor. The court also granted the plaintiff's request for liquidated damages noting that the restaurant did not act in good faith and took no steps to learn the requirements of the wage and hour laws. The defendant also did not consult a lawyer. The court said that ignorance of the law is no defense.

33. **Spears v. Bay Inn & Suites Foley, LLC, et al**, No. 22-13376 U.S. Ct. Appls, 11th Circuit (06/20/2024). The plaintiff worked as a front desk clerk at hotels located in Alabama and operated by defendants, Rick Patel Sr. and his son Rick "Sunny" Patel Jr., and the plaintiff sued the defendants for unpaid wages and overtime under FLSA. The plaintiff argued that he was paid less than the minimum wage and owed overtime pay for his work. The question was whether the son, "Sunny" could be held individually liable as an "employer" under the FLSA and how plaintiff's lodging (the plaintiff stayed overnight due to his hours and his base being in Florida) should be factored into the wage calculation. The court affirmed the lower court's

ruling that Sunny was an employer under the FLSA as he was involved in the day-to-day operations and had financial control. However, the court vacated the damages calculation and remanded the case for recalculation.

34. **Toro v. Rusty Bucket Restaurant & Tavern,** 2024 WL 69578 (S.D. Ohio, 01/05/2024). The plaintiff was a server at one of defendant's restaurants and received tips, so the restaurant was able to take a tip credit. Plaintiff complained that the defendant required servers and bartenders to spend more than 20% of their time on non-tip-producing work such as cleaning, as well as opening and closing duties; all the while paying the servers and bartenders below-minimum tip credit wages. The court found that the allegations are sufficient to state a claim under the FLSA, and denied the defendant's motion to dismiss the case.

35. **Arevalo v. Havana Harry's II Inc.** No. 23-20555-CIV-DAMIAN, U.S. District Court, S.D. FL (01/12/2024). The plaintiffs filed a lawsuit against the defendants, alleging violations of the Fair Labor Standards Act (FLSA) related to unpaid overtime wages. The plaintiffs worked at the defendants' restaurant and claimed that the defendants manipulated time records and made improper payroll deductions, resulting in unpaid overtime wages. The defendants filed a motion for judgment on the pleadings, seeking dismissal of certain claims. The court granted the defendants' motion in part and denied it in part. Specifically, the court dismissed the plaintiffs' claims related to improper deductions for Federal Insurance Contributions Act (FICA) taxes, stating that there is no private right of action under FICA and that such claims are preempted by federal law. However, the court allowed the plaintiffs' claims regarding deductions for meals and parking expenses to proceed, as there were disputes regarding whether these deductions were permissible under the FLSA. Additionally, the court dismissed the plaintiffs' claims for conversion and civil theft under Florida law, ruling that they were preempted by the FLSA and lacked sufficient legal or factual support. The defendants were granted the right to recover their reasonable attorney's fees and costs incurred in defending against the civil theft claim. The court granted the defendants' motion to dismiss certain claims related to FICA deductions and state law claims for conversion and civil theft, while allowing the claims regarding deductions for meals and parking expenses to proceed.

36. **Cazares v. Beety Market Inc., et al,** No. 23 -cv-320 (PRK)(PK) U.S. District Court, E.D.N.Y. (02/16/2024). Plaintiff was employed by defendant's food market located in Queens, NY to prepare food, clean dishes and perform other cleaning necessary for the food market. Plaintiff was paid $10 per hour but never paid overtime wages. Plaintiff repeatedly complained to his boss about the improper pay without any recourse. Plaintiff also was not provided with wage statements detailing his rate of pay or the pay schedule. He was paid in cash every week and worked from noon until midnight, 7 days a week. Plaintiff served the complaint on the defendants, and the defendants did not respond or provide an answer. The court proceeded in the opinion to explain how the burden is on the plaintiff for the motion for a default judgement and concluded that plaintiff met the requirements and granted plaintiff's motion. Compensation was paid to plaintiff for unpaid minimum wage, unpaid overtime pay, unpaid spread of hours, failure to provide wage notices and statements, as well as liquidated damages, plus prejudgment interest.

37. **Hoffman v. Bear Chase Brewing Company, LLC,** No. 1:21cv1443 (DJN/WEF) U.S. District Court, E.D. VA (03/19/2024). Plaintiff was employed by defendant's outdoor venue that served food, beer and wine and he worked initially as a barback and then a bartender for three years.

Plaintiff alleged that defendant violated the FLSA by failing to give plaintiff sufficient notice of the tip credit required by law and for unlawfully including managers and supervisors in the tip pool. A trial ensured and a jury returned a verdict in favor of the plaintiff. Plaintiff sought liquidated damages for the defendant's failure to comply with the law. Defendant argues that liquidated damages are not warranted stating that the defendants acted in good faith and that the defendant had reasonable grounds for believing that the act or mission of the defendant was not a violation of the FLSA. Defendant argued that he hired a GM who had a degree in hotel and restaurant management and thus relied on him to know what to do. The court said it was unreasonable to rely exclusively on him to develop and implement a complex employee payment structure in compliance with the FLSA and most employers hire an expert to do this. The court held for the plaintiff and awarded $34,245.61 in liquidated damages along with the $34,245.61 awarded to the plaintiff by the jury for compensatory damages.

38. **Kaciak, et. al. v. Tab Restaurant Group, LLC,** No. 6:23-cv-1200 CEM-LHP, U.S. District Court., M.D.FL (01/24/2024). The case involves eleven plaintiffs who worked for the defendant alleging violations of the Fair Labor Standards Act (FLSA). They filed a complaint against the defendant, but the defendant did not respond, resulting in a default judgment entered against it. However, the court denied the plaintiffs' motion for final default judgment without prejudice due to several issues. Firstly, the plaintiffs failed to adequately allege FLSA coverage in their complaint, both regarding individual and enterprise coverage. The complaint lacked specific details demonstrating that either the plaintiffs or the defendant were engaged in interstate commerce or met the enterprise coverage criteria. Secondly, the plaintiffs' claim regarding illegal kickbacks lacked sufficient detail and legal support. Their complaint and motion lacked specific allegations and failed to cite relevant legal authority to support their claim under 29 C.F.R. § 531.35. Lastly, the plaintiffs did not provide a sufficient damages calculation in their motion for default judgment. While they attached a partial damages calculation, they admitted to having limited records and requested a hearing to determine the damages. However, the court suggested that damages could be established with mathematical certainty based on further evidence, such as affidavits, without the need for a hearing. As a result, the court denied the plaintiffs' motion for final default judgment without prejudice and gave them thirty days to file a renewed motion addressing the issues raised, including providing sufficient evidence for FLSA coverage, clarifying the claim regarding illegal kickbacks, and presenting a detailed damages calculation. Alternatively, the plaintiffs could file an amended complaint if necessary. Failure to comply could lead to the dismissal of the case for failure to prosecute.

39. **Lunemann, et al., v. Kooma III LLC,** No. 23-3704-SKM U.S. District Court E.D. PA (05/13/2024). Plaintiffs were servers in the defendant's sushi restaurant located in Pennsylvania. The defendant was sued by a server who claimed that the defendant violated the minimum wage laws by sharing server tips with the sushi chefs. The case was also a class action suit. The court agreed to allow a settlement for the class action part of the lawsuit. Some of the key points of the settlement included servers who worked at defendant's restaurant from September 22, 2020 until December 10, 2023 which included 44 servers. The defendant will pay a maximum of $112,500 to settle this dispute, plus taxes. From that amount, $33,740 will go toward attorney fees and $3000 will go to the server who brought the suit. All remaining amounts will be distributed to the remaining servers. The court will decide on whether to approve the full settlement.

Employment – Hostile Work Environment

40. **Doyle v. American Glory Restaurant Corp, et al.,** No. 23 Civ. 7624 (PAE) U.S. District Court, S.D. N. Y (04/04/2024). Plaintiff worked at the American Glory restaurant in Hudson, NY as a part-time bartender. In time, the plaintiff became the assistant general manager. She contends she was constructively discharged as she was subject to both discrimination and retaliation throughout her employment. The owner of the restaurant was the plaintiff's supervisor, and the plaintiff alleged he made offensive remarks about the plaintiff's body constantly. Identifying the shape and size of her breasts. On at least 5 occasions, the defendant told the plaintiff that her breasts could serve as a draws for older men to patronize the restaurant. Defendant also confronted the plaintiff with sexually explicit materials and inappropriate remarks related to sex. Defendant also retaliated against the plaintiff for complaining about the discriminatory language. The court denied the defendant's motion to dismiss the plaintiff's hostile work environment claims. And will hear the plaintiff's claims for retaliation as the defendant was the plaintiff's employer when the defendant demoted the plaintiff.

41. **Portillo v. H Restaurant and Night Club, et al.,** Co. 8:21-cv-0294-PX, U.S. District Court, D. Maryland (03/25/2024). Plaintiff, a server at defendants' restaurant in Silver Springs, Maryland called the Wheaton Lounge. She also worked at another of defendants' restaurant called El Tipico. The plaintiff never received an hourly wage but was paid solely by tips. She worked an average of 42 hours a week for the first five months of employment and then 34 hours per week for the last 5 months of employment. There is no record of her hours by defendant. The plaintiff was also promised a bonus but was not paid each time she reached her goals. She was also responsible for paying the bills when customers did not. The defendants allegedly condoned and encouraged customers to in a sexually harassing way to attract business. She was also subjected to sexual comments, groping, and pressured to engage in sexual relations with one of the defendants. She refused advances, and was retaliated against when she was fired. Her claims were for wage and hour violations as well as battery and intentional infliction of emotional distress. The defendants defaulted on the case by not answering the complaint. A judgement for plaintiff was entered for most counts, and the plaintiff was to provide additional evidence to determine exact damages under the wage and hour violations. Plaintiff was awarded $200,000 in compensatory damages and $200,000 in punitive damages.

Employment – Sexual Harassment

42. **Callahan v. Xayah Enterprises, LLC**, No. 23 cv-3265 U.S. District Court, N.D., Ill (05/10/2024). Plaintiff was working for defendant Harold's Chick shack restaurant and brought suit against the defendant alleging sexual harassment, sex-based discrimination, assault, negligent retention, and negligent supervision and training. Plaintiff claims that while working at the restaurant, she was sexually harassed by a coworker named Jerry, who later threatened her with a gun in retaliation for reporting the harassment. Defendant moved to dismiss the complaint, arguing lack of subject-matter jurisdiction and failure to state a claim. However, the court denied both motions. The defendant argued that it shouldn't be held liable under Title VII because Jerry, the alleged harasser, wasn't their employee. The court rejected this, stating that whether Jerry was an employee is a matter that goes to the merits of the case, not subject-matter jurisdiction. Regarding the Title VII claims, the court found them plausible,

rejecting the defendant's argument that the harassment wasn't based on gender and that the assault wasn't within the scope of Jerry's employment. The court also denied the defendant's argument that the plaintiff voluntarily left her job, finding that she was effectively forced to quit due to the harassment and the company's inaction. Regarding the state law claims of assault, negligent retention, and negligent supervision and training, the defendant's arguments were also dismissed. The court found that even if the assault claim were based on sexual harassment, which it wasn't, the claims of negligent retention and supervision were distinct and could proceed independently. The court denied the defendant's motion to dismiss, allowing the case to proceed.

Environmental Review

43. **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., (01/29/2024). The petitioner objected to the construction of a hotel in Duluth, Minnesota. State law requires an environmental assessment worksheet 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." This ordinance was created to encourage harmony between humans and the environment, to promote efforts to prevent or eliminate damage to the environment and increase understanding of the environment. The Petition was filed, and the City of Duluth determined that an environmental assessment was required. On appeal, the city council revised the decision negating the need for the assessment. The petitioner appealed arguing that the court and not the city was the proper appeal venue. This argument was rejected by the court based on the plain language in the ordnance. Also, the court declined to rule that the city council's ruling was arbitrary and capricious.

Expert Testimony

44. **Faxel v. Wilderness Hotel & Resort, Inc. v. ProSlide,** No. 21-1967, U.S. Ct. of App., Seventh Cir. (08/15/2024). Plaintiff Meghan and Mike Faxel visited the "Wild West" water park at the Wilderness Hotel in Wisconsin Dells, and Meghan was injured on a water slide known as the "Black Hole." The plaintiffs' sued the hotel for negligence, common-law premises liability, and loss of consortium. The hotel sought contribution from ProSlide Technology, the slides' manufacturer. The court imposed a deadline for the plaintiffs to submit a liability expert, which the magistrate judge found necessary to establish the standard of care for the water park operator. The plaintiffs did not meet the deadline. Without expert testimony, the court ruled that the plaintiffs could not prove their claims since the safety protocols, inspection, and maintenance standards of water slides are not within the common knowledge of a jury. The court granted summary judgment in favor of the defendant ant the decision was affirmed by the appellate court. The ruling underscored the importance of expert testimony in cases involving specialized knowledge, especially in establishing a defendant's duty of care in complex environments like water parks.

Federal Jurisdiction

45. **Cunningham v. Marriott International, Inc., et al,** No. 24-477, U.S. District Court, E.D. LA (05/08/2024). In this case, Edith Cunningham brought a lawsuit against Marriott International, Inc., Chartis Specialty Insurance Company, and Sheraton LLC after she tripped

and fell on an electrical outlet at the Sheraton Hotel in downtown New Orleans, resulting in bodily injury. Cunningham initially filed the lawsuit in the Civil District Court for the Parish of Orleans, State of Louisiana. The defendants removed the case to the United States District Court for the Eastern District of Louisiana, asserting diversity jurisdiction under federal law. They argued that the amount in controversy exceeded $75,000, a requirement for diversity jurisdiction. Cunningham filed a Motion to Remand, asserting that her claims did not meet the jurisdictional threshold. The defendants failed to prove that the amount in controversy exceeded $75,000. The court found that the defendants' arguments, including Cunningham's failure to stipulate that her damages did not exceed $75,000 and her post-removal denial of damages exceeding $75,000, were insufficient to establish jurisdiction. Additionally, the court determined that the defendants did not provide enough detail about Cunningham's injuries and damages to meet their burden of proof. Therefore, the court granted Cunningham's Motion to Remand and remanded the case to the state court for further proceedings.

Forum Non Conveniens

46. **Olson v. Hyatt Hotels Corp., et al,** 2024 WL 1005566 (Superior Ct., Del, 03/07/2024). Plaintiff, a guest at defendant's Dominican Republic hotel, filed suit against the hotel after her husband was killed by an electrical shock while in the swimming pool at the hotel. Plaintiff brought suit in Delaware and the defendants sought to have the case removed to the Dominican Republic. The court denied removal on the basis that the defendants advertised their resort in the state of Delaware; the autopsy occurred in Delaware; testimony from a witness in the Dominican Republic could be presented at trial by use of a deposition; a view of the premises at trial could 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."

47. **Tennaro-Messina v. Marriott International, Inc.,** No. 23-20852 U.S. Dist. Ct. D. N. J. (06/20/2024). The plaintiff filed a personal injury and premises liability lawsuit after she allegedly slipped and fell in the lobby of the W Fort Lauderdale hotel in Florida. The plaintiff, a New Jersey resident, claimed to have suffered severe injuries due to the hotel's negligence. The case was initially filed in New Jersey, but the defendant, W Hotel Management, Inc., moved to transfer the venue to the Southern District of Florida, arguing that the incident and key witnesses were all located in Florida. The plaintiff opposed the transfer, citing her residence in New Jersey and the location of her medical treatment. However, the court found that the convenience of the parties and witnesses, along with the interests of justice, favored the transfer. The court emphasized that the incident occurred in Florida, and most relevant evidence and witnesses were located there. Additionally, the public interest factors, such as local interest in the case and court congestion in New Jersey, supported the transfer. Therefore, the court granted the motion to transfer the case to the Southern District of Florida.

Forum Selection Clause

48. **Rosemont Hotels, Inc. v. Barton Malow Co.,** et al, 2024 WL 416499 (M.D. Fl., 01/09/2024). Plaintiff, a hotel developer, contracted with the defendant for the construction of a hotel. Plaintiff alleged that the defendant failed to properly perform the terms of the agreement. The plaintiff sued for breach of contract. The contract contained a forum-selection clause, which said the forum should be " … a US court serving the area including Rockville, Maryland."

The plaintiff filed the lawsuit in a Florida and district courts should ordinarily transfer a case to the forum specified in the contract clause unless the plaintiff can show reason to invalidate the clause. The plaintiff failed to do that so although Maryland is less convenient for the plaintiff, the plaintiff contractually agreed to that specific court when signing the contract. The clerk of the court was directed to transfer the case to the US District Court of the District of Maryland.

Franchise Agreement

49. **Tryp Hotels Worldwide, Inc. v. Sebastian Hotel, LLC**, No. 21-11557 (MEF)(JSA) U.S. District Court, D. New Jersey (03/28/2024). During late 2016, a franchisor, the plaintiff, and a hotel owner, Sebastian the defendant, entered into two agreements, a franchise agreement, with a guaranty and a note. In 2016, the hotel owner terminated the franchise agreement. The franchisor sued the hotel owner and the guarantor. In defendant's counterclaim, they argue that the franchise agreement was void as a result of wrongful inducement and that the plaintiff breached the agreement first. Sebastian claimed the misrepresentations included that the Franchisor's employees suggested the brand would be a good "fit" even though the employee knew it wasn't. Sebastian also argued that the Franchisor said the brand would grow, which was false. And Sebastian stated he was induced to enter into the agreement without being provided key information. The court rejected these claims as Sebastian did not provide evidence to support the claims and that statements about future predictions are generally not misrepresentations. The court held that a jury must decide whether Tryp breached the agreement first, so the summary judgment was denied.

50. **Sonesta RL Hotels Franchising, Inc. v. Patel et al**, 2024 WL 457046 (D. Mass., 02/06/2024). The defendant signed a franchise agreement with the plaintiff. Also, the plaintiff loaned the defendant $15,000 for renovations to defendant's hotel facility. The day after the money was provided, the defendant filed for bankruptcy. It never paid any of the fees required by the agreement or payments on the loan. The plaintiff brought a lawsuit, and the defendant defaulted. In addition to upholding the plaintiff's breach of contract case, the court held that the defendant violated the implied duty of good faith and fair dealing. The required conscious wrongdoing and dishonest purpose were established by the fact that the defendant knew that the company would be filing for bankruptcy within a day of accepting the loan. The court concluded that the plaintiff's request for 75 hours of attorney's fees was excessive and reduced the fee amount.

Fraud

51. **LaForte v. Expedia, Inc., Hilton Hotels, et seq.,** 2024 Ill. App. 3d 230153, Ill. App. Ct. (02/06/2024). In March of 2022, the plaintiff filed a civil complaint in small claims court against defendants alleging that Expedia breached a contract with LaForte and fraudulently induced her into booking a stay through Expedia "on the basis that the cancellation policy was for only one night's charge" and was otherwise refundable. Suit followed whereby the plaintiff sought $1,708.44 in compensatory damages and punitive damages. At the bench trial, the circuit court found in favor of the plaintiff and awarded her damages. On appeal, the defendants argue that the court was wrong when it found the plaintiff's fraud allegation was proven and when it awarded punitive damages. The appellate court reversed the lower court's decision. The defendants argued that the lower court erred as the plaintiff failed to

prove the elements of common law fraud by clear and convincing evidence. The appellate court acknowledged that it won't disturb a lower court's decision unless it is against the manifest weight of the evidence. In this case, the evidence clearly showed the lower court erred as there was no evidence that Expedia posted a false statement with knowledge of, or reckless disregard for, its falsity.

Independent Contractors

52. **Wendy-Geslin v. Oil Doctors, New Ko-Sushi Japanese Restaurant, et al,** 2024 WL 14237 (2nd Dept NY, 04/03/2024). The plaintiff tripped and fell over a hose on the sidewalk next to a restaurant located in Manhattan which was owned by the defendant. The plaintiff alleged it was dark outside, the hose was black in color, and there were no signs or barriers near the hose alerting her to its presence. The hose ran from a truck operated by the defendant Oil Doctors hired by the defendant restaurant to collect oil and clean out is grease trap in the basement of the restaurant. The plaintiff sued due to her personal injuries. Generally, a tenant of 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 stated that cleaning grease traps could be a special use. Another general rule is that a party is not liable for its independent contractor's negligent acts. An exception exists, however, where the work performed is inherently dangerous. The court held that a potential tripping hazard placed across the sidewalk in the dark could be inherently dangerous

Insurance

53. **Covington Specialty Insurance Company v. Sweet Soul, Inc**. No. 23-1480 U.S. Ct. of Appls, 6th Circuit (05/08/2024). Covington Specialty Insurance Company sued Sweet Soul Bistro seeking a declaration that it had no obligation to defend or indemnify Sweet Soul in a lawsuit brought by the estate of a victim shot outside the restaurant. The district court ruled in favor of Covington based on an assault and battery exclusion in Sweet Soul's insurance policy. However, Covington lacked standing to pursue the duty to defend claim against the estate. The court vacated that part of the order and remanded for dismissal of the claim against the estate. Covington did have standing for its duty to indemnify claim against the estate, and the court affirmed the district court's ruling that the assault and battery exclusion barred coverage for the estate's lawsuit.

54. **Interstate Restoration, LLC. v. Zurich American Insurance Co, et al,** No. 21-cv-01380 NYW-JPO U.S. District Court, D. Colorado (03/05/2024). A subsidiary of Marriott owns the Sheraton Grand Rio Hotel which suffered a mudslide, and the hotel sought relief under an insurance policy held by Zurich American. Marriott was the named insured. Interstate was hired by Marriott to perform the repairs as the mudslide caused millions of dollars in damage to the hotel. Interstate performed the repairs pursuant to a work order signed by the general manager of the hotel on behalf of the owner. Interstate filed a breach of contract claim against Marriott for recovery of its invoices for the work performed. Interstate also sued Zurich for intentionally interfering with a contract due to Zurich allegedly obstructing payment, which Zurich denies. Marriott argued that the work order did not create a binding contract because the owner of the hotel was ambitious on the work order. The court found that Interstate believed the contract was with Marriott based on conversations with Marriott

representatives. And the contract was binding although the work order did not specify the owner of the hotel's name.

55. **Ramos v. Osseo Family Restaurant v. Grinnell Mutual Reinsurance Co.,** 2024 WL 1299543 (03/27/2024). The plaintiff sued the defendant restaurant for failing to pay overtime wages, and the restaurant notified its insurance company. The insurance company 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 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 provisions, the court ruled in favor of the insurance company that it has no duty to defend or indemnify the restaurant.

56. **T.E. v. Wyndham Hotels, et al,** 2024 WL 474400, S.D. Ohio, (02/07/2024). A sex trafficking case was brought by an alleged victim against several hotels and one of the defendants was Red Roof Inn. The insurance company of Red Roof Inn attempted to intervene in the case and asked for a declaratory judgement regarding its obligations, if any, to defend and/or indemnify Red Roof Inn. 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 the original parties. The language of the insurance policy is wholly separate from the alleged victim's claims. Also, the insurance company can pursue a separate declaratory judgment action.

Jurisdiction

57. **Sunset Equities, Ltd & Hershco v. Donald J. Urgo & Associates, LLC, et al,** 2024 WL 1195414 S.D.N.Y. (03/20/2024). The plaintiffs hired the defendants to manage a hotel located in Nassau, Bahamas which was to be rebranded to a Marriott hotel. Numerous disagreements occurred resulting in the plaintiffs bringing this action against the defendants in New York. The claims included misrepresentation of their status as holding a license to do business in the Bahamas and the failure to contribute $200,000 toward pre-opening expenses of the hotel. The defendants filed suit in the Bahamas claiming the plaintiff misrepresented its financial status rendering the maintenance of the hotel difficult and the plaintiffs otherwise obstructed the defendants' ability to manage the hotel. The NY court stayed it's proceeding until the outcome of the Bahamian action, noting substantial overlap between the parties and the issues in both lawsuits. The advanced stage of the Bahamian action, together with the location of the witnesses and the fact that Bahamian law was referenced in the operating agreement, convinced the court not to go forward with the NY case at the time.

58. **Lyons v. Hyatt Hotels Corp., et al**, 2024 WL 706040, N.D. Indiana (02/21/2024). A guest of the hotel, located in Mexico, was injured when he, while riding in a golf cart driven by a hotel employee was thrown from the cart and suffered serious damages. The guest was a resident of Indiana and a urogynecologist. The plaintiff filed a suit for his personal injuries in Indiana and the hotel sought to remove the case to Mexico. Indiana has a comparative negligence rule, and Mexico follows the contributory negligence rule. Also, Mexico does not allow recovery for punitive damages or pain and suffering. The hotel sought a declaratory judgment that Mexican laws should apply. The court agreed stating that the accident occurred in Mexico, the hotel's duty to the plaintiff was allegedly breached in Mexico and the plaintiff

was initially treated in Mexico for his injuries. The court said, "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.

59. **Martin v. Holiday Inn Hotel & Suites, et al,** No. 3:24-cv-834, U.S. Dist. Ct., N.D. Ohio, Western Div. (06/20/2024). The plaintiff, on behalf of himself and his minor child, filed a lawsuit claiming the court had diversity jurisdiction over the matter. The court found that the plaintiff's complaint did not adequately establish diversity jurisdiction, which requires that all plaintiffs and defendants be citizens of different states. The plaintiff only provided sufficient information regarding citizenship of two individual defendants. But for the other defendants, including various LLCs, the plaintiff failed to specify whether the entities were corporate or non-corporate and did not identify the citizenship of each member of the LLCs. The plaintiff was ordered to supplement the complaint with an affidavit detailing the citizenship of all defendants. The judge also encouraged the parties to work together to ensure that jurisdiction can be verified promptly, warning that failure to establish jurisdiction could result in the case's dismissal.

Licenses – Alcohol

60. **Dichello Distributors, Inc. v. Anheuser-Busch, LLC**, No. 3:20 cv 01003-MS U.S. District Court, D. Conn (02/07/2024). Connecticut has a three-tier system for alcohol distribution. Plaintiff, a beverage wholesaler, filed suit against Anheuser-Busch the supplier since the 1940s alleging that defendant violated Connecticut law and public policy by exercising excessive control over the plaintiff. Plaintiff claimed that the defendant's actions amounted to unfair trade practices and tortious interference with its business relationships. The defendant denied the allegations and filed a counterclaim for breach of contract, fraudulent misrepresentation, and breach of the duty of good faith and fair dealing. The parties entered into a Wholesale Equity Agreement which outlines the rights and responsibilities of each party. The court found that a reasonable jury could not conclude that defendant intentionally and improperly interfered with the plaintiffs business relationships nor exercised control over the plaintiff's advertising or leads.

Negligence – Infliction of Emotional Distress

61. **Strayer v. Wingate at Wyndham, et al,** 2024 WL 207497 Superior Crt., N.J., App. Div. (01/19/2024). The plaintiff was a guest of the defendant hotel. Richard Sperazza, the plaintiff, sued to recover for his alleged injuries for negligent infliction of emotional distress when he woke up to find the body of his murdered friend, Strayer, in the hotel room he shared while on a work assignment. The hotel had given the key to the room to another crew member who entered the room when plaintiff was not there and shot the roommate with a handgun. When the plaintiff returned to the room late at night, he noticed the deceased in the room and assumed he was sleeping so he didn't turn on the lights. When the plaintiff awoke the next morning, he noticed Strayer was still in bed which was unusual for him. He touched the body, and it was cold. The crew member was arrested and convicted for the murder. The plaintiff argued that the hotel was negligent in its distribution of the key card and sued for one count of negligent infliction of emotional distress and another count for his own safety fears. One of the elements of the first cause of action or injury to owners is "a marital or

intimate familial relationship between plaintiff and the injured party." The court stated that this element was missing. As to fear for his own safety, an element is that the plaintiff must be in the "zone of danger." The court determined that the plaintiff could not prove a reasonable fee of immediate personal injury because he was not present when the shooting occurred, and was not aware that the roommate was murdered until later in the day. The lower court's judgment for dismissal of plaintiff's claims was affirmed.

62. **Scheffer v. Jamerson**, No. 3:23-cv-00048 U.S. Dist. Ct. W.D. Virginia (06/14/2024). The plaintiffs Allen and Patricia Scheffer brought an action against a law enforcement officer, Randy Jamerson for intentional infliction of emotional distress (IIED), gross negligence and willful and wanton negligence after a mistaken identity incident during a police manhunt in Charlottesville, Virgina. While the Scheffers were staying at the hotel, law enforcement mistakenly believed they were harboring a kidnapping suspect because the Scheffers were driving a rental Jeep that vaguely matched the suspect's vehicle. Despite discovering that the Scheffers were not the suspects, officers, including the defendant, still confronted them in their hotel room late at night, leading to a tense encounter where the defendant and another officer pointed guns at Mr. Scheffer and conducted a search. The defendant moved to dismiss the claims. The court ruled that the Scheffers' IIED claim was insufficient because they did not demonstrate severe emotional distress as required by Virginia law. Their symptoms, such as loss of sleep and night terrors, did not meet the high threshold for IIED, which demands life-altering distress. The court also dismissed the gross and willful and wanton negligence claims, noting that the defendant's actions, while possibly forceful, showed some degree of care, thus failing to meet the legal standards for gross negligence, which requires a complete disregard for safety. As a result, the court dismissed the claims of IIED, gross negligence, and willful and wanton negligence against the defendant.

Negligence – Open and Obvious

63. **Minerva v. Mohegan Tribal Gaming Authority, No. GDTC-T-16-116-JAM,** Mohegan Gaming Disputes Court (06/04/2024). Plaintiff, a guest, and business invitee at the Mohegan Sun Casino slipped and fell in a visible puddle of water in the lobby near the concierge desk sustaining personal injuries. The plaintiff filed a claim for negligence and the defendant countered with a clam that the Plaintiff herself was negligent by not observing her surroundings and vailing to avoid the liquid. The court stated that there was constructive notice of the liquid substance on the floor and the issue was whether it existed for such a duration of time that defendant's employees should have discovered it. Video footage shows a Mohegan Environmental Services attendant("EVS") was posted in the lobby area at the time of the fall and is seen in the video traversing the area where the plaintiff fell just prior to the time of the incident. The court found the defendant liable for the plaintiff's injuries stating that the EVS attendant should have noticed and addressed the puddle. The court assessed damages finding 33% comparative negligence on the plaintiff's part.

Negligence – Premises Liability

64. **Wilson v. CHA Galleria, LP, et al**, No. 3:23-CV215D, U.S. District Court, N.DC., Texas (05/07/2024). Plaintiff Abbey Wilson sued DoubleTree Hotel by Hilton Dallas Near the Galleria ("DoubleTree") and Tim Godsey for injuries sustained from a sexual assault allegedly

committed by Godsey at the hotel. Wilson's claims against DoubleTree were for negligence and premises liability. After the court granted DoubleTree's motion to dismiss Wilson's first amended complaint, Wilson filed a second amended complaint alleging common-law claims against Godsey for assault, sexual assault, battery, and false imprisonment, as well as negligence and premises liability claims against DoubleTree. DoubleTree moved to dismiss Wilson's negligence and premises liability claims under Rule 12(b)(6) for failure to state a claim. The court granted defendants' motion, dismissing Wilson's action against DoubleTree with prejudice. The court ruled that Wilson's claims were barred by the Texas Dram Shop Act, which provides the exclusive cause of action against alcohol providers for injuries resulting from the intoxication of a patron. Since DoubleTree was considered an alcohol provider and Wilson was over 18 years old at the time, her negligence and premises liability claims against DoubleTree were preempted by the Dram Shop Act. Therefore, the court dismissed Wilson's claims against DoubleTree with prejudice.

65. **Silvas, et al., v. Hilton International of Puerto Rico, LLC. et al.,** No. 21-1597 (RAMO) U.S. District Court, D. Puerto Rico (02/02/2024). Crystal Michelle Silvas and Paul Andrew Silvas sued multiple defendants, including Pool & Spa Technicians Corp., after Crystal Silvas was injured when she stepped on a paver and fell into a jacuzzi pool at the Caribe Hilton hotel. The plaintiffs alleged negligence on the part of the defendants, including Pool & Spa, which was contracted to maintain the pool area. Pool & Spa filed a motion for summary judgment, arguing that it had no duty to the plaintiffs based on the terms of its contract with the hotel. The court granted Pool & Spa's motion for summary judgment, finding that the contract primarily concerned cleaning services and did not impose a duty on Pool & Spa to maintain the structural integrity of the pool area or report hazards like loose pavers. Additionally, the court ruled that Pool & Spa did not owe a duty of care to the plaintiffs as business invitees because the incident occurred on the hotel's grounds, not Pool & Spa's premises. Therefore, the court dismissed all claims against Pool & Spa Technicians Corp.

66. **Lasseter v. Jackson Hotel LLC, et al,** 2024 WL 633132 Sup. Crt, Miss. (02/15/2024). The plaintiff, a 76-year-old guest of defendant's hotel, injured himself while using his cane by tripping and falling on a transition strip adjoining a carpeted area leading to a tiled threshold in front of the hotel. Later that evening, the plaintiff's wife visited the area and noticed a raise tip that was not secured to the floor. Plaintiff sued claiming the hotel breached its duty to keep the premises reasonably safe. The GM of the hotel testified that he walked the area numerous times a day and never noticed the defect. He was not aware of any concern with the area, and no one had tripped before. There was no evidence that the flooring was installed improperly.

67. **Lyndon-Kelly v. Hilton Hotels**, 2023 WL 8447937 Dist. Ct. N.J. (12/06/2023). The plaintiff sued the defendant hotel for injuries sustained when a planter fell on her foot while she stood outside a Parsippany, NJ hotel owner and operated by the defendant. The defendant moved for summary judgement arguing that it had no actual or constructive notice that the planter posed any hazard. The plaintiff claimed the wind blew the planter and an expert witness opined that the direction of the wind was such that it would have carried the planter away from the plaintiff. The hotel argued that the plaintiff must have inadvertently leaned against the planter causing it to fall. The court granted the hotel's motion to dismiss and dismissed the complaint.

68. **Thames v. Bally's Park Place, LLC et al**, Civil No. 21-1876 U.S. Dist. Ct., D. N J (06/17/2024). Plaintiff brought a negligence claim after she sustained severe injuries from falling off the roof of Bally's Wild West Casino in Atlantic City. The incident occurred on April 7, 2019, and the plaintiff, who had been drinking at the casino, fled from a security officer, accessed the roof through an unalarmed door, and then fell while attempting to climb down the building. The defendants sought to exclude the expert testimony of Russell Kolins, the plaintiff's security expert, and also moved for summary judgment, arguing that they were not negligent, and that the plaintiff failed to present sufficient evidence of a dangerous condition or breach of duty. The court denied the defendants' motions. It found that Kolins' expert opinion was admissible, and that the plaintiff had provided enough evidence to suggest that the casino might have been negligent in failing to secure the roof area, which had a history of similar incidents. The court also ruled that there were genuine issues of material fact regarding whether the plaintiff was visibly intoxicated when she was served alcohol and whether the casino had actual or constructive notice of the dangerous condition, making summary judgment inappropriate. Thus, the case was allowed to proceed to trial, where these factual disputes could be resolved by a jury.

Negligence – Sexual Assault

69. **Doe v. The Ritz-Carlton Hotel Company, LLC,** No. 23-cv-05218 AMO U.S. District Court, N.D. CA (05/07/2024). This case involves Jane Doe and John Doe as plaintiffs suing Marriott International, Inc. and The Ritz-Carlton Hotel Company, LLC for sexual assault, intentional infliction of emotional distress, and negligence. The defendants filed a motion to dismiss and a motion to strike parts of the complaint. On the claims against Marriott, the court granted the motion to dismiss the claims against Marriott, stating that the plaintiffs failed to sufficiently allege alter ego liability. However, the dismissal is with leave to amend, allowing the plaintiffs to amend their complaint. As for plaintiff's direct liability for sexual assault and intentional infliction of emotional distress claims, the court granted the motion to dismiss these claims under a theory of direct liability as the plaintiffs conceded this point. Regarding the vicarious liability for sexual assault and intentional infliction of emotional distress claims, the court denied defendant's motion to dismiss these claims, stating that the plaintiffs' allegations make the liability plausible when viewed favorably to the plaintiffs. The negligence claim of John Does, the court granted defendant's motion to dismiss, stating that John Doe failed to meet the requirements for negligent infliction of emotional distress. However, the dismissal is with leave to amend. Defendants also sought a motion to strike the request for attorney's fees and punitive damages, stating that such challenges should be addressed under different rules, however the defendants failed to provide sufficient legal grounds for striking the requests. In conclusion, the court granted some parts of the motion to dismiss, denied others, and denied the motion to strike. The plaintiffs were given an opportunity to file an amended complaint, and any amended complaint must be filed by a specified date.

70. Lane v. American Airlines, Inc., No. 18-CV-6110 (MKB) U.S. District Court, E.D. N.Y (02/27/2024). Plaintiff boarded an American Airlines flight from Phoenix to New York taking a window seat, and Rene Santiago boarded shortly after the plaintiff taking the seat next to the plaintiff. The plaintiff alleged that Mr. Santiago was drunk while stumbling to his seat and he repeatedly asked for and was given alcoholic drinks once he boarded. She also claimed

that he sexually assaulted her during the flight. Plaintiff sought to exclude testimony of past sexual abuse and assaults. The court said the evidence is not intended to show other sexual behavior or to prove her sexual predisposition, but to show the prior sexual assaults identities sources of emotional distress. The court studied each of the expert testimonies to see whether they are allowed in as evidence and concluded that some evidence is allowed and others.

Piercing the Corporate Veil

71. **Columbo v. Phillips Bryant Park LLC., et al,** 2024 WL 1138942 (S.D. NY, 03/15/2024). The plaintiff was employed by the defendant hotel for 20 years, first in the capacity as an independent contractor, and later in the capacity as an Asset Manager and Managing Director. He accumulated deferred compensation in the amount of $382,374 as an incentive and to reward plaintiff's loyalty and contributions to the hotel. Approximately 5 years later, during the pandemic, defendants began using the funds in the plaintiff's account to loan itself money to cover the hotel's operational expenses. Plaintiff only received $60,000 and sued the defendants for unlawfully withholding his deferred-compensation funds and defendants' failure to responsibly manage the funds. Plaintiff attempted to pierce the corporate veil, but the court stated that one of the elements of the 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

72. **McKee v. Crestline Hotels Resorts LLC,** 2024 WL 105247, Appls, Crt. Fl, (01/10/2024). Plaintiff was injured and her husband killed in a hit and run car accident caused by a defendant's employee acting within the scope of his employment at the Hilton Singer Island Oceanfront hotel in West Palm Beach, Florida. The plaintiff sought to imposes liability on a theory of respondeat superior. The appellate court held that the employee driver was not acting within the scope of his employment when he hit the plaintiff and her husband in a crosswalk, even though the plaintiff provided evidence that suggested the driver was calling his employer at the moment of the collision. The driver denied calling his employer at that time and was not running any errands on behalf of his employer. The defendant relied upon the "going and coming" rule. Summary judgement in the defendant's favor was proper.

Securities

73. **Pack, et al. v. LuxUrban Hotels Inc., et al,** No. 24 cv 1030 U.S. Dist. Ct S.D. N Y (06/18/2024). This case involves a securities class action lawsuit filed by Janice Pak who alleges that LuxUrban falsely claimed to have secured a lease with a prestigious Manhattan hotel, the Royalton. LuxUrban failed to disclose multiple lawsuits against the company. These alleged misrepresentations inflated LuxUrban's stock price, leading investors to suffer significant losses when the truth was revealed. The court focused on appointing the lead plaintiff and counsel for the class action. Two groups, the LuxUrban Investor Group and the zCap/Marchetta Group sought appointment as lead plaintiff. The court appointed zCap/Marchetta Group as the lead plaintiff because they had the largest financial interest in the case and satisfied the necessary legal criteria. The court said the zCap/Marchett Group was best suited to represent the class.

Spoilation

74. **Lawrence v. Renaissance Hotel Operating,** 2024 WL 1091790 DC Dist. Ct (03/13/2024). The plaintiff was sexually attacked at the Washington, D.C. Downtown hotel operated by the defendant by a man whom the plaintiff met in the hotel's lobby bar. The plaintiff consumed "an excessive amount of wine" at the bar and was seen on the hotel camera as being taken to the man's hotel room where she was sexually assaulted and beaten. The next morning, the plaintiff, having been drugged, left the assailant's room completed naked and with a black eye and a laceration so severe it ripped a mole off her face. Although the hotel was aware of her circumstance (they gave her a bathrobe), the staff did not call the police, did not summon medical assistance, and failed to preserve evidence that might have been available in the perpetrator's guest room where the assault occurred. Specifically, soiled bed sheets and towels, trash, and possible drug residue. Due to the lack of evidence, the attacker was not prosecuted. The plaintiff sued the hotel for spoliation and the court denied the hotel's motion to dismiss.

Trademark

75. **Asazu LLC v. Collectandcreate LLC,** 323 cv 1285B U.S. District Ct., N.D Tex (11/23/23) Asazu, the plaintiff, sought a default judgment against Collectandcreate (CAC), the defendant, for trademark infringement and unfair competition. Asazu owned the trademark for "KOME" and operated a Japanese restaurant in Austin, Texas under this name. CAC opened a restaurant in Dallas, Texas also named "KOME," serving similar cuisine. Asazu filed a complaint and served CAC, but CAC failed to respond. Asazu then sought a default judgment, which was denied without prejudice by the court. The court outlined the legal standard for obtaining a default judgment, emphasizing that it is a drastic remedy. To obtain such a judgment, the plaintiff must demonstrate procedural compliance and the substantive merits of their claims. Additionally, the plaintiff must show entitlement to the relief sought, in this case, a permanent injunction. While the court found procedural compliance with the default judgment process, it concluded that there was an insufficient basis for judgment in the pleadings. Although Asazu demonstrated ownership of the trademark, it failed to sufficiently show a likelihood of confusion resulting from CAC's use of the mark. The court analyzed various factors including the strength of the mark, similarity of designs, similarity of services, identity of retail outlets and customers, defendant's intent, actual confusion, advertising media, and degree of care exercised by potential consumers. Ultimately, the court found that Asazu had not provided enough evidence to support a finding of likely confusion among consumers. Furthermore, Asazu did not adequately demonstrate irreparable harm, a necessary element for granting injunctive relief. The court denied Asazu's motion for default judgment without prejudice, allowing Asazu to file a renewed motion if it addresses the factual deficiencies outlined in the court's order.

76. **Amin v. Hingorani, et al,** No. 22 Civ. 9851 U.S. Dist. Ct. S.D. N.Y. (08/16/2024). The plaintiff Amin operates a film festival called South Asian International Film Festival and since 2004, has held a film festival in New York City screening South Asian films. Defendants conducted competing festivals featuring South Asian films, first in Texas in 2015 under the name "Dallas/Fort Worth South Asian Film Festival" and then in 2019, the defendants debuted a "South Asian Film Festival in New York City using the name "NYC South Asian Film Festival." Plaintiff filed a trademark application in 2019, and the PTO rejected the application finding that the phrases and acronyms used are not eligible for trademark protection because they

are geographically descriptive. A suit was filed by the plaintiff alleging that defendants infringed on plaintiff's trademarks and sought an injunction which was denied by the court. The court said the plaintiff's marks were not protectable as they were descriptive.

Trafficking

77. **K.O. v. G6 Hospitality, LLC, et al**., No. 22-11450 U.S. District Court E.D. Michigan (03/31/2024). The plaintiff, K.O., alleged that she was sex trafficked between 2003 and 2014 at 12 various hotels owned by the defendants in the Southeast Michigan region. She met her trafficker under the guise of a romantic relationship and began dating the plaintiff before he turned violent and sold her to buyers for sex. She claims her trafficker used these hotels to facilitate her exploitation by paying for rooms in cash daily, requesting secluded rooms, soliciting buyers in lobbies, and parking lots and using the hotel internet to advertise sex services. The claim was filed under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the "Act") and states that the defendants failed to prevent the suspicious activity and provided an environment conducive to her being exploited. Defendants filed motions to dismiss. The arguments made by defendants include the Act cannot apply retroactively (before 2008), the plaintiff's claims are barred by the Act's 10-year statute of limitations, the plaintiff engaged in impermissible shotgun pleading, the plaintiff failed to allege that the defendants participated in a sex trafficking venture under the Act and that at the plaintiff failed so sufficiently allege vicarious liability and an agency relationship on behalf of the hotel chains. The court examined each of the claims and defenses as it pertains to each of the defendants. Many of the defendants were granted their motions to dismiss finding that the plaintiff failed to state a direct or indirect claim for liability under the Act. Some were not granted their motions to dismiss, and the case continues.

78. **S.C. v. Wyndham Hotels and Resorts Inc.,** case No. 1:23-cv-00871 U.S. Dist. Ct., N.D. Ohio (04/02/2024). The plaintiff, who claimed she was trafficked for sex, sought to hold five hotel companies liable for her trafficking under the TVPRA. She didn't sue the hotels where she was trafficked, but instead sued the franchisors of the hotels where she was trafficked and the corporate parents of the franchisors. The location of the hotels are in Ohio. The record lacks evidence that any franchisor received notice of the alleged trafficking. And the court said although there may be enough to establish triable jury questions, the plaintiff did not show sufficient evidence to create viable jury questions on any of her claims against the franchisor defendants. Summary judgment to defendants was granted.

79. **E.C. v. Choice Hotels International**, 2024 WL 1142162 S.D. Ohio (03/15/2024). The plaintiff brought a trafficking action based on the TVPRA and the Child Abuse Victim's Rights Act (CAVRA). The defendant sought dismissal of the CAVRA case due to the failure of the plaintiff to file her claim within the time period outlined by the statute of limitations. The alleged trafficking occurred between 2009 when the plaintiff was 17, and 2014. Congress revised CAVRA several times including altering the statute of limitations. The plaintiff wanted the statute of limitations in effect when she escaped from her traffickers to apply but the court dismissed the plaintiff's case due to her failure to bring the claim within the required time period.

80. **Doe K.R. v. Choice Hotels, et al**, No. 6:23-cv-1012 JSSLHP U.S. Dist. Ct., M.D. Florida, Orlando Division (0612/2024). The plaintiff, an 18-year-old, alleged she was sex trafficked at the

Suburban Extended Stay hotel in Orlando and that that both her and her traffickers exhibited "obvious and apparent signs of trafficking" including interactions with the front desk staff. The defendants moved to dismiss but the court rejected their motion stating that the plaintiff did sufficiently plead facts to establish each element of her claims.

81. **Doe R.A. v. Best Western International, Inc, et al,** No 2:23-cv-3459, U.S. Dist. Ct., S.D. Ohio, Eastern Division (08/16/2024). Another case arising under the Trafficking Victims Protection Reauthorization Act (TVPRA). The plaintiff claimed she was trafficked for at least eight months in 2012 and 2013 at several hotels in the Columbus Area. She alleged that defendants failed to act knowing the widespread and ongoing human trafficking occurring in their hotels. The defendants filed a motion to dismiss based on not being the property party. Best Western has independent contractors and not agents running hotels under their brand. And that defendants did not exercise direct or indirect control over the employees who worked at the hotel. The court dismissed the defendants' motion to dismiss as the plaintiff did establish a claim under TVPRA.

Tribal Sovereign Immunity

82. **Jie Xia , et al, v. Harrah's Arizona Corporation**, No CV-23-02086-PHX-GMS U.S. District Court, D. Arizona (05/10/2024). The plaintiffs, five non-white female former employees, alleged that the defendant violated federal laws, including 42 U.S.C. § 1981 and Title VII, by terminating their employment. The termination stemmed from their involvement in operating an electronic craps game called Roll To Win, which was vulnerable to cheating strategies. Despite being suspended and investigated, without any charges brought against them, the plaintiffs were ultimately terminated, while Caucasian and male employees were not. The defendant filed a motion to dismiss based on tribal sovereign immunity, as it operated under a management contract with the Ak-Chin Indian Community. However, the court denied the motion, ruling that the defendant was not an arm of the tribe and therefore could not claim sovereign immunity.

Venue

83. **Filsoof V. Wheelock Street Capital, LLC, et al.,** No. 22 Civ. 9359 (NRB) U.S. District Court S. D. N. Y. (11/30/23). Teresa Rene Filsoof, a Georgia resident, filed a lawsuit against Wheelock Street Capital, LLC, and WS CE Resort Owner, LLC, alleging negligence resulting in injury at a hotel and restaurant in Braselton, Georgia. The defendants, headquartered in Connecticut, moved to transfer the case from the Southern District of New York to the Northern District of Georgia. The court granted the defendants' motion, citing lack of personal jurisdiction over the defendants in New York and that the events giving rise to the claim occurred in Georgia. Therefore, the case was ordered to be transferred to the Northern District of Georgia.