Hospitality Case Review:
The Top 100+ Cases
That
Impacted Us in 2018

Hospitality Law Conference
Series 2.0
April 9-10, 2019
Houston, Texas

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

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Karen Morris is an elected Town Justice in Brighton New York, a Professor of Law at Monroe Community College (MCC), and an author. She was elevated to the title of Distinguished Professor, awarded by the Chancellor of the State University of New York.

She has written several textbooks including numerous editions of Hotel, Restaurant and Travel Law, the latest of which was published in 2017 by Kendall Hunt and won a Textbook Excellence Award from Text and Academic Authors Association. She also wrote two editions of New York Cases in Business Law for Cengage Publishing. In 2011, she published *Law Made Fun through Harry Potter's Adventures,* and in 2017, *Law Made Fun through Downton Abbey*. She also co-authors Criminal Law in New York, a treatise for lawyers. She writes a column for Hotel Management Magazine entitled, *Legally Speaking*, and a blog for Cengage Publishing Company on the law underpinning the news.

Among the courses she has taught are Hotel and Restaurant Law, Business Law I and II, Constitutional Law, Movies and the Law, "The Michael Jackson Trial" and "O.J. Simpson 101; Understanding Our Criminal Justice System." Her course offerings include some in traditional classroom settings and others online. She won the Excellence in Teaching Award in 1994, having been selected by her peers, and the Chancellor's Award for Teaching Excellence in 2002, conferred by the Chancellor of the State University of New York.

Judge Morris writes newspaper commentaries on various legal issues and penned a monthly column for the Greater Rochester Track Club entitled, "The View from the Back of the Pack."

Professor Morris is a past president of the Greater Rochester Association for Women Attorneys, Alternatives for Battered Women, Inc., the Northeast Academy of Legal Studies in Business, and Text and Academic Authors Association, a national organization that advances the interests of academic authors. She also is a past Dean of the Monroe County Bar Association Academy of Law and past president of Brighton Kiwanis. In 2016, she was awarded the Lawyer of the Year Award, conferred by fellow lawyers. In 2009, she won the Humanitarian Award, conferred by the Monroe County Bar Association, and was named a Woman of Distinction in 2011.

Her favorite volunteer activities include being a Big Sister in the Big Brother program, which she has done for more than twenty years, and serving food weekly at a soup kitchen.

She received her Juris Doctor degree from St. John's University and earned a Masters of Law (LL.M.) in Trade Regulation from New York University. She was previously an Assistant District Attorney, an attorney in private practice and in-house counsel for Macy's Department Stores. She has participated in several Macy's Thanksgiving Day parades as a clown make-up artist, Captain of the Bugs Bunny Float, and Tortoise-and-the-Hare Float, and a balloon handler for Clifford, the Big Red Dog. Her newest hobby is magic. She performs for youngsters at not-for-profit agencies, and the soup kitchen.

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Diana S. Barber, J.D., CHE, CWP is currently an adjunct professor teaching hospitality law and hospitality human resource management at Georgia State University in Atlanta, GA. In addition, she conducts a one-day workshop on contracting and risk management for the Events and Meeting Planning Certificate Program offered by The University of Georgia in Athens, Georgia.

In 2017, Diana became a co-author of *Hospitality Law, Managing Legal Issues in the Hospitality Industry* (5th Edition), along with Stephen Barth.

Ms. Barber is a recipient of the J. Mack Robinson College of Business Teaching Excellence Award in 2011 and was awarded 2011 Study Abroad Program Director of the Year by Georgia State University. In addition, Ms. Barber is the recipient of the 2010 Hospitality Faculty of the Year award and in 2012, received a Certificate of Recognition from the Career Management Center for the J. Mack Robinson College of Business. Ms. Barber is a member of Phi Beta Delta, an honor society for international scholars. Diana also completed her certification as a Certified Wedding Planner through the nationally recognized [the] Bridal Society.

Ms. Barber has recently launched a consulting/speaking company called LodgeLaw Consulting using her combined academic and hospitality legal skills; specializing in providing education to hospitality companies on preventative measures to reduce legal exposure, as well as a full range of legal services to hotels, motels, restaurants, event planning companies and private clubs. She has over thirty years of legal hospitality experience. Diana began her law practice as an associate attorney at King & Spalding in Atlanta, Georgia after graduating cum laude from Walter F. George School of Law at Mercer University in Macon, Georgia. She then spent over fourteen years with The Ritz-Carlton Hotel Company, LLC serving as vice president and associate general counsel. She is a member of the State Bar of Georgia, G.A.H.A., and the Georgia Hotel & Lodging Association ("GHLA").

Ms. Barber has given numerous presentations for hospitality related associations and hotel companies and has written many articles for hotel/motel security periodicals, meeting planner periodicals, the Georgia Restaurant Forum, Hotel-Online and the American Hotel & Lodging Association. Since 2007, Ms. Barber has been on the editorial board of Hospitality Law monthly newsletter. She also writes a monthly legal Q&A column for the Georgia Hotel & Lodging Association newsletter.

Diana Barber is "Of Counsel" with Berman Fink Van Horn, PC, a law firm in Atlanta, Georgia, which is also the general counsel to the GHLA and continues to handle "hot-line" issues for members of GHLA.

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ADA/Standing

1. *Brito v. Wyndham Hotels and Resorts, LLC*, 2018 WL 317464 (D. Colo., 01/08/2018). Plaintiff is a paraplegic and requires the use of a wheelchair to ambulate. While at defendant hotel he encountered multiple violations of the Americans with Disabilities Act (ADA) that effected his use and enjoyment of the premises and sued. The hotel challenged plaintiff's standing. To establish standing, a plaintiff must show, inter alia, that he suffered an injury in fact. To prove that, plaintiff must establish a likelihood that he will return to defendant's premises. Factors a court considers are the proximity of the business to plaintiff's residence, the plaintiff's past patronage of the business, the definitiveness of plaintiff's plan to return, and the plaintiff's frequency of travel near defendant. In the complaint plaintiff stated he lives in the same county as defendant, he has frequented defendant hotel for "pleasure purposes," he was a guest at the premises for a two day stay, and he alleges an intention to return within four months. This constitutes a personal stake in the outcome to constitute standing and avoid dismissal of the complaint.

Bankruptcy

2. *In Re Lorraine Hotel 2017 LLC*, 2018 WL 5288893 (N.D. Ohio, 10/22/2018). Plaintiff hotel filed a Chapter 11 petition in bankruptcy. The debtor's sole asset was a 93-room hotel, of which 54 rooms were rentable. The debtor did not have casualty insurance covering destruction of, or damage to, the facility. The Bankruptcy Code, Section 1112(b) authorizes a judge to dismiss or convert a Chapter 11 case to Chapter 7 "for cause." Cause exists where a debtor fails to maintain appropriate insurance resulting in risk to the estate. The court stated appropriate insurance coverage is of "paramount importance" in this case because of the single asset in the estate and the status of the business as a struggling downtown hotel. The court thus dismissed the Chapter 11 case and denied conversion to Chapter 7. Instead, creditors can pursue their state remedies.

Class Action

3. *Valverde v. Xclusive Staffing, Inc., et al,* 2018 WL 4178532 (D. Co., 08/31/2018). Plaintiff is an employee of Omni Hotel. Per the written employment policies of the management company that operates the hotel, a $3.00 processing fee is deducted from each paycheck plaintiff and other employees receive. Plaintiff objected and seeks certification of a nationwide class of plaintiffs. Defendant objected arguing the allegations were insufficient to show that plaintiffs from other states were subject to the same policy. The court noted that defendant management company's policies are national and controlled centrally from its Colorado headquarters. They are contained in its written employment policies used nationwide. The court thus found the evidence sufficient to certify a nationwide class.

Contracts

4. *Murphy Elevator Co., Inc., v. Coco Key Hotel & Water Resort*, 2018 WL 1747924 (Ohio Appls Crt, 04/11/2018). The parties had a two-year elevator maintenance contract. After the first year and a half, the hotel failed to pay. The elevator company stopped performing and sued for breach of

contract. The hotel argued that it should only be liable for the unpaid moneys up to the time plaintiff stopped performing. The court rejected this argument and granted the elevator company lost profits. Noted the court, an award of damages should put the injured party in the same position it would have been in had there been no breach.

5. *Stanciel v. Ramada Lansing Hotel and Conference Center*, 2018 WL 842907 (Mich. Appls, 02/13/2018). Plaintiff fell when entering a hot tub at defendant hotel. Plaintiff attributes the fall to a broken support bar leading into the tub. Plaintiff sued, and the parties purportedly agreed to a settlement. Defendant prepared a written settlement agreement and submitted it to plaintiff. The documents included a "Medicare addendum." Defendant's attorney told plaintiff's counsel to advise if he had a problem with any of the wording. Plaintiff returned the signed documents to defendant but unilaterally crossed out language in the addendum. Plaintiff now seeks to enforce the settlement agreement. Defendant argued the agreement was not valid because defendant was not willing to agree to the settlement without the eliminated clause. Plaintiff argued the clause that was crossed out was not an essential term of the settlement agreement so there was still a meeting of the minds on all the essential terms. The court ruled the parties did not reach an enforceable settlement agreement. Case dismissed.

6. *Claris, Ltd. v. Hotel Development Services, LLC*, 2018 WL 3203053 (Crt. Appls, Ohio, 06/29/18). Per contract dated 8/2005, defendant agreed to build plaintiff a 4-floor, 122 room hotel which plaintiff planned to operate as a Candlewood Suites. The construction was completed in late summer 2006. In 2013 the hotel began experiencing water penetration when rain occurred. Plaintiff's expert witness investigated defendant's construction work of the hotel's walls and identified five deficiencies. The expert excluded one of the five as the cause of the water problem but did not identify the extent to which the other four may have contributed to the damage. Therefore, plaintiff failed to establish that a breach of contract by defendant caused the leakage. Thus, the court reversed a jury verdict in favor of plaintiff and directed a verdict for defendant.

7. *Couture Hotel Corporate v. US*, 2018 WL 3076847 (Crt. of Fed. Clms, 06/21/2018). Plaintiff purchased a $9 million hotel near Nellis Air Force Base intending to participate in the off-base lodging business for visitors to the base utilized when on-base lodging is full. To meet the base's requirements, plaintiff made modifications costing in excess of $1 million. When the work was completed, defendant advised plaintiff that, due to lowered demand, it was not adding any new facilities to its overflow listings at the time. Plaintiff sued, claiming that defendant's refusal to permit plaintiff to compete for off-base services violated the Competition in Contracting Act, various associated procurement regulations, and a contract implied-in-fact. The court held for the government finding procurement rules were not violated, and a contract-in-fact did not exist. While the government representative talked to plaintiff about prerequisites to qualify for the lodging overflow business before plaintiff purchased the facility, documents provided to plaintiff clearly stated that a prerequisite to the government signing a contract were various inspections and approvals. Said the court, "[I]n negotiations where the parties contemplate that their contractual relationship would arise by means of a written agreement, no contract can be implied." The complaint was thus dismissed for failure to state a claim.

Default Judgment

8. *Travelodge Hotels, Inc. v. Durga*, LLC, 2018 WL 5307809 (D. NJ, 10/26/2018). Defendant was a franchisee of plaintiff. Defendant ceased operating and plaintiff filed suit for damages for breach of contract. Plaintiff ultimately received a default judgment. Defendant now seeks relief from that judgment. He argued his failure to defend was excusable because he was traveling the world searching for experimental medical treatments for their daughter who suffers from a rare anoxic brain injury which worsened about the time of the lawsuit. Per defendant, this search "consumed" his life. The court granted the relief, noting that the defendant's inattention to the lawsuit was excusable given the daughter's illness.

Eminent Domain

9. *North Carolina Dept. of Transportation v. Laxmi Hotels, Inc*., 2018 WL 2207793 (05/15/2018). Defendant operates a Super 8 Motel. The Department of Transportation (DOT) sought to widen and improve the street on which the hotel was located. As a result of the work, the hotel lost several parking spaces. Also, due to a 15-foot tall retaining wall installed, visibility of the facility from the nearby thoroughfares was totally lost. The DOT claims it explained the extent of the work to be performed. The hotel's president stated the DOT assured him the hotel would not lose any parking spaces and failed to explain the height of the retaining wall. As a result of the lost parking and street visibility, the hotel claims the DOT significantly underpaid for the taking since the loss of parking and visibility severely impacted the value of the hotel. The court agreed that the DOT did not adequately inform the hotel of the extent of the taking of hotel property. The court thus ordered the DOT to provide just compensation. The case was remanded for further calculation of appropriate reimbursement for the hotel.

Employment/Actual Employer

10. *Frey v. Hotel Coleman, et al*, 2018 WL 4327310 (7th Cir., 2018). Plaintiff worked at a Holiday Inn Express in Algonquin, Illinois. The hotel was owned by Hotel Coleman, Inc. which hired Vaughn Hospitality, Inc. to manage the facility. Vaughn Hospitality consisted of Michael Vaughn and his wife. Plaintiff's paychecks came from Hotel Coleman; she was trained, supervised, evaluated, assigned, etc. by Vaughn Hospitality. Plaintiff claimed Michael Vaughn sexually harassed her and she filed a claim with the EEOC. She was thereafter fired and sued Hotel Coleman and Vaughn Hospitality for retaliatory discharge. The lower court determined Vaughn Hospitality was not plaintiff's employer and dismissed the charges against it. Following trial against Hotel Coleman, plaintiff appealed Vaughn Hospitality's dismissal. The appeals court reviewed several factors to consider when determining who is an employer, the most important being the right to control and supervise the worker. The court vacated the ruling that Vaughn Hospitality was not a joint employer and remanded the case. In doing so the court commented that the district court will "likely" conclude that Vaughn Hospitality was plaintiff's employer.

Employment/Agreement

11. *James v. Taco John's International, Inc.,* 425 P.3d 572 (Wyo. 08/22/2018). Two Taco John's corporate executives sued Taco John's after they were terminated for employment agreement violations. Both executives signed an agreement that said they would devote all of their time, attention, knowledge and skills solely to the Taco John's business. One of the men's wives decided

she wanted to have a beef jerky franchise and the two men began to not only help her but spend considerable amount of time on the beef jerky business. The district court said the employment agreement was unambiguous and granted Taco John's motion for summary judgment. On appeal, the court affirmed the lower court's decision disregarding the plaintiffs' argument that the language to use all their time was meaningless as that would include personal time. The court disagreed since the verbiage was listed under a section heading of "other employment."

Employment/Arbitration

12. *Rivera-Gomez v. Ritz-Carlton San Juan Hotel*, 2018 WL 1318006 (D. Puerto Rico, 03/13/2018). Plaintiff sued defendant Ritz-Carlton San Juan for age discrimination in employment. Defendant moved to compel arbitration pursuant to a signed arbitration agreement between the parties. Plaintiff did not challenge the agreement's validity or that his claim fell within the agreement's scope. Instead, plaintiff argued the agreement did not apply because the employer entity identified in it was "The Ritz-Carlton Hotel Co., LLC," and plaintiff's true employer was Luxury Hotel International of Puerto Rico, Inc. Turns out the former is a d/b/a of the later. The court labeled plaintiff's argument "disingenuous" and granted defendant's motion to dismiss and compel arbitration.

13. *Morton v. Darden Restaurants, Inc.*, No. 8:17-1865-HMH-KFM (D. D.C. 03/02/2018). Plaintiff, a black woman employed by Long Horn Steakhouse in Anderson, South Carolina for four years, sued her former employer for race discrimination and retaliation. Her employer sought a motion to compel arbitration pursuant to the employer's dispute resolution process. Plaintiff claimed she was not made aware of the dispute resolution process to arbitrate disputes nor any updates. Furthermore, evidence of her knowledge of the process was absent from her employment file. The court, however, disagreed stating that in South Carolina, "continued employment constitutes both sufficient consideration for, and acceptance of an offer of, an arbitration agreement." The court granted the defendant's motion to compel arbitration.

14. *Lee v. Cal. Commerce Club, Inc*., No. B276171 Cal. Ct. App. (01/22/2018). Brittney Lee applied to be a runner at a casino and signed an arbitration agreement stating that she would arbitrate any claims related to recruitment, employment or termination. After a failed medical examination, the offer was rescinded, and plaintiff filed an action against the Commerce Casino asserting many allegations including disability discrimination, failure to accommodate, failure to engage in the interactive process, wrongful termination, invasion of privacy, etc. Plaintiff admitted she signed the arbitration agreement but said the agreement was without consideration, illusory and unconscionable. The court disagreed and granted Commerce Casino's motion to compel arbitration.

Employment/Class Action

15. *Richardson v. Interstate Hotels & Resorts, Inc.*, 2018 WL 1258192 (N.D. Calif., 03/12/2018). Plaintiff was a room attendant at the Sheraton Fisherman's Wharf Hotel in San Francisco. She sued her employer claiming it failed to provide meal breaks, rest periods, minimum wage, overtime pay, accurate and itemized wage statements, and reimbursement for necessary expenditures. Plaintiff sought to represent a class of workers at the hotel. Defendant denied the necessary element of commonality, noting that each room attendant had varying schedules. The court nonetheless found enough commonality concerning the hotel's policies and certified the class.

Employment/Discrimination/ADA

16. *DePaolo v. GHM Portland Mar, LLC,* No. 2:16-cv-00468-NT (D. Maine 08/10/2018). Plaintiff was hired in 1999 by the hotel as a maintenance worker and was subsequently promoted to chief of maintenance requiring him to be on call for emergencies. Plaintiff's personality caused issues while at work and he had complaints lodged against him from other employees. He was told to treat fellow employees with more respect. In 2013, plaintiff was diagnosed with cancer and was offered leave through FMLA to undergo treatments. Plaintiff alleged in his complaint that he was called "cancer-brain" and "chemo-brain" on several occasions by the general manager of the hotel. In 2014, plaintiff resigned, then recanted his resignation, expecting to take FMLA leave at the end of January. Before his leave began, a sprinkler broke and plaintiff was called. He didn't answer the call and he was ultimately fired. Plaintiff filed suit alleging retaliation in violation of the ADA and interference with FMLA rights. The district court held that the retaliation claims could proceed, denying portions of defendant's motion for summary judgment.

17. *EEOC v. Midwest Gaming & Entertainment, LLC,* No. 17 C 6811 (N.D. Ill. 05/25/2018). The EEOC filed suit against defendant, the owner and operator of the Rivers Casino, on behalf of Donnan Lake, a former employee. Lake, who worked as a slot machine technician, took medical leave due to needing treatment for cancer. At the end of his leave, he requested a reasonable accommodation for his disability, being an extension of medical leave for an additional surgical treatment for his disability. Such request was denied by the employer as being a request beyond the scope of a reasonable ADA accommodation and Mr. Lake's employment was subsequently terminated. The casino filed a summary judgment motion and the EEOC filed a motion for discovery. The district court held that discovery was needed to determine the slot technician's job duties. The court noted that an employee who needs long-term medical leave cannot work and is therefore not a "qualified individual" under the ADA, however, whether the accommodation is "reasonable" is fact-intensive and more information is needed to make that determination. The request for additional leave may be reasonable. Summary judgment motion denied.

Employment/Discrimination/ADA/Association Discrimination

18. *Bialy v. Chipotle Mexican Grill*, No. 16-42 (W.D. Pa. 03/21/2018). The plaintiff is alleging that his employment termination with Chipotle was based on his spouse's disability under the ADA. Plaintiff was the general manager of defendant's restaurant and based on a diagnosing planning tool used to evaluate issues occurring in Chipotle restaurants, plaintiff's store was running "very poorly" and plaintiff was not performing well. While attending a work function awards ceremony, plaintiff's spouse collapsed and was taken to the hospital. Plaintiff informed his supervisor that he would be taking care of her for a few days and did not know what was wrong other than she had stopped breathing. Defendant was never told by plaintiff what the actual diagnosis was for his wife. She had been diagnosed with POTS Postural Orthostatic Tachycardia Syndrome. The court held that defendant did not know of, nor was it given notice of, plaintiff's wife's alleged disability, therefore no discrimination. Summary judgment for defendant granted.

Employment/Discrimination/ADEA

19. *Grzelewski v. M&C Hotel Interests, In*c., 2018 WL 474795 (W.D. NY, 01/02/2018). Plaintiff was a maintenance worker whose job included "traversing the hotel grounds to assess problems and make repairs." He had been with the hotel for 19 years. He was legally blind and age 60. To perform the

job, plaintiff was required to read maintenance request forms and to write reports. He claims he was terminated after asking for a different magnifier, one the size of a desktop computer. The chief engineer denied the request because of the magnifier's size. Plaintiff thus had to rely on an old, worn out portable magnifier rendering it difficult for him to read and write. Plaintiff was told when terminated that his performance had decreased. Plaintiff had no disciplinary or safety issues in his personnel record. Plaintiff claims the hotel, by failing to permit him to use the larger magnifier, had failed to provide a reasonable accommodation of his disability. The complaint failed to say that plaintiff can perform all the tasks of the job with or without accommodation. The court dismissed the case without prejudice to enable plaintiff to file a timely motion to amend the complaint to allege ability to perform all the essential functions of the position.

20. *Breve v. Ritz Carlton Hotel Co., LLC*, 2018 WL 339108 (E.D. La., 01/09/2018). Plaintiff was employed at the Ritz-Carlton New Orleans for 12 years. She and a co-worker were terminated for clocking out early. Plaintiff sued the hotel alleging age discrimination. Several years later a concierge position became available. Hotel management asked plaintiff's co-worker to apply and offered him the job. He declined and told plaintiff about the opening. She applied but was notified 5 days later that the position was no longer open. In response, plaintiff filed this age discrimination case, alleging the hotel was retaliating against her for the discrimination lawsuit she initially commenced. The hotel established that plaintiff's application for the position was submitted nine days after the hotel stopped reviewing applications. Plaintiff was thus unable to establish a link between her original discrimination case and the hotel's decision to not pursue her candidacy for the concierge position.

21. *MacAlister v. Millennium Hotels & Resorts*, 2018 WL 5886440 (S.D. NY, 11/08/2018). Plaintiff is a white woman over age 40 who worked for defendant as Corporate Director of Sales. She alleged a series of incidents that negatively impacted her work and led to a demotion in her responsibilities. She sued for, inter alia, age discrimination. The court dismissed the case because she did not prove even a minimal inference of discrimination based on age. No evidence suggested she was explicitly singled out because of her age, no one at work mentioned anything about her age, she was not replaced by a younger candidate, and no evidence was presented that her younger colleagues received more favorable treatment. For similar reasons, plaintiff's Title VII discrimination and hostile work environment claims were likewise dismissed.

Employment/Discrimination/Gender

22. *Gibson v. MGM Grand Detroit, LLC*, No. 17-12127 (E.D. Mich. 08/31/2018). Plaintiff, a female longtime employee of MGM, worked in the maintenance department as an engineer and plumber. There were three levels of engineer positions. Plaintiff applied for Engineer II and Engineer III and was denied. Men were hired for both the II and III Engineer positions. Plaintiff went to the union, but the union did not pursue her claims, so she filed a charge of discrimination for gender discrimination with the EEOC. MGM moved for summary judgment which was denied. The court said that even though the plaintiff did not offer any evidence of discriminatory motive underlying the employment decisions, she presented enough evidence to survive a summary judgment motion.

23. *Merriam v. Peak Restaurant Partners*, No. 2:15-cv-00032-DB-EJF (D. Utah 03/12/2018). A former female general manager of a Utah IHOP sued the restaurant alleging gender discrimination and retaliation. The GM was doing a great job when her supervisor was replaced and allegedly the

trouble began for the GM. The new supervisor would speak to other employees in Spanish and not tell the GM what was said. The GM was denied requested training. Soon the GM was cited with violations and failed the health department's inspection. The health inspection standards had been changed, which is why the restaurant failed. Plaintiff was threatened with termination if her performance didn't improve. Plaintiff ultimately sued for gender discrimination, constructive discharge, hostile work environment and retaliation. Defendant moved for summary judgment arguing plaintiff did not suffer an adverse employment action. Plaintiff claimed that her adverse employment action was the threat of being fired. The court granted the summary judgment motion of defendant as to the discrimination claim stating that defendant did not humiliate the GM nor damage her reputation and any harm of future employment is not deemed adverse. As to the retaliation claims, the summary judgment motion was denied.

Employment/Discrimination/Nepotism

24. *Morton v. Grand River Hotel*, 2018 WL 3153573 (W.D. Mich., 06/28/2018). Plaintiff was employed by defendant hotel. She complained that the manager's family members, cousins and friends were treated more favorably than she was and were assigned better and more hours. The court dismissed the case noting that the only federal law restricting nepotism applies exclusively to public employers. No federal law restricts nepotism for private, at-will employers.

Employment/Discrimination/Race

25. *Roan v. Ensminger*, No. 3:17-01177 (M.D. Tenn. 07/11/2018. A black assistant manager at a Sonic Drive-In in Tennessee filed a complaint pro se alleging racial discrimination against defendant after being questioned about a missing deposit of $1,440. The accused black managers were taken to the police station for questioning. None of the white managers were required to go to the police station to answer questions, however, two of the white managers did take polygraph tests. The court granted defendant's motion for summary judgment as plaintiff, even after amending his complaint, did not prove an adequate factual basis for a racial discrimination claim nor allege enough factual content from which the court could draw a reasonable inference.

26. *Montanez v. McDean LLC,* No. 1:16-CV-447 (N.D. N.Y. 03/06/2018). A former male Hispanic crew member of defendant's McDonald's franchise restaurant in Albany, NY filed a complaint pro se against defendant alleging race and national origin discrimination, sexual harassment and retaliation. Plaintiff claimed he was called a "fake Puerto Rican" and was accused of "wanting to be black.". Defendant cited three workplace policies: 1) attendance policy, 2) crew meal/break policy and 3) offenses/conduct while working policy and alleged that plaintiff's time at the restaurant was full of disciplinary issues. Plaintiff was caught on surveillance tape of going out to the dumpster during his shift to smoke, which is against the rules. Plaintiff was also caught eating a hamburger during his shift, also against the rules. Plaintiff failed to show up to work twice. Multiple written warnings were issued to plaintiff prior to termination. The court granted defendant's motion for summary judgment.

27. *Martinez v. MGM Grand Hotel, LLC,* 2018 WL 1189267 (D. Nev., 03/06/2018). Pro se plaintiff was a kitchen worker at defendant hotel. She was injured on the job which resulted in a permanent partial disability. One day after requesting an accommodation she was terminated. She sued for discrimination based on disability and Title VII. The latter cause of action was supported in the complaint only by the statement that plaintiff speaks "little English." The hotel moved to dismiss for

insufficient accusatory instrument. The court upheld complainant's claim for disability discrimination under the Americans with Disabilities Act. Concerning the Title VII claim, the court first noted that Title VII does not include discrimination on the basis of disability. The court further held the reference to speaking limited English was insufficient for a race or national origin discrimination claim but it granted plaintiff leave to amend the complaint to further support her Title VII claim, if she can.

Employment/Discrimination/Religion

28. *Jean Pierre v. Park Hotels and Resorts, Inc*., No. 1:17-cv-21955 (D.FL. 01/14/2019). A Haitian born dishwasher at the Conrad Hotel in Miami, FL worked for the hotel since 2006. Due to her religious beliefs, she asked not to be scheduled on Sundays. Plaintiff was a missionary for the Soldiers of Christ Church. In 2015, management began scheduling her on Sundays and plaintiff's pastor wrote a letter explaining the violation of her religious beliefs, but the manager allegedly threw it away. Eventually, plaintiff was terminated for unexcused absences and she filed a complaint with the EEOC who in turn issued a right to sue letter. The court said her Title VII rights were violated and the jury awarded her $21 million in damages. Florida has a cap on punitive damages so the most she will receive will be $300,000 of the $21 million. Defendant plans to appeal, claiming during her ten years with the hotel, multiple concessions were made to accommodate her religious beliefs.

Employment/FLSA

29. *Gregori v. Market Street Mgmt., LLC*, No. ELH-16-3853 (D. Md. 09/28/2018.) Two employees of Family Meal restaurant in Frederick, Maryland filed an FLSA violation and Maryland wage and hour law violation against the defendant restaurant for including two managers in the calculation of the tip pooling spreadsheet, thus making the tip pool invalid. Plaintiffs argued that the managers should not have been included and therefore plaintiffs were entitled to additional wages. Defendant objected and filed a summary judgment motion which was granted by the district court. The district court said that employees with some managerial responsibilities are not necessarily barred from participating in a tip pool. Both managerial employees had as their primary duties bartending and servicing customers, similar to low-level supervisors which other courts have concluded to be insufficient to qualify as managers for purposes of tip pooling.

30. *Acosta v. Cathedral Buffet, Inc.*,887 F.3d 761 (6th Cir. 04/16/2018). The Cathedral Buffet is a restaurant in Ohio that is non-profit organized for religious reasons. The Department of Labor began investigating the restaurant in 2014 to review its employment practices. The restaurant had about 35 employees and the rest of the workers were volunteers. The pastor, Reverend Angley recruited volunteers from his congregation by pressuring them to volunteer. He would tell his church members that not volunteering at the restaurant was akin to blasphemy against the Holy Ghost. The DOL filed suit and the district court held that the restaurant's religious affiliation did not exempt it from the requirements of the FLSA, thus requiring Angley to pay $388,000 in back wages. On appeal, the Sixth Circuit reversed stating that the volunteers were not employees under the FLSA. There was no economic relationship between the restaurant and the church volunteers. The court said to be an employee there must be an expectation to receive compensation for the work and this was not the case here. The bottom line: The key to whether a volunteer at a non-profit organization is an employee is whether he or she has an expectation of compensation, not why the person volunteered.

31. *Young v. Rolling in the Dough, Inc*., No. 17 C 7825 (N.D. Ill. 03/08/2018). Plaintiff was a driver for Domino's pizza and sued her employer, a franchisee, for alleged violations of FLSA stating that she was not paid minimum wage after accounting for tip credits, deductions and other expenses while working. She also claimed she was required to work in dual jobs such as cleaning, taking orders, tending to the oven and other non-tipped duties. Plaintiff attempted to certify to establish a class action. The district court granted conditional collective certification to the drivers despite the defendant's argument that each employee's situation was different, and the request was fact intensive. Domino's failed to show any evidence that the employees were not similarly situated.

32. *Troester v. Starbucks Corp.*, (Sup. Crt. Ca., 7/26/2018). Plaintiff was a supervisor at Starbucks who worked the closing shift. The software required him to clock out before initiating the store closing software which functioned to transmit daily sales and other data to Starbucks corporate headquarters. Plaintiff then activated the alarm, exited the store, and locked the front door. He then walked his coworkers to their cars. On average he set the alarm within one minute after clocking out. Once set, he needed to exit the store within one minute to avoid triggering the alarm. The time to walk his coworkers to their cars was 35-45 seconds. Over the 17 months of his employment the unpaid time added up to $102.67. He brought a class action seeking to collect that money. Starbucks claimed the amount was *de minimus* referring to the FLSA principle that excuses payment of small amounts of wages when difficult to record administratively. Plaintiff argued that California had not adopted the rule. The court reviewed the regulation's history and objectives and noted the ability of technological advances to now record small amounts of time. While not rejecting the doctrine in total, the court held in the facts of this case that the *de minimus* doctrine would not apply.

33. *Balbed v. Eden Park Guest House, LLC,* 881 F.3d 285 (4th Cir. 01/25/2018). Plaintiff worked for six-months as a bed and breakfast innkeeper on behalf of Eden Park Guest House located in Maryland. Plaintiff then sued defendant for alleged violations of the FLSA due to the plaintiff not receiving minimum wage for the time worked. By contract, plaintiff agreed to work 29 hours per week for $800 per month. The question was about whether in-kind compensation such as lodging, should be considered for purposes of the minimum wage laws. Both parties filed motions for summary judgment and defendant prevailed. Plaintiff appealed to the circuit court and the circuit court remanded to the district court with certain instructions, such as determining the reasonableness of the agreement between plaintiff and defendant and the value of the in-kind contributions to plaintiff. Defendant did not have any recordkeeping, as required by law, for the time plaintiff worked or the value of the lodging, food and utilities provided to plaintiff.

34. *Java v. El Aguila Bar Restaurant Corp*., No. 16-CV-6691 (JLC) (S.D. N.Y. 04/25/2018). Plaintiff filed an action alleging that his Bronx based former employers failed to pay him minimum wage and overtime compensation as required by the FLSA and New York Labor Law. Plaintiff testified that he was not provided any documentation concerning his wages when he was hired and that there was no system for employees to record or track their work time. Defendant admitted to poor record keeping. The court ordered defendants to pay plaintiff $5,000 in statutory penalties for wage statement violations and attorneys' fees and costs.

35. *Balczyrak-Lichosyt v. Soniya Hotel, LLC,* No. 16-cv-4386 SIL (E.D. N.Y. 09/28/2018). Plaintiff was employed for approximately six years at defendant's hotel as a housekeeper and front desk clerk.

She sued and sought summary judgment due to defendant's failure to pay overtime claims under the FLSA and the New York Labor Law. The court found that defendants violated the law by paying plaintiff her regular rate of pay for overtime hours, as well as failing to include the value to Plaintiff of the hotel room and MetroCard in her regular rate of pay when calculating overtime. Plaintiff was awarded a total of $517,559.17 in damages.

36. *Spencer v. Macado's, Inc*., No. 6:18-cv-00005 (W.D. Va. 08/01/2018). A group of servers, waiters and bartenders at defendant's restaurant sued their employer alleging they were paid below minimum wage. Plaintiffs were required to (1) perform non-tip producing tasks unrelated to their normal work duties (known as "dual jobs" violation), (2) spend over 20% of their time on non-tip producing tasks unrelated to their normal work (a "side work" violation) and (3) perform unpaid work off the clock. The restaurant moved to dismiss, which was granted by the court because plaintiffs did not provide enough facts for their allegations to be plausible. Only one claim survived the motion to dismiss as the court held that when an employee is assigned to non-producing side work more than occasionally or part of the time, that the employee could be seen as performing dual jobs, and that "any wage paid for an untipped job that is below the federal minimum wage is per se illegal wage, regardless of any tips that may bae received for a separate job in the course of the week."

37. *Harbourt v. PPE Casino Resorts Md., LLC*, Nos. CCB-14-3211, CCB-16-0339 (D. Md. 08/02/2018). After the State of Maryland passed a referendum legalizing table games in the state's casinos, the Maryland Live! Casino created a dealer training school partnering with a local community college to jointly administer the program. Out of 8,000 applicants, only 831 were selected for the training and many got jobs thereafter. A group of former students of the dealer program filed a complaint against the casino alleging violation of the FLSA by failing to compensate them during the training. The district court granted the casino's motion to dismiss but the appellate court reversed. While the FLSA requires employers to compensate employees for all work performed, training programs generally are not covered by the Act because they mostly are for the benefit of the trainee. Plaintiffs did not perform duties of a full employee and there was no guarantee of employment. Summary judgment for the casino.

Employment/FMLA

38. *Laborde v. Mount Airy Casino,* No. 3:16-CV-769 (M.D. Pa. 06/12/2018). Plaintiff, working as a floor supervisor for defendant's casino, was terminated for performance reasons and sued defendant alleging his termination was a result of disability discrimination and being disciplined for taking time off under the FMLA. Plaintiff's employment performance issues include swearing at a coworker and twice for disrespectful behavior. Plaintiff asked for FMLA leave complaining about chronic back pain and gout flare-ups, all due to stress. During one of plaintiff's shifts, he allowed a patron to place 18 bets over the table limit resulting in the gambler receiving $3,900 in extra winnings and $900 in extra losses. At first assumed a mistake, it was later learned that this behavior was intentional. The court dismissed plaintiff's disability discrimination claims under the ADA, however plaintiff will be allowed to pursue a claim for discrimination and retaliation under the FMLA. The court said that the temporal proximity between the taking of leave and plaintiff's termination precluded summary judgment in favor of defendant on those claims.

Employment/Harassment

39. *Harris v. Four Points Sheraton Hotel*, 2018 WL 6067236 (E.D. WI., 11/20/2018). Plaintiff was hired as a housekeeper at a Four Points Sheraton Hotel. She sued pro se for "violation of her rights." She alleged the Executive Housekeeper hollered at her, her workload was increased substantially, she was denied help although other housekeepers were assisted, her keys were stolen, she was micro-managed, rumors were spread about her, her boss was fired for not terminating her, and she was not assigned many shifts. The court granted the hotel's motion to dismiss noting that although plaintiff's allegations describe "unpleasant incidents," plaintiff did not allege that her employer discriminated against her on the basis of her race, color, religion, sex or national origin. Said the court, "[N]ot all harassment is the basis for a lawsuit in federal court". The dismissal was without prejudice, and the court "strongly encouraged" plaintiff to talk with a lawyer and included in the decision information about the local Bar Association's Lawyer Referral Service including a phone number.

Employment/Meal Breaks

40. *Rodriguez v. Taco Bell Corp*., 896 F.3d 952, (9th Cir. 07/18/2018). Taco Bell's 30-minute meal break policy required that the discounted meal be eaten on the premises. Plaintiff, an employee of defendant, filed for class action status against Taco Bell alleging that employees who must remain on the premises should be paid a premium rate because they were required to stay at the restaurant if they purchased a discounted meal. She alleged that defendant violated the California law by failing to relieve employees of all duty during the meal break. The court held that the law was not violated because defendant did relieve employees from all duties during the meal break and did not exercise control over their activities. The employees were free to use their break in any way that they wanted. The only restriction was that if they obtained a discounted meal, they had to eat it in the restaurant. Defendant's reasoning for its policy was to cut down on theft.

Employment/Minimum Wage

41. *McCray v. Marriott Hotel Services*, 2018 WL 4167147 (9th Cir., 8/31/2018). The city of San Jose enacted a minimum wage law mandating $10/hour. Plaintiff worked as a server for the San Jose Marriott and was paid only $9/hour. He inquired with the human resources department as to why he was receiving less than minimum wage. He was told that his union had opted out of the minimum wage ordinance so that it could secure other benefits for its members such as healthcare. Plaintiff sued in state court seeking the full minimum wage. Marriott removed the case to federal court which granted summary judgment to the hotel. Plaintiff appealed claiming the cause of action was a state one and the federal court lacked jurisdiction. The appeals court agreed, vacated the summary judgment, and returned the case to state court. That court will have to address the question of whether the minimum wage established by the ordinance is waivable.

42. *Diaz v. Grill Concepts Services, Inc*., 233 Cal.Rptr.3d 524, 23 Cal.App.5th 859, (Cal. Ct. App. 05/24/2018). In 2010, Grill Concepts opened a Daily Grill restaurant in Los Angeles, near the LAX airport. The location of the restaurant, designated as the "airport hospitality enhancement zone" required that the employers pay a living wage higher than the state minimum wage in exchange for workforce training and development, subsidized power and improved streets and waste management. Upon opening, the HR director suspected that they were not paying the proper zone wage and was told that the attorneys were handling it. Nothing happened until 2014 when several employees

demanded immediate reimbursement for the underpayment as well as waiting time penalties. Checks were cut to all employees, former and current, within eight weeks. Cross motions were filed for summary adjudication and a trial court partially granted and denied the claims. Defendant argued that the ordinance was unconstitutionally vague, and the court dismissed that claim. Waiting time penalties had to be paid, however, the court found that the restaurant did not act willfully so no treble damages. Defendant appealed and the trial court decision was affirmed. The court stated that ignorance of the law is no excuse.

Employment/Negligence

43. *Quito v. PCS Mgt., LLC*, No. 153131/2014 (N.Y. 08/10/20108). After his shift ended, an employee who was a pizza and pasta cook at a New York restaurant suffered from an injury when he fell down the stairs at the back of the house. The staircase did not have handrails at that time. According to the workers compensation board, the plaintiff's fall was a result of his intoxication — which showed a blood alcohol content of more than 0.30 percent — on the evening of the accident. He then filed a complaint against his employer alleging negligence for the unsafe nature of the staircase. The restaurant moved for summary judgment. Although the employee alleged that there were numerous building code violations in the stairway, the court found that he failed to present evidence that the code violations resulted in his fall. The court found that plaintiff's testimony that he had no recollection of how the accident occurred was sufficient to find for the restaurant as a matter of law. The court noted that it is ultimately the employee's burden to prove that the restaurant's negligence caused his injuries. The uncontroverted evidence that the employee was severely intoxicated when he fell down the staircase precludes him from creating an issue of fact as to the cause of his injuries. Summary judgment was granted for defendant.

Employment/Retaliation

44. *Jensen v. Isle Casino Hotel*, 2018 WL 4211609 (8th Cir., 09/05/2018). Plaintiff was a security guard for defendant hotel. She reported that another employee had made inappropriate sexual comments to her and he was fired. He was popular and other workers expressed anger towards plaintiff because of his termination. Five months later plaintiff was terminated and sued claiming retaliation. The hotel asserted the termination was due to plaintiff making disparaging comments about a co-worker's fiancé even after she had been warned not to interfere with the worker's personal affairs. No evidence established any animus by plaintiff's supervisor from plaintiff's complaint about the sexual comments. The court thus determined that plaintiff's protest about the terminated employee was neither the but-for cause nor a significant factor in plaintiff's termination. Further, the significant time lapse between the complaint about sexual comments and plaintiff's termination weakens any inference of causation. The court thus affirmed the district court's grant of summary judgment to the hotel.

Employment/Sexual Harassment

45. *Orchowski v. Urgo Hotels LLP*, 2018 WL 283735 (D. Nev., 01/03/2018). Plaintiff was employed by defendant hotel for nine months. Per the complaint, the Director of Operations, "a position far superior to plaintiff's," subjected plaintiff to actions and statements that constitute sexual harassment. Plaintiff reported the issues to the human resources manager, but the situation was not remedied. Defendant terminated plaintiff's employment within a week of plaintiff's complaint. Plaintiff sued. His complaint in the lawsuit failed to allege that he exhausted his administrative remedies by filing a

complaint with the EEOC as required by Title VII. The complaint is therefore deficient, and the court granted defendant's motion to dismiss. But the court did so without prejudice to enable plaintiff to file an amended complaint, noting that plaintiff had received a right-to-sue letter.

46. *Watkins v. Saginaw's Famous Fried Chicken*, 2018 WL 2165356, No. 337288 (Mich. Ct. App. 05/10/2018). Plaintiff, Wayne Watkins was a shift manager at defendant's Popeye's franchise in Saginaw, Michigan. Defendant had an anti-fraternization policy in response to issues that arose when employees began dating each other. Almost two years after plaintiff started working, a female employee told her father that plaintiff's supervisor had approached the female employee in the parking lot and requested to see her "twins" (her breasts). Plaintiff shared this information with the franchise owner and plaintiff said that this type of behavior has been going on for some time. Plaintiff suggested that an investigation be started so the sexual harassment would stop. Plaintiff's supervisor denied making the statement about the "twins" to the female employee. Three days later, plaintiff was suspended without pay allegedly because of violations of the Hazard Analysis Critical Control Point log. Plaintiff was subsequently terminated, allegedly for a poor attitude and multiple violations of HACCP, and he sued for unlawful retaliation and discrimination. The court said the comment about the female employee's breasts was an isolated incident lacking the necessary severity and pervasiveness to constitute a hostile work environment and dismissed plaintiff's claims. On appeal, the court found fault in the trial court's decision and stated that there was conflicting testimony in the record concerning the grounds for plaintiff's termination which constituted a genuine issue of material fact, so the dispute should be resolved by a jury. The case was reversed and remanded for further proceedings.

47. *Jones v. PNK Partnership d/b/a L'Auberge Casino & Hotel of Baton Rouge,* 2018 WL 3430683 (M.D. La, 07/13/2018). Plaintiff, an African-American woman, was an Assistant Food and Beverage Manager in the casino buffet. As a single mother she was unable to work nights. She was assured of a primarily day work schedule. Her boss made repeated sexual advances and suggestive comments, typically at least twice every shift. Plaintiff rebuffed him, and he assigned her night shifts. Plaintiff complained to Human Resources on multiple occasions, but nothing was done. Plaintiff's co-workers complained about her attitude and accused her of shirking her responsibilities. Also, she repeatedly came to work late and left early. Plaintiff was terminated. She sued for sexual harassment and retaliation. The court determined the allegations of sexual harassment were sufficiently severe and pervasive to avoid summary judgment against her. On the retaliation claim, the hotel alleged as an affirmative defense plaintiff's performance problems. Plaintiff failed to show the hotel's stated reasons were pretextual. Therefore, the retaliation claim was dismissed.

Franchise/Arbitration

48. *Choice Hotels International, Inc. v. Patel*, 2018 WL 6065103, 2018 WL 6065103 (11/20/2018). Defendant was a franchisee of plaintiff. Defendant defaulted by failing to maintain a level of guest satisfaction required by the franchise contract. Per that agreement, plaintiff gave defendant notice of default. Defendant failed to cure the breach within the time allotted and so Choice scheduled arbitration per the contract and notified defendant. The arbitration was conducted by the American Arbitration Association. Defendant failed to appear or participate. A default award issued in favor of Choice Hotels which then sought a judgment by default based on the arbitration award. The franchise

contract provided that an arbitration award may be entered against a party even if it failed to appear. The court granted Choice Hotels request for judgment by default.

Franchise/Breach of Agreement

49. *Lokhandwala v. KFC Corp.*, No. 17-cv-5394 (N.D. Ill. 01/23/2018). Franchisor KFC allegedly breached the franchise agreement by unreasonably attempting to block plaintiff/franchisee from telling patrons that the restaurant offers halal chicken, prepared in accordance with Islamic dietary laws and customs. Plaintiff, the franchisee, owns and operates eight franchises; all with the same agreements. From 2003 until 2017, franchisor allowed franchisee to sell halal chicken and even helped franchisee find a halal-certified supplier. In 2017, the franchisor instructed franchisee to stop marketing his products as halal, stating that a 2009 KFC policy prohibits franchisees from making religious dietary claims about its products since terms like "halal" and "kosher" are interpreted differently. Plaintiff claims that defendant failed to mention this during the negotiation of two new franchises located in Muslim communities and the franchise agreement makes no mention of the 2009 KFC policy. The court ruled in KFC's favor finding that the agreement unambiguously authorizes KFC to control the franchisee's advertising.

Franchise/Fraud

50. *Lenexa Hotel, LP v. Holiday Hospitality Franchising, Inc*., 2018 WL 196589 (D. Kansas, 04/26/2018). Plaintiff hotel was operating as a Radisson until it was convinced to sign a 10-year license agreement to become a Crowne Plaza franchise. Since opening as such, plaintiff's revenues were consistently lower than projected. Plaintiff blames this on defendant's failure to identify, in its marketing and reservation system, plaintiff's hotel as a Crowne Plaza located in Kansas. Plaintiff now claims he was misled and fraudulently induced through misrepresentations and silence, to enter the license agreement. The gist of the current phase of the case is procedural law relating to amending a complaint. But the cause of action, fraudulent inducement, is a reminder of the importance, when considering buying into a franchise system, of doing due diligence before entering a contract. Likewise, a reminder that franchisors should be accurate in the information they provide to prospects.

Franchise/Liquidated Damages

51. *Travelodge Hotels, Inc. v. Wilcox Hotel*, LLC, 2018 WL 1919955 (N.J., 04/23/18). Travel Lodge entered a franchise agreement with defendant for the operation of an 80-room Days Inn for a fifteen-year term. The contract specified such items as royalties, system assessments, taxes, interest, reservation system user fees, and other expenses, all due on a recurring basis. The agreement specified liquidated damages to be applied in the event of premature termination by the franchisee. The amount was the lesser of $1,000 for each guest room, or the total amount of recurring fees generated at the facility during the year immediately preceding the date of termination. The alleged fraud concerned how defendant planned to promote plaintiff hotel in defendant's reservation system, and problems the Crowne Plaza brand was experiencing. The owner of defendant personally guaranteed the obligation. The franchisee violated the agreement and the franchisor terminated it. The franchisee continued to use the name Travelodge without authorization. The franchisor sued for infringement; the franchisee defaulted. The court upheld the liquidated damage clause.

52. *Red Lion Hotels Franchising, Inc. v. First Capital Real Estate Investments, LLC*, 2018 WL 4259241 (E.D. Wash., 09/06/2018). Defendant entered into three franchise licensing agreements with

defendant. Each included a liquidated damage clause. Occupancy plummeted due to the shale oil market crash, resulting in defendants failing to make timely payments to plaintiff and abandoning the hotels. Plaintiff sued seeking to enforce the liquidated damage clause. Defendants argued that the clause was unenforceable because the amount of damages was not reasonably related to plaintiff's loss and so constituted a penalty. The court noted that defendant was in the business of rescuing failing real estate projects and thus knew the risks associated with the hotels. Further, the time to assess the reasonableness of the damages is when the contract was formed; not by considering facts occurring after the signing. The court therefore ruled that the clause was reasonable and enforceable as written.

53. *Park Hospitality, LLC v. Brady Hotel, Inc.*, 2018 WL 5095992 (D. Minn., 10/19/2018). Defendant signed a License Agreement with plaintiff enabling defendant to operate a 280-room hotel in Davenport, Iowa using plaintiff's trademark. In the event defendant failed to renovate and open the facility, the contract included a liquidated damage clause of $1,000/per room, an obligation for attorney's fees, and a personal guarantee by defendant's owner. Defendant failed to open the hotel despite notice of default and extension of the time to comply. Plaintiff sued, and the court enforced the liquidated damage clause. Plaintiff was awarded a default judgment in the amount of $280,000, plus attorneys' fees and costs in the amount of $12,218.34.

Franchise/Sherman Act

54. *Butler v. Jimmy John's Franchise, LLC*, 331 F. Supp.3d 786, No. 18-cv-0133 (S.D. Ill. 07/31/2018). A class action complaint was filed against the franchisor alleging violations of the Sherman Act. All franchise agreements with Jimmy John's contain restrictive covenants barring franchisees from soliciting or recruiting any person then employed or who was employed within the preceding 12 months by Jimmy John's, or an affiliate or a franchisee. The damages are substantial so most franchisees required employees to sign a non-compete clause stating that employees cannot work or have any interest in any business that sells submarine, hero, deli or wrapped or rolled sandwiches within a few miles of any Jimmy John's franchisee during their employment and for two years after. Plaintiff had so few hours at one of the franchises that he sought more work, but due to the non-compete provision, he was unable to transfer to a busier store. Due to the provisions, he alleged he has suffered reduced wages, reduced hours and employment benefits, as well as loss of professional growth opportunities and illegal working conditions. Efforts by Jimmy John's to dismiss the claims were denied as the court determined that plaintiff stated a plausible claim for relief under the Sherman Act, Section 1.

Fraud

55. *Holt v. Noble House Hotels & Resorts, LTD*, 2018 WL 2011031 (S.D. Ca., 04/30/2018). Plaintiff ate at defendant's restaurant. When her bill arrived, it included a 3.4% "surcharge" of $1.38. Plaintiff claims defendant is misleading the public by advertising prices for food and drinks in the menu without disclosing that a surcharge will be added to the bill until "it is too late to make an informed decision about the increased total bill." Plaintiff asserts intentional deception. Plaintiff's attorney has filed 15 class action complaints, including the instant one, in San Diego courts against restaurants that add surcharges to their customers' bills. Two test cases were in progress. Defendant sought a stay pending the result in those cases, since they could significantly impact the outcome of this case. The court denied the stay, finding it would result in the potential of prejudice to plaintiff. A stay could

result in uncertainty for an "indefinite period of time" because the schedule for the test cases is likely to be delayed. Also, if the stay is imposed plaintiff may lose the opportunity to obtain receipts or credit card-related information from third-party vendors with potentially short retention periods. So, plaintiff's case will proceed.

Guest Discrimination

56. *Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919 (Hawaii Ct. App. 02/23/2018). Plaintiffs filed an action against the owner/operator of a B&B for discrimination on sexual orientation and denial of public accommodations as defendant refused to rent a room to the female couple in a same-sex relationship. Defendant argued that the rooms were not subject to the Hawaii public accommodation laws as the rooms were in her personal home, and that she has a right not to promote or endorse behavior that her faith teaches her is immoral in connection with her deeply held religious beliefs. The state trial court dismissed the defendant's arguments, granting plaintiffs motion for summary judgment. Defendant appealed claiming that an exemption to the public accommodation laws is in order. The appellate court disagreed and affirmed the trial court's ruling. By looking at the legislative history, it was clear to the appellate court that the legislature's goal of prohibiting discrimination in public accommodations would exempt selecting a tenant who would reside with defendant for a longer-term in her home.

Insurance

57. *Superhost Hotels, Inc. v. Selective Insurance Co. of America*, 160 AD3d 1162 (3rd Dept, 04/12/2018). Plaintiff hotel suffered significant damage to its interior from flooding during Hurricane Irene. The hotel had an all-risk commercial liability insurance policy covering physical loss and damage and excluding coverage for wear and tear. The insurance company denied plaintiff's claim asserting the damage was not caused by the hurricane but instead by the hotel's lax caulking maintenance. Caulking had been applied when the hotel was built to seal the areas where the walls meet the hotel's concrete floors, and where windows abutted masonry walls. The caulk had separated from these surfaces over time due to age and lack of maintenance, creating spaces through which storm water could travel into the hotel's interior. The hotel sued. The court ruled in favor of the insurance company and dismissed the case.

Intentional Infliction of Emotional Distress

58. *Geissler v. Borgata Hotel Casino & Spa,* 2018 WL 3141832 (D. N.J., 06/27/2018). Plaintiff created a disturbance at defendant hotel restaurant and was denied service because of intoxication. Additionally, hotel employees falsely accused her of stealing alcohol. She was subsequently arrested by the police and charged with "defiant trespass' which was later dismissed. Among the claims in her lawsuit against the hotel, many of which were remanded for trial, was intentional infliction of emotional distress. One of the elements is that defendant's actions proximately caused severe emotional distress. Here, plaintiff stated the incident was "traumatic" for her and her family, and she was "devastated" by having to spend a night in jail. She did not seek medical treatment, she continued to see her psychologist of several years for "life in general problems" including marital problems caused only in part by the incident and did not vary the frequency of those visits, nor did plaintiff suffer any bodily injury. Said the court, while plaintiff may have been "offended, even devastated," she did not suffer any new conditions and did not begin a new or altered course of

mental health treatment. Plaintiff's injuries thus did not rise to the level of severe, and so summary judgment was granted for the hotel on the claim of intentional infliction of emotional distress.

59. *Shaw v. NP Santa Fe, LLC*, 2018 WL 6419293 (D. Nev., 12/06/2018). Plaintiff, who is African-American, alleges he was waiting to play blackjack at defendant casino when he was approached by a manager who said, "Hey, do you know what my late, great dad used to say? There is nothing better than hanging a man with a nice new shiny rope." Plaintiff sued for violation of his civil rights based on 42 USC 1981, and for intentional infliction of emotional distress. The court granted defendant's motion for summary judgment on the federal claim because plaintiff did not allege that he was asked to leave or otherwise denied services or lost a contractual interest. On the second cause of action, the court, while acknowledging the inappropriateness of the manager's comment, also dismissed the claim because insults alone are not enough basis for an intentional infliction of emotional distress claim.

Jurisdiction

60. *DeLorenzo v. Viceroy Hotel Group, LLC*, 2018 WL 6131489 (2nd Cir., 11/21/2018). Plaintiff was a guest at defendant resort located on the island of Anguilla. She was sexually assaulted in her hotel room by an employee of the resort. She sued. The hotel raised the issue of personal jurisdiction. The hotel is principally located in Anguilla with an office in Connecticut. Plaintiff argued that NY should have jurisdiction over the hotel because it hires a New York-based company to create and maintain publicly accessible websites and online booking programs. Further, plaintiff asserts, she booked the hotel in New York. The accessibility of the website from NY does not, without more, establish the continuous solicitation sufficient to confer general jurisdiction. Although plaintiff booked the hotel in NY, the claim arises from an alleged sexual assault in Anguilla. Courts have consistently held that booking a hotel in-New York is too remote from negligence alleged to have occurred at a foreign hotel to satisfy New York's long arm statute.

Mandatory Gratuities

61. *Ghee v. Apple-Metro, Inc.*, No. 17-CV-5723 (JPO) (S.D. N.Y. 01/26/2018). A group of patrons of two Applebee's restaurants in midtown Manhattan filed a putative class action alleging that the restaurants force customers to pay a tip of either 15 or 18 percent without disclosing that charge in advance. Plaintiffs allege they ordered their meal and paid through a table-top computer. During the payment process, the tablet prompts the customer to select a tip, but does not provide the option of not leaving a tip. Plaintiffs allege that when they tried to enter a number less than the minimum that a message directed them that the "amount entered is under the minimum service charge" and to enter a higher amount. Plaintiffs allege that the menu prices are misleading because the restaurant does not disclose the mandatory tip and that the word "tip" is misleading because it's actually an end-of-the-meal surcharge. A class action suit was filed asserting claims under New York law of unfair business practices, false advertising, breach of contract, negligent misrepresentation and unjust enrichment. Defendant moved for summary judgment, which was denied. The court stated that while the menu did read that the prices did "not include beverages, dessert, taxes or gratuity," the disclosure was inadequate. "It is one thing to disclose that prices do not include tips," the court said. "It is quite another thing to disclose that prices do not include tips *and that there will be a mandatory tip when the check arrives*."

Negligence/Contributory

62. *Davis v. Hulsing Hotels North Carolina, Inc*., 2018 WL 1124792 (Sup Crt. N.C., 03/02/2018). While a guest at defendant hotel, plaintiff ate at the hotel restaurant. During the meal she consumed ten alcoholic drinks. She fell on the way to her room necessitating a wheelchair transport by a hotel employee. That night she died in her room of acute alcohol poisoning. The administrator of her estate sued the hotel for wrongful death, negligence, and dram shop liability. The court determined that both plaintiff and defendant were negligent. North Carolina is a contributory negligence state. Said the court, "[I]t is well established that a plaintiff's contributory negligence is a bar to recovery from a defendant who commits an act of ordinary negligence."

63. *Boff v. Inter-Continental Hotels, Corp.* (DC, 12/04/2018). Plaintiff slipped and fell on a sidewalk in front of defendant hotel during a rainstorm. The Washington DC Building Code requires that "drainage water collected from a roof, awning, canopy or marquee . . . shall not flow over a public walking surface." Plaintiff claims on the night he tripped, water flowed from the hotel's awning onto a downward-sloping granite ramp in the sidewalk where he fell, making it more slippery than normal. Defendant commissioned a mechanical engineer to observe the drainage system in practice a few months after plaintiff's fall. The engineer concluded that the awning could not have caused rainwater to overflow onto the sidewalk as plaintiff describes. The hotel's video surveillance footage establishes that plaintiff was running to catch a cab when she fell. Plaintiff argues it is susceptible of "divergent inferences" and further, running in the rain does not establish negligence. This circumstance may be critical because the District of Columbia is one of but a few jurisdictions in which contributory negligence can be a complete defense to defendant's liability for negligence. The court denied summary judgment concluding that a factual question exists.

Negligence/Damages

64. *Parker v. Four Seasons Hotels, Ltd.,* 2018 WL 5024917 (N.D. Ill., 10/17/2018). Plaintiff was injured by an exploding glass door in the bathroom of a Four Seasons Hotel guestroom. The bathroom doors had recently been upgraded. Due to faulty installation, several other doors had similarly exploded prior to plaintiff's injury. Plaintiff was awarded $20,000 in compensatory damages and sought punitive damages as well. The jury rejected the punitive damage claim, finding the evidence insufficient to prove Four Seasons acted intentionally or wantonly. On a different issue and consistent with precedent, the court refused to admit evidence of remedial measures taken by the defendant after plaintiff's accident and before the trial.

Negligence/Duty of Care

65. *Hammond v. San Lo Leyte VFW Post #7515*, No. 118,698 (Kan. Ct. App. 09/28/2018). Plaintiff was injured after visiting a VFW when an altercation occurred outside the building. Plaintiff had words with a customer in the men's room and when plaintiff went to order another beer he was asked to leave by the management. The other customer followed plaintiff out and kicked plaintiff as he was trying to get into his truck. Plaintiff sued the VFW for failing to protect him and the organization filed a motion for summary judgment. The motion was granted by the district court and plaintiff appealed. On appeal, the Kansas Court of Appeals reversed and remanded the case. The court held that the assault was entirely predictable and could have been avoided. Illinois courts have determined that tavern owners owe a duty to protect customers from injuries that take place immediately outside the premises.

66. *Cosgray v. French Lick Resort & Casino*, 102 N.E.3d 895 (Ind. Ct. App. 05/09/2018). A woman attending a company holiday party checked into the defendant hotel. She was expecting a colleague to meet her in her guest room, so she propped her door open and fell asleep. She awoke to a man sexually assaulting her, so she sued the hotel for negligence, vicarious liability and negligent infliction of emotional distress. Defendant moved for summary judgment which was granted and affirmed on appeal. The court held that the plaintiff's injuries resulted from the conduct of a third person and that the sexual criminal attack on plaintiff by another invitee in a guest room left unlocked intentionally could not be expected and therefore not foreseeable. Judgment for defendant.

Negligence/Limitation of Liability

67. *Jordan v. Marriott International, Inc*., 346 Ga. App. 706 (Crt. Appls Ga., 06/28/2018. Plaintiff was a guest at defendant Marriott Atlanta Hotel. When she checked out she inadvertently left $30,000 worth of jewelry in her room safe. The hotel located it and agreed to hold it until plaintiff could make arrangements to retrieve it. A significant portion of the jewelry was stolen while in the hotel's possession. Plaintiff sued based on Georgia's innkeeper statutes, bailment and breach of contract. Per the statute, an innkeeper's liability is limited to $1,000 for loss of a guest's property. Plaintiff denied she was a guest when the hotel took possession of her items. Per Georgia law, when guests leave property after departing, the innkeeper's liability remains "for a reasonable time." The court determined a question of fact exists whether plaintiff was still a guest, and so denied summary judgment. While the statute allows for liability greater than $1,000, a prerequisite is a written contract so stating. The parties did not enter such an agreement. Concerning bailment, the court described the arrangement as for the sole benefit of Jordan, the bailor, thus requiring only slight diligence by the hotel. The court determined the hotel met this standard and dismissed the bailment claim. Finally, the court dismissed the breach of contract case, finding no consideration was given by plaintiff.

Negligence/Open and Obvious

68. *Sanford v. Omni Hotels Management, Corp.,* 2018 WL 1327090 (M.D. Fla., 03/15/2018). Plaintiff was a vendor at a conference held at defendant hotel. She slipped on a three-step stairway leading to a buffet in the main dining room and suffered substantial injuries. The carpet on the steps had a horizontal line through it that ran parallel to the steps. No patron had ever tripped on the steps before. There was no obstruction on the stairs, the area was well-lit, and the weather outside was dry. Plaintiff claimed the carpet created an illusion that the floor was level, transforming the steps into a latent danger of which defendant had a duty to warn. The court rejected the argument that the blending of colors and patterns in the rug created an optical illusion of flatness. The court therefore held the steps were open and obvious, and no duty to warn existed. Judgment was therefore entered in Omni's favor.

69. *Stevens v. Best Western Plus*, 2018 WL 4211371 (M.D. N.C., 09/04/2018). Plaintiff was a guest at defendant Best Western Plus hotel. She was injured when she fell while stepping into an elevator that was not level with the lobby floor. An out-of-service tag had been placed over the call button while elevator technicians were fixing the doors. Plaintiff alleged the elevator doors were open when she approached, she did not look at the call button, so she missed the out-of-service tag, and she did not notice that the elevator had misleveled by 3-5 inches. She sued the elevator company and the hotel for

negligence. The court granted summary judgment to the defendants noting that the technicians concluded that misleveling was an unusual consequence of the repairs and so was not foreseeable. Plaintiff also argued the power should have been turned off, but the power was needed to troubleshoot the door problem. Further, the court declined to find that the warning tag was not sufficiently prominent.

Negligence/Premises Liability

70. *Gress v. Holiday Inn Chicago-Skokie*, 2018 IL App 170380 (Ill. App. Crt, 05/02/2018). While a guest at defendant hotel, plaintiff drank alcohol at the hotel restaurant, went to her room where she became unconscious, and was allegedly raped by a hotel security guard. Plaintiff sued the hotel and the employee. The trial court dismissed the hotel from the case but not the perpetrator, and plaintiff appealed. The appeals court reinstated the case against the hotel noting a special relationship exists between a hotel and its guests which creates a duty of care. The court also ruled that the sexual assault was foreseeable because the hotel knew that plaintiff, a paying guest, was rendered intoxicated and "essentially facilitated the assault by sending a male security guard/repairman into her private hotel room." The court rejected defendant's claim that the assault was not foreseeable even though no previous rape had occurred at the hotel or been committed by the employee involved.

71. *Hamilton v. Steak 'n Shake Operations, Inc*., 92 NE3d 1166 (03/07/2018). Plaintiff and three others were dining at defendant Indianapolis Steak 'n Shake restaurant. Another group of people entered and began threatening plaintiffs due to one of their sexual orientation. For the next half hour, the second group repeatedly yelled, taunted, blocked the door, then pounded on the windows from outside inviting a fight. The only restaurant employees on duty were a cook and a server. Neither intervened, called security, or called police. The encounter escalated, and plaintiff was shot in the face. Only then did the eatery's employees seek help. Plaintiff filed suit alleging negligence for failure to take action to diffuse the situation. The restaurant moved for summary judgment. The court held that the escalating circumstance between the parties should have alerted the eatery that harm might be imminent, giving rise to a legal duty to take reasonable steps to provide or patrons' safety. The appeals court thus reversed the trial court's grant of summary judgment to the restaurant.

72. *Casey v. McDonald's Corp*., No. 16-7124 (D.C. Cir. 01/26/2018). After an altercation outside of a McDonald's restaurant by two visibly intoxicated individuals, one of the men died after being punched and fell hitting his head on the sidewalk. Four days later while still in the hospital, the man died. The family of the deceased sued the two bars for serving alcohol to intoxicated persons and McDonald's for negligence. A district court dismissed the claims against the bars and granted summary judgment to McDonald's. On appeal, the circuit court upheld the lower court's decision as to the summary judgment in favor of McDonald's but reversed the decision in favor of the bars stating that the allegations made by the parents of the deceased did state a claim under tort law that could survive a motion to dismiss. The parents argued that McDonald's should also be held responsible because several other area McDonald's restaurants had hired security guards. The court stated that the practice of hiring guards was not sufficiently widespread to establish a national standard of care for quick service restaurants. Plaintiff also did not provide any evidence of a standard of care requiring that McDonald's workers break up or prevent fights or even to contact the authorities.

73. *Pronk v. Standard Highline Hotel*, 158 AD3d 465 (NY, 02/08/2018). Plaintiff cut his foot on a glass votive candleholder while entering a spa pool. The candleholder had apparently fallen from a table located close to the pool where people could be expected to walk barefoot. Plaintiff sued, and the hotel moved to dismiss the complaint. The court held that triable issues of fact existed as to whether defendant breached its duty to maintain the premises in a reasonably safe condition. The court noted that defendant failed to establish that it lacked constructive notice because the employee responsible for checking the spa pool had not checked it for about five hours prior to the accident. Therefore, defendant's motion to dismiss was denied.

74. *Young v. Circus Circus Casinos*, 2018 WL 2059547 (Nevada Appls Crt, 04/26/2018). Plaintiff injured his back at defendant casino when he leaned on an elevator handrail and it broke. At trial plaintiff presented an expert on vertical transportation engineering and accident investigation. The court however excluded portions of his testimony and later struck other parts of it. On appeal plaintiff argued the exclusion of the evidence was error. The appeals court held against plaintiff noting that the expert's inspection of the premises occurred two years after the incident that caused the injury. His testimony concerning his inspection was therefore remote in time to the incident and could have unfairly prejudiced the jury. Additionally, expert testimony is inadmissible if it is based on assumption or conjecture rather than recognized methods, treatises or codes, or other scientific evidence. Here, plaintiff's witness admitted that his testimony was not based on any recognized methods but instead relied on assumption and conjecture.

75. *Vazquez v. Omni Hotels Management*, 2018 WL 6304959 (N.D. Ill., 12/03/2018). While a guest at the Chicago Omni Hotel to attend a Blackhawks celebration parade, plaintiff tripped on a raised paver on the sundeck terrace. She testified the paver "was not out of the slot. It was not noticeable" but was uneven by 1 ¼ to 1 ½ inches. The hotel established that Omni employees regularly inspected the pavers on twice-a week walk-throughs. The director of engineering stated that none of these routine inspections disclosed any defects in the condition of the pavers during the year he had worked for the hotel. A search of the hotel's computerized record of work requests yielded no results for any maintenance issues involving the pavers. The court granted the hotel's motion for summary judgment finding that plaintiff is unable to prove that Omni had actual or constructive knowledge of the alleged defect.

Negligence/Security

76. *Mu v. Omni Hotels Mgmt. Corp.*, 882 F.3d 1 (1st Cir. 02/07/2018). Plaintiff, who lived in a condo attached to an Omni hotel, suffered injuries after encountering a group of rowdy men in the lobby of the hotel. Plaintiff had notified the hotel's concierge of the group and asked him to call the police. The group confronted plaintiff and began to punch, kick and shove him resulting in a broken arm. The next day, the hotel told plaintiff to contact the police. After asking about hotel security cameras, he was told they were not working due to ongoing construction. Plaintiff sued the hotel for negligence and Omni filed a motion for summary judgment. Holding that the attack was not foreseeable, the district court granted defendant's motion. The court also said that plaintiff failed to provide enough proof that his injury was the natural and probable consequence of a specific act of negligence. On appeal, the court reversed and remanded the case stating that the sequence of events that unfolded could make the harm foreseeable and confer a legal duty on defendant. The court also said plaintiff did in fact provide enough evidence and it is up to a jury to determine whether defendant is liable.

77. *Santangelo v. Omni Hotels*, 2018 WL 6448842 (E.D. La, 12/10/2018). Plaintiffs, husband and wife, vacationed at the Omni Hotel in New Orleans. Unknown to plaintiffs, the hotel locks were not functioning. Three intruders, who were hotel guests in a nearby room, entered plaintiffs' guest room at 4:00 a.m. and assaulted and robbed them as they were "trapped inside." When the perpetrators left, the police were called. Officers directed the hotel to seal the intruders' room, but the hotel failed to do so, apparently because of the malfunctioning locks. This enabled the burglars to escape with stolen property. Plaintiffs sued the hotel alleging negligence and negligent hiring. The hotel moved to dismiss. The court denied the motion on the negligence claim, noting that hotels have a duty to maintain their premises in a reasonably safe condition and warn guests of hidden dangers known by the hotel or reasonably discoverable. Broken locks are a violation of that duty. The court dismissed the negligent hiring claim because plaintiff failed to allege any facts suggesting defendant knew or had reason to know the employees were unfit for their jobs.

78. *Lee v. Harvey's Hotel & Casino*, 2018 WL 6591798 (D. Nevada, 12/14/2018). Plaintiff spent the Fourth of July holiday at defendant hotel. He went to the restroom after viewing fireworks and, while washing his hands, was stabbed from behind multiple times with a fold-out knife. He suffered multiple lacerations. Neither casino security nor local police were able to apprehend the attacker. Plaintiff claims the hotel was negligent in its follow-up and investigation, and likewise in the precautions it utilized to prevent such an attack. The court granted defendant's motion for summary judgment because plaintiff presented no evidence of prior incidents or similar wrongful acts, rendering the attack unforeseeable.

Negligence/ Wrongful Death

79. *Buckley v. W Hollywood Hotel*, No. B281742 (Cal. Ct. App. 03/28/2018). Norman Buckley's spouse, Davyd Whaley, who suffered from PTSD and paranoia, committed suicide in 2014 at the W Hollywood Hotel. He checked in to defendant's hotel the same day under "incognito" or "anonymous". Mr. Whaley was a well-known painter. When plaintiff could not locate Whaley, he contacted the police and subsequently became aware of a credit card charge for the W Hotel. Plaintiff contacted the hotel and the hotel staff denied plaintiff's urgent request to get ahold of Whaley stating that there was no record of Whaley having checked into the hotel. Plaintiff saw Whaley's car parked at the hotel and called 911 which lead to plaintiff discovering that Whaley was deceased. Plaintiff sued defendant for negligence-wrongful death, intentional and negligent misrepresentation and intentional infliction of emotional distress. The trial court found no duty on the part of the hotel to prevent the guest's suicide and no duty to disclose the guest's room number. On appeal, the court affirmed the lower court's ruling stating that the hotel assumed no responsibility to care for the needs of Mr. Whaley. The court also stated that the SCOTUS has recognized that innkeepers have a reasonable expectation of privacy in their guest registries and law enforcement cannot demand access to that information without a warrant.

Procedural/Choice of Law

80. *Alpert and Drill v. Starwood Hotels and Resorts Worldwide*, 2018 WL 5456493 (D., Conn., 10/29/2018). Plaintiff, a resident of Massachusetts, was a guest at defendant's Cabo San Lucas, Mexico resort, a waterfront property. While standing in the ocean, plaintiff was hit by a large wave causing him to tumble and his head to hit the bottom of the sand, resulting in serious, permanent

injuries. He sued in Connecticut and argued that Connecticut law should apply because the resort's parent company is located there. The court rejected this position noting the following: tourism emanating from the US is a major industry in Mexico; that country has a strong interest in regulating resorts' conduct and ensuring foreign tourists' safety; applying Connecticut law would undermine Mexico's sovereignty and its ability to regulate its resort industry; and the Restatement Second holds that the choice of law in personal injury cases generally favors the jurisdiction in which the alleged tortuous conduct and injury occurred.

Procedural/Federal Jurisdiction

81. *Arcangel v. Huntington Atlantic Hotels, LLC*, 2018 WL 5885517 (D. MD, 11/09/2018). Plaintiffs were bitten by bed bugs while guests at the Courtyard by Marriott Hotel in Silver Spring, Maryland. Plaintiff sued asserting three distinct causes of action: negligence against the hotel seeking $75,000; negligence against the pest control contractor seeking $75,000; and violation of the Maryland Consumer Protection Act against the hotel seeking $75,000. Plaintiffs began the case in state court; defendants sought to remove the case to federal court; plaintiff contested the removal. Diversity of citizenship jurisdiction in federal court requires damages in excess of $75,000. Defendants argued the alleged damages amounts should be aggregated. Plaintiff claimed the "one harm, one recovery" rule applied. The court agreed with defendants noting that plaintiff pled three distinct offenses representing different theories of recovery, and therefore plaintiff could recover full damages on each count.

Procedural/Forum Non Conveniens

82. *Fischer v. Island Hotel Co., Ltd.*, 2018 WL 791337 (S.D. Fla., 02/07/2018. Plaintiff, a resident of the state of Washington, was a guest at defendant Atlantis Resort located on Paradise Island, Bahamas. While floating on an inner tube at the resort's water park, an employee allegedly pushed two other guests into plaintiff, resulting in injuries requiring surgery to repair. Plaintiff sued in Florida; defendant moved to dismiss for forum non conveniens. The court granted the motion due to the following. The case has no factual connections to the US or to Florida; all of the relevant events occurred in the Bahamas; The "vast majority" of witnesses are in the Bahamas and thus are outside the subpoena power of the Florida court. The cost to defendant to bring witnesses to the US would be "substantial." Plaintiff will have to travel a significant distance regardless of whether the case is situated in Florida or the Bahamas.

Procedural/Forum Selection Clauses

83. *Wylie v. Island Hotel Co., Ltd.*, 2018 WL 3421374 (S.D. Fla., 07/13/2018). Plaintiff slipped and fell on a water attraction at defendant resort in the Bahamas. When she and her husband registered at the hotel, the husband signed a document titled, "Acknowledgement, Agreement and Release." It identified the Bahamas as the venue for any resulting lawsuits. Plaintiff sued for her injuries in a Florida court. The resort moved to dismiss based on the release. Plaintiff argued it did not apply because only her husband signed it. The court enforced the release against the plaintiff and dismissed the case. The court referenced the "closely related" doctrine which allows a signatory to bind a non-signatory to a forum selection clause when the parties are closely related. There were no allegations that plaintiff was denied the ability to review the terms and conditions, or that plaintiff's husband did not sign the document.

Procedural/Statute of Limitations

84. *Dorobanov v. Caesars Entertainment Corp.*, 2018 WL 1071441 (N.D. Ill, 02/27/2018). Plaintiffs are professional gamblers. They learned from other gamblers that keno machines at various Harrah's casinos were making higher-than-usual payouts. Plaintiff went to a Harrah's and won a large amount of money playing keno machines. He told friends who also travelled to a Harrah's, played keno machines, and won big. Turns out there was an "inadvertent coding error in the keno machines." The Illinois Gaming Board investigated and indicted plaintiff. At the trial following the state's case, the judge granted plaintiffs' motion for a directed verdict. Plaintiffs then sued the Gaming Board and the casino for false arrest. Plaintiff began the lawsuit more than two years following the arrest. The relevant Illinois statute of limitations is two years beginning when the detention/arrest occurs. Plaintiffs argued it would be unjust to dismiss their claims. The court determined that equitable tolling did not apply here and dismissed plaintiff's false arrest case.

85. *Osorio v. Minneapolis Hotel, et seq*, 2018 WL 4387576 (D. Minn., 09/14/2018). Plaintiff was a buffet table attendant at defendant hotel. He was injured while on duty when a full can of soda fell several stories in the hotel's atrium and hit him on the head. He filed a workers' compensation claim and thereafter was treated aggressively by his supervisor. He sued the hotel for retaliation. Turns out the hotel had been sold after plaintiff's fall and the previous owner retained all liability incurred prior to the acquisition. Plaintiff filed an amended complaint to include the prior owner. It was served two days after the statute of limitations had expired. The prior owner moved to dismiss the case. The court denied the motion, holding that an amended complaint relates back to the original complaint; true even if the amended pleading changes a party.

Product Liability

86. *Horan v. Windrift Hotel Resort*, 2018 WL 1003370 (3rd Cir., 02/21/2018). Plaintiff ate three raw clams served to her at defendant's restaurant. Two days later she began feeling ill. She was diagnosed with Vibrio vulnificus (Vibrio) sepsis infection which resulted in an above-the-knee amputation of her left leg and several surgeries on her left arm. Soon after she ate the clams, a Board of Health inspector found numerous health violations at the eatery relating to handling of raw fish. Plaintiff sued the hotel and restaurant claiming violation of the New Jersey Products Liability Act. Defendant moved for summary judgment. The court held a *Daubert* hearing at which each side's expert testified concerning their knowledge of the risk to human health of raw fish. Based on that testimony and prior case law, the court concluded that Vibrio is a naturally occurring bacteria in raw clams that does not create a health risk to most healthy adults, and therefore does not render the clams per se defective. For plaintiff to survive the summary judgment motion, she would need to prove that the clams arrived at the hotel with non-infective dosage levels of Vibrio, and the hotel's food-handling practices created a defect that proximately caused her illness. However, plaintiff's expert admitted that it is "impossible" to assess whether the clams contained non-infective levels of the bacteria at the time they were delivered to the hotel. Therefore, summary judgment was properly granted in favor of the hotel.

Search and Seizure

87. *Aquino v. Hawaiian Monarch Hotel*, 2018 WL 832838 (D. Haw., 02/12/2018). Plaintiff sued defendant hotel claiming a violation of 42 USC Section 1983 based on police entering defendant's privately-owned apartment within defendant hotel. To prove a violation of Section 1983, plaintiff

must allege two essential elements: 1) a right secured by the Constitution or US laws was violated; and 2) the alleged violation was committed by a person acting under color of state law. Since defendant hotel is not a person, it cannot act under color of state law. Case dismissed with prejudice.

Tipping/Tip Pooling

88. *Kawakami v. Kahala Hotel Investors, LLC,* 2018 WL 3197543 (Sup Crt. Hawaii, 06/29/2018). Plaintiff held his wedding reception at defendant hotel. The hotel collected a 19% "service charge" on the purchase of food and beverages for the reception. The hotel retained 15% of the service charge for what it called "the management share," and used those funds to pay banquet employees' wages. The hotel utilized an event agreement form for large group events including plaintiff's. It contained no disclosure that a portion of the service charge would be paid to the hotel rather than banquet servers as tips. Per Hawaii law (and some other states' laws as well), a service charge must be distributed directly and entirely to service employees as tip income. An exception exists where the restaurant clearly discloses that it will distribute the service charge in some other way. Defendant hotel failed to do so. Therefore, judgment for plaintiff. Per the Hawaii statute, defendant may be required to pay treble damages and attorneys' fees.

89. *Ahmed v. Moran's Hotel Group Management, LLC*, 160 AD3d 555 (NY, 04/19/2018). NYC Code requires that when the term "administrative charge" is used in a catering contract to mean something other than a tip, the wording of the document must clearly identify that the administrative charge is not a gratuity or tip. A banquet server assistant at defendant hotel did not receive a share of an administrative charge and sued the employer. The latter noted that the contract contained two charges in addition to food and beverage, and clearly stated that one was a gratuity to be distributed to the staff, and the other was an administrative charge and not a gratuity but rather would be retained by the hotel. Although the proposals may have omitted the clarification, the Banquet Event Order, the official document that contains the event's specifications, did. Clear language on the Banquet Event Order was enough.

90. *Davis v. International Coffee & Tea, LLC*, No. E066700 (Cal. Ct. App. 04/03/2018). Plaintiff Jacob Davis was a server at a coffee Bean and Tea Leaf, which was operated by defendant. He sued defendant alleging that the company's tip-pooling policy violates the California state law for wage and hour. Tips were collected in a jar where customers were free to leave a gratuity. Defendant would collect the money daily, put it in a safe location and divide it at the end of the week to those who were tip-eligible on a pro rata basis throughout the 21 different shifts during the week. Plaintiff claimed it was unfair to distribute the tips weekly instead of daily stating that such policy is patently unfair and unreasonable. The court held that there was no violation of state law and the decision was affirmed on appeal. The appellate court said that plaintiff's remedies lie with the state legislature which must create a cause of action for unfair and unreasonable tip pooling.

91. *Henkel v. Starwood Hotels & Resorts Worldwid*e, LLC, 2018 WL 294454 (M.D. Penn., 01/04/2018). Plaintiffs are former food servers at Starwood Hotels in Pennsylvania. Their employment ended in October 2012 when Starwood sold the properties. The complaint, filed March 2, 2017, alleges that Starwood charged its customers a mandatory gratuity fee of 20% of the hotel bill in lieu of tipping, and Starwood failed to pay the fee to plaintiffs. They sued for breach of contract as a third- party beneficiary. Starwood moved to dismiss claiming the action is time-barred. The statute

of limitations period is four years. The lawsuit was commenced four and a half years after plaintiffs' employment terminated. Plaintiffs claim the discovery rule should apply. That rule extends the statute of limitations in circumstances where plaintiff could not have discovered defendant's wrongful conduct earlier. The court rejected this argument noting that plaintiffs "certainly had sufficient notice" that they were not receiving any gratuities and so should have known "something was amiss". The complaint was thus dismissed with prejudice.

Trademarks/Lanham Act

92. *Canes Bar & Grill of S. Fla., Inc. v. Sandbar Bay, LLC,* No. 18-20204-CIV-MARTINEZ-OTAZO-REYES (S.D. Fla. 09/29/2018). Plaintiff, the owner of the mark "Sandbar Sports Grill" has been using the mark since 1999 and registered the name and logo in 2017. His bar was in Coconut Grove, located within greater Miami. A former investor of shares in the Sandbar name sold his shares in 2013 and moved out of Miami. When he sold his shares, he signed a document titled Sale, Transfer and Assignment, and Covenant and mistakenly thought he had retained a license to use the mark. In 2018, the defendant/former investor opened a restaurant in Cutler Bay called the Sandbar Sports Grill which is about 20 miles south of Coconut Grove; allegedly in the same market as plaintiff's grill. A motion for preliminary injunction filed by plaintiff was denied by the magistrate court. On appeal to the district court, the court reversed and granted the preliminary injunction as plaintiff had presented enough evidence of customer confusion and a likelihood of irreparable harm. The logos were very similar, and it appeared that the defendant intended to derive a benefit from using plaintiff's mark.

93. *Viacom International v. IJR Capital Investments, LLC,* No. 17-20334 (5th Cir. 05/22/2018). Viacom sued a restaurant for infringing on its common law trademark, The Krusty Krab, which is a fictional restaurant in Viacom's animated television series SpongeBob SquarePants. Plaintiff has never used The Krusty Krab to license a restaurant. In 2014, defendant decided to open seafood restaurants in California and Texas, and the owner says he initially planned to name the restaurants the Crusted Crab, before changing it to The Krusty Krab. Defendant's owner says he didn't become aware of SpongeBob until he was searching to see if other restaurants had a similar name, and because no actual restaurants used the mark, he filed a trademark application. Defendant's mark was approved. In November 2015, Viacom sent a cease-and-desist letter demanding defendant stop using The Krusty Krab mark and subsequently filed suit in January 2016 for trademark infringement and unfair competition claims. The district court granted plaintiff's motion for summary judgment. Defendant appealed stating that plaintiff's trademark was not valid and that there was not a likelihood of confusion. On appeal, the lower court's decision was affirmed. The appellate court noted that even though plaintiff never registered The Krusty Krab mark, the SCOTUS has held that the Lanham Act "protects qualifying unregistered marks." The court found that specific elements within a television show can receive trademark protection, and that this protection may be granted to certain characters, places and elements of a broader entertainment entity. The circuit court noted that other courts have protected the trademarks of Kryptonite and the Daily Planet from Superman, and the General Lee from The Dukes of Hazzard because of their critical roles in the entertainment. Although the fictional restaurant and the proposed seafood restaurant have little overlap in terms of menu and style, the court found that, given the success of SpongeBob, defendant's use of the mark would likely cause confusion.

94. *Billy Goat IP LLC v. Billy Goat Chip Co., LLC*, No. 17-cv-9154 (N.D. Ill. 08/07/2018). The owner of the iconic Billy Goat Tavern in Chicago, Ill., filed a complaint against a Missouri chip company which sells its potato chips under the name Billy Goat Chips. The Billy Goat Tavern, established in 1934, maintains four locations in the city of Chicago, as well as locations in Washington D.C. and O'Hare International Airport. The Billy Goat mark was trademarked in 1982, and the restaurant was featured in a now well-known 1978 Saturday Night Live skit using the phrase often shouted to customers at the restaurant: "Cheezborger, Cheezborger, Cheezborger." In 2009, defendant began selling potato chips under the name The Billy Goat Chip Company and registered the name in 2010. Defendant sells the chips primarily in St. Louis, Mo., but now offers chips at three places in Chicago, several of which are blocks from plaintiff's locations. Plaintiff says the confusion has become increasingly worse, so plaintiff filed a complaint alleging trademark and copyright infringement, unfair competition, and related statutes. Defendant filed a motion to dismiss; which the district court denied. Defendant argued that plaintiff had constructive notice of Billy Goat Chip's since it started using the mark in 2010 and expanded to Chicago in 2014 but did not file a suit for several years after — invoking the doctrine of laches, whereby the claim cannot be allowed due to the long delay in asserting the claim — but the court found that there were too many unknown and disputed facts that precluded summary judgment on this argument.

95. *Shaya v. John Besch Restaurant Group*. (settled 04/2018) Plaintiff Chef Alon Shaya is a partner in a standout Israeli restaurant in New Orleans named after him. An expose in fall, 2017, in the New Orleans newspaper reported that 25 women complained about repeated and pervasive sexual harassment at the restaurant. Plaintiff's partner, Chef John Besh, learned that plaintiff had cooperated with the reporter and so the partner terminated his relationship with plaintiff. The partner however retained the restaurant's name of Shaya. Plaintiff Shaya then obtained a federal trademark on the name, and then sent a cease and desist letter to the partner. In return, the partner sued Shaya for declaratory judgment seeking to resolve the right to the name in favor of the partner. The party entitled to the trademark protection is the one who first used the mark in commerce. True, even if someone else obtained a trademark registration on the name. The two chefs settled the case, apparently amicably, with Besh's company retaining the right to the name Shaya. Plaintiff opened his own Israeli restaurant in New Orleans and named it Saba. It is located about a mile from Shaya. The case underscores one of many risks that apply when using one's own name with a business.

96. *Equinox Hotel Management, Inc. v. Equinox Holdings, Inc.*, 2018 WL 659105 (N.D. Calif., 02/01/2018). Plaintiff is a San Francisco-based hospitality company specializing in operating and revitalizing hotels. It owns and uses the trademark Equinox Hotel Management consistently and prominently. All of its hotels have fitness centers or gyms on the premises. Defendant is a "fitness giant" operating Equinox branded luxury health clubs nationwide. Defendant now plans to open at least 50 hotels under the Equinox mark. Plaintiff anticipates direct competition for the health-conscious consumer and sued for trademark infringement. The court denied plaintiff's motion for a preliminary injunction noting that 11 instances of confusion over 30 months is insufficient to show plaintiff will suffer irreparable harm. Additionally, the court noted that plaintiff waited 30 months to seek the preliminary injunction, as a result of which defendant spent two and a half years developing and promoting its hotel brand. Delay alone can constitute grounds for denying a preliminary injunction.

Unemployment Benefits

97. *Diblasi v. Davidson Hotel Co., LLC,* 2018 WL 3431719 (N.J., App. Div., 07/17/2018). Plaintiff was employed by defendant hotel. He sought a one-month leave to assist his terminally ill mother. The leave was denied because plaintiff had not worked for the hotel long enough to qualify for federal or state family leave. He then resigned to avoid termination for abandonment, and to conclude his employment on good standing for possible re-employment. He submitted a resignation letter that identified the reason for his departure as a family emergency, and later applied for unemployment benefits. The relevant New Jersey statute provides that people who resign from their positions are not eligible for unemployment benefits. True, although the employee leaves for good, but personal, reasons, as plaintiff did. The court thus affirmed the decision of the administrative agency' that plaintiff is not entitled to unemployment benefits.

Union/NLRB

98. *Tamosiunas v. NLRB,* 892 F.3d 422, No. 16-1338 (D.C. Cir. 06/15/2018). Plaintiffs worked at the Hyatt Regency Hotel in Hawaii, and since 2006, the hotel workers had been represented by Unite Here! Local 5. The applicable collective bargaining agreement included a union security clause which required all employees of Hyatt to be either full or core members of the local chapter as a condition of continued employment. Plaintiffs objected to membership in the union and participated only as "core" members who pay a reduced annual fee to cover their share of the representative work benefitting all employees. The union sent letters demanding that plaintiffs pay full membership dues even though they had opted for "core" membership. The union also started wage-garnishment proceedings to collect the full dues. Plaintiffs sued, and the circuit court said that the union coerced or restrained plaintiffs from exercising their NLRA right to limit their association with the union. The NLRB's decision that the letter was not coercive was vacated.

Wages

99. *Davis v. Doubletree Hotel Times Square,* 2018 WL 317849 (S.D. NY, 01/05/2018). Plaintiff, an employee of defendant, claims the hotel improperly withheld income taxes and executed a child support-related garnishment against his wages. Plaintiff claims violations of due process and other civil rights, civil conspiracy, abuse of process, breach of fiduciary duty, economic duress, and infliction of emotional distress. Concerning tax withholding, plaintiff claims he is a nonresident alien which would make him exempt from federal income taxes. Yet he was born in the US and lived in New York state all his life. His claim appears to be that of a "sovereign citizen," one who claims to not be bound by the laws of the US. No such status exists except in the minds of those who assert it. Plaintiff is an American citizen and as such is liable to pay income taxes. Therefore, the hotel properly withheld plaintiff's taxes. Concerning the garnishment to his wages, it was made pursuant to a Child Support Enforcement Income Withholding Order, which employers are obligated to honor. Plaintiff claims the order is void and the garnishment therefore is illegal. The court rejected this argument, referencing the legal basis for the administrative agency that issued the order. The court labeled the legal authorities cited by plaintiff "uniformly misdirected and irrelevant."

Workers Compensation

100. *Baiguen v. Harrah's Las Vegas, LLC,* 2018 WL 4402378 (Sup Crt Nev, 09/13/2018). Plaintiff arrived for work as a Harrah's house person. While walking from his car in the employee parking lot

to the employee-area where he would receive keys and a radio for his shift, he evidenced to co-workers symptoms of a stroke. His manager arranged for two co-workers to drive plaintiff home. They unlocked his front door, helped him change clothes, and left after about a half hour. He remained in his home until he was found two days later, unable to talk and drooling. A treatment exists for plaintiff's type of stroke but it must be administered within three hours of exhibiting stroke symptoms. It increases by 30% the chance that a patient will fully recover. Plaintiff sued Harrah's for negligently failing to secure medical treatment for him during the three-hour period. Harrah's argued plaintiff's sole remedy was workers compensation. The court granted summary judgment to Harrah's determining the injury occurred in the workplace. Plaintiff appealed. The court affirmed noting that although the stroke was apparently not work-related, the lost chance of recovery by delaying medical assistance was work-related.

101. *Threadgill v. 6001, Inc.*, No. A-1-CA-34785 (N.M. Ct. App. 07/02/2018). A bouncer at the defendant nightclub was fatally shot while escorting a patron to his vehicle. His estate sued the nightclub for wrongful death claiming that the case fits within the willful employer exception to the exclusivity provision of the worker's compensation act, arguing that the nightclub knew or should have known that serious injury or death could result from the nightclub's actions or omissions. The district court disagreed and granted summary judgment for defendant. Plaintiff appealed and added a claim of intentional spoliation of evidence since the claims log book kept by security was no longer kept as per advice of counsel. On appeal, the court affirmed the summary judgment in favor of defendant as the estate failed to show that the nightclub's conduct rose to a level of egregiousness required to make a case for willful employer status invoking the exception to the workers compensation act.