

HOTELS, RESORTS AND CASINOS : THE CONSUMER'S RIGHTS & REMEDIES

December 1, 2001

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Hotels, resorts, casinos and theme parks² provide accommodations, food, entertainment, sports activities, thrill rides, gambling, property storage, vehicle and equipment rentals, telephone services, vehicle parking and security and tours of local sites of interest. In addition to hotels, resorts and casinos, accommodations and facilities are available through resort timesharing³ or home exchange programs⁴.

Table Of Contents

1. Accidents On The Premises

A] Slips, Trips & Falls

B] Rapes, Robberies & Assaults

1] Criminals

2] Terrorists

3] Rapes

4] Sexual Assaults

5] Robberies

- 6] **Animals**
- 7] **Assaults In Hotel**
- 8] **Assaults In Parking Lots**
- 9] **Safety Precautions In The Islands**
- C] **Drownings And Other Related Injuries**
 - 1] **Beaches**
 - 2] **Pools**
 - 3] **Burning Chemicals**
 - 4] **Boats**
 - 5] **Diving Accidents**

Warning: Be Careful At Recommended Public Beaches

- D] **Food Poisoning, Water Contamination & Disease**
 - 1] **Poisonous Fish**
 - 2] **Foreign Objects**
 - 3] **Contaminated Water**
 - 4] **Unsanitary Food Preparation**
 - 5] **Salmonella**
 - 6] **Shigella**
 - 7] **Small Pox Fever**
 - 8] **Legionnaires' Disease**
 - 9] **Carbon Monoxide**

- 10] Defective Ventilation Systems
- 11] Pesticides
- 12] Second Hand Smoke
- 13] Aids
- 14] Food Allergies

Warning: Contact The Center For Disease Control

- F] Fire And Smoke Inhalation
- G] Heart Attacks, Suicides & Medical Malpractice

2. Accidents Off The Premises

Warning: Be Careful Of Recommended Tours And Sports

- A] Transportation Accidents
- B] Sports Activities
 - 1] Horses And Camels
 - 2] Water Sports
 - a] Beaches
 - b] White Water Rafting
 - c] Scuba Diving
 - d] Snorkeling
 - e] Water Skiing
 - f] Jet Skiing/Personal Watercraft

- g] **Fishing**
- h] **Boating**
- i] **Tubing**
- 3] **Winter Sports**
 - a] **Snow Skiing**
 - b] **Snowmobiling**
 - c] **Tobogganing**
 - d] **Ice And Roller Blade Skating**
- 4] **Miscellaneous Sports Activities**
 - a] **Biking**
 - b] **Hiking**
 - c] **Parachuting And Parasailing**
 - d] **Golfing**
- 3. **Accidents: Disclaimers And Assumption Of The Risk**
 - A] **Enforceable Disclaimers**
 - B] **Assumption Of The Risk Doctrine**

Warning: Recreational Use Statutes Reduce Liability

- 4. **Hotel Overbooking & Cancellation Fees**
 - A] **Breach Of Contract & Damages**
 - B] **Hotel Cancellation Policies**
- 5. **Liability For Stolen Luggage And Personal Property**

A] Innkeepers' Statutes

- 1] Ohio
- 2] Wisconsin
- 3] District of Columbia
- 4] Connecticut
- 5] Georgia
- 6] Louisiana
- 7] New York
- 8] California
- 9] Nevada
- 10] Pennsylvania

B] To Enforce Liability Limits Notice Must Be Adequate

6. Pets, Pets, Pets

7. Misrepresentations: Accommodations, Services & Facilities

A] Printed Brochures

B] Oral Promises

C] Implied By Law

8. Types Of Misrepresentations

A] Bait & Switch Schemes

B] Superlatives

C] Ratings

D] Location

E] Facilities, Services & Activities

- F] **Safe Accommodations**
- 9. **Hotel & Resort Overcharges**
- 10. **Casinos: Common Consumer Complaints**
 - A] **Slips, Trips & Falls**
 - B] **Rapes, Assaults & Robberies**
 - C] **Ejection For Intoxication & Rude Behavior**
 - D] **Theft Of Property**
- 11. **Casinos: Unique Problems Experienced By Patrons**
 - A] **Cheating & Other Frauds**
 - B] **Collecting Gambling Debts**
 - C] **Blackjack & Card Counters**

Personal Injury Accidents On The Premises

Hotel, resort and casino guests may sustain physical injuries both on and off the premises. Generally, the standard of care is to provide reasonably safe accommodations unless a higher standard is assumed⁵ or imposed by local statute⁶. The types of accidents occurring on the premises include the following:

Slips, Trips, Falls & Minor Injuries

Slip, trip, fall and minor injury claims cover a broad spectrum of factual situations:

A] **Handicapped Accessible Accommodations** [See Sigros v. Walt Disney World Co.⁷ (minor guest with cerebral palsy suffers discomfort because resort was misrepresented by travel agent and hotel representatives as having handicapped-accessible accommodations and facilities); Bergonzine v. Maui Classic Charters⁸(350 lb. handicapped passenger breaks ankle; cruise line promised that cruise would be suitable for the handicapped); Anderson v. Turton Development, Inc.⁹(guests injured on handicapped ramp); See also: Wade, Fewer Barriers For the Disabled¹⁰ (" (The Americas with Disabilities Act), signed...in 1990, requires that motels built after Jan. 26, 1993, meet particular rules: public areas and a percentage of bedrooms must be accessible by wheelchair; alarms, telephones, bathroom fixtures and the like must accommodate guests with vision or hearing impairments or other disabilities. In 1996, the (Justice Department) sued new Days Inns...saying that the motels did not provide equal access for disabled guests...The department found some problems recurring throughout the chain, among them, insufficient accessible parking, inaccessible entrances and walkways, inadequate signs for those with limited vision; bathroom doors too narrow for wheelchairs. Last month's settlement, filed in federal court in Kentucky, where one of the five motels was situated, came after 13 months of mediation "; See also Blum, Study: Rooms for disabled travelers underused¹¹ (" There is an excess supply of accessible hotel rooms for

travelers with disabilities, according to a study commissioned by the American Hotel & Motel Association ")].

B] **Sliding Glass Doors** [See Wilson v. Best Travel¹² (English tourist falls through glass window in Greek hotel; Greek safety standards apply and not those of Great Britain unless consumer reasonably expected British standards to be followed); Sheppard v. Crow-Barker-Paul¹³(minor guest injured when plate glass in sliding door shatters; hotel liable under common law even if not required to retrofit glass per safety glazing statute); Jones v. Peyton Place, Inc.¹⁴(slip and fall on worn carpet propels guest through glass door into brick wall; strict products liability theory applied); Kenkins v. McLean Hotels, Inc.¹⁵(child falls through sliding glass door)].

C] **Bathroom Accidents** [See Brasseaux v. Stand-By Corp.¹⁶ (guest slips in shower after attack by killer bees; hotel liable for failing to discover bees); Terrill v. Lincoln Motor, Inc.¹⁷ (guest and female companion slip and fall in bathtub); Romero v. Holiday Inn, Utrecht¹⁸ (guest slipped and fell in shower after being scalded with hot water); Bernard v. Marriott Corp.¹⁹(slip and fall in bathtub after heat lamp explodes); Korsak v. Atlas Hotels, Inc.²⁰(guest struck in eye by jet of water after showerhead fell off); Howerton v. Red Ribbon, Inc.²¹(guest sustains knee injury when bathtub grab bar detaches

from wall); Kerr-Morris v. Equitable Real Estate²² (slip and fall in shower); Woodford v. Hilton Hotels Corp.²³(hotel guest stands up in shower and hits head on soap dish); Ely v. Blevins²⁴(guest burned in hot shower when valve fails); Bidar v. Amfac, Inc.²⁵(guest falls using defective towel rack to lift himself from toilet; strict liability theories not apply to sale of hotel services)].

D] **Slippery Lobby Floors** [See Merkur v. Wyndam International, Inc.²⁶ (slip and fall on lobby floor in Puerto Rico); Quarles v. Columbia Sussex Corp.²⁷(slip and fall on puddle of coffee in lobby in New York); Wheeler/Kolb Management Co. v. Poretsky²⁸ (hotel invitee trips on stone next to fountain in lobby); Esser v. McIntyre²⁹(guest of hotel guest slips on popcorn kernels on floor)].

E] **Collapsing Chairs** [See McElheny v. Trans National Travel³⁰(guest slid off pool chair at Club Fortuna Beach in Bahamas and broke ankle); Delarosa v. Holiday Inn³¹(pool chair collapses in hotel in North Carolina); Bruno v. Merv Griffin's Resorts International Casino Hotel³² (casino patron falls off chair in front of slot machine); Ware v. Fairmont Hotel Co.³³ (chair collapses in New Orleans hotel); Yuniter v. A & A Edgewater of Florida³⁴(guest injured when chair collapses)].

F] **Beds** [See *Francois v. Holiday Inn, Inc.*³⁵ (guest injures ankle on board protruding from bed); *Ferrucci v. Atlantic City Showboat, Inc.*³⁶ (slip and fall over bed)].

G] **Falling Down Stairs** [See *Taieb v. Hilton Hotels Corp.*³⁷ (guests injured walking down thirty-four flights of stairs); *Morogiannis v. Caesars World, Inc.*³⁸ (fall down casino staircase); *Davis v. Players Lake Charles Riverboat*³⁹ (slip and fall down staircase in riverboat casino); *Manes v. Richard Coats*⁴⁰ (slip and fall in stairwell in Alaska hotel); *Thielmier v. Louisiana Riverboat*⁴¹ (guest slipped off stairs descending from stage); *Deerinwater v. Circus Circus Enterprises*⁴² (guest twists ankle descending stairs during fire alarm)].

H] **Falling Off A Tram** [See *Poteau v. Walt Disney World Co.*⁴³ (fall from resort tram)].

I] **Run-Away Luggage & Money Carts** [See *Malon v. Colony Ins. Co.*⁴⁴ (guest struck by luggage cart being pushed across hotel lobby by valet parker); *Brewer v. Robinson*⁴⁵ (slip and fall over money cart at casino); *Crum v. Circus Circus Enterprises*⁴⁶ (casino patron hand crushed by run-away change cart)].

J] **Incompetent Waitresses** [See *Ho v. Jim's Enterprises*⁴⁷

(patron hit in the back with tray of drinks at casino); Spann v. Robinson Property Group⁴⁸ (cocktail waitress in casino spills hot coffee on patron); Barner v. Missouri Gaming Commission⁴⁹ (casino patron injured in hot coffee spill)].

K] **Falling Objects** [See Catalano v. BRI, Inc⁵⁰(ceiling collapsed in bathroom in Las Vegas hotel); Batterman v. Red Lion Hotels, Inc.⁵¹(guest injured by falling ceiling tile); Collazo v. Condado Plaza Hotel⁵²(guest at hotel restaurant struck with falling concrete)].

L] **Escalators & Elevators** [See Blansit v. Hyatt Corp.⁵³ (accident on escalator); Nysted v. Patriot American Hospitality, Inc.⁵⁴(slip and fall entering elevator); Gavoni v. Dobbs House, Inc.⁵⁵(guests injured when elevator malfunctioned in Chicago hotel); Guilfore v. D.H. Homes Co.⁵⁶(escalator accident)].

M] **Fall Into Maintenance Pit** [See Spinozzi v. ITT Sheraton Corp.⁵⁷(guest fell into maintenance pit at Mexican hotel)].

N] **Parking Lot Accidents** [See Buford v. Riverboat Corp.⁵⁸ (" Sixty-three year old Jasper Buford was on his way to partake of the \$1 breakfast special at the Isle of Capri Casino...when he

slipped and fell in one of the casino parking lot crosswalks "); Kusmirek v. MGM Grand Hotel, Inc.⁵⁹ (guest hit by car in hotel parking lot); Smith v. Washington Sheraton Corp.⁶⁰(guest fell from ramp leading to garage); Gates v. Royal Palace Hotel⁶¹ (guest struck by car driven by valet parking attendant); Morin v. Traveler's Rest Motel⁶²(slip and fall on ice in parking lot); Anderson v. Turton Development, Inc.⁶³(guests injured on handicapped ramp)].

O] **Intoxication** [See Williams v. Lakeview Co.⁶⁴ (personal injury action against casino for damages caused by serving liquor to intoxicated patron); Petitto v. Sands Hotel & Casino, Inc.⁶⁵ (casino patron served alcohol after she was intoxicated and suffered injuries in automobile accident; casino liable under Dram Shop Act); Ruppel v. Hyeon Jin, Inc.⁶⁶(intoxicated guest fell down flight of stairs)].

P] **Outdoor Showers** [See Javits v. RSMO⁶⁷(slip and fall in outdoor shower)].

Q] **Carpets** [See Jones v. Peyton Place, Inc.⁶⁸(slip and fall on worn carpet propels guest through glass door into brick wall; strict products liability theory applied); Avery v. Cleveland Avenue Motel, Inc.⁶⁹(trip and fall on worn carpet);

Jones v. Hyatt Corp.⁷⁰(slip and fall in hotel corridor);
Richardson v. Sport Shinko⁷¹(guest kneels on staple in
carpet)].

R] **Tables** [See Green v. Harrah's Casino⁷²(trip and fall
walking between crowded tables)].

S] **Sidewalks** [See Ellsworth v. Hotel Corp.⁷³(slip and fall
on sidewalk in front of hotel); Vincelette v. Metropolitan Life
Ins. Co.⁷⁴(guest fell entering hotel); Cooper v. Hilton
International Co.⁷⁵(guest falls on steps of Egyptian hotel)].

T] **Balconies** [See Knoell v. Cerkenik-Anderson Travel,
Inc.⁷⁶(student on tour to Mazatlan, Mexico consumes alcoholic
beverages for three days and jumps to his death from hotel
balcony); Powell v. Trans Global Tours, Inc.⁷⁷(guest falls from
hotel balcony); Mount Vernon Fire Insurance Co. v. DLRH
Associates⁷⁸(guest jumped or was pushed out of the window of her
hotel apartment); Bennett v. Saegar Hotels, Inc.⁷⁹(guest jumps
from window trying to escape persons attempting to impress her
into prostitution)].

U] **Dance Floors** [See Endres v. Mingles Restaurant⁸⁰(slip
and fall while dancing); Brown v. Johnson⁸¹ (slip and fall on

dance floor); Spangler v. Kehres⁸² (man falls on woman during " slow dancing ")].

V] **Pool & Sun Decks** [See Nelson v. Fairmont Hot Springs Resort⁸³(slip and fall on winter pool sun deck); Jacobson v. Princess Hotels International, Inc.⁸⁴(guest falls on pool deck)].

W] **Darkened Rooms** [See Roberts v. United States⁸⁵(slip and fall in darkened room)].

X] **Defective Space Heaters** [See Livingston v. Begay⁸⁶ (defective space heater causes death of guest; strict liability theories do not apply to sale of hotel services)].

Y] **Merry-Go-Rounds** [See Kendrick v. Vaz, Inc.⁸⁷(guest breaks ankle while pushing children on merry-go-round)].

Rapes, Robberies & Assaults

There has been an increasing number of cases involving rape, robbery and assaults at hotels, resorts and casinos, reflecting the increased negligence liability of hotels for failing to provide appropriate security measures. Generally, hotels, resorts

and casinos must have security devices and personnel commensurate with the level of criminal activity in the immediate environment including criminal activities on the premises. Such cases cover a broad spectrum of factual situations.

A] **Criminals** [See *Shurben v. Dollar Rent-A-Car*⁸⁸(tourists attacked in rental car in Miami; " Shurben (claimed that rental car company) breached a duty to warn her that in certain areas of Miami, there was a risk of attack by criminals who targeted tourists in rental cars, and in particular, rental cars bearing the license plate designation of her rental car...Assuming the facts as alleged...are true, we believe that Dollar had a duty to warn Shurben of foreseeable criminal conduct, particularly in light of the superior knowledge of the car rental company... Dollar should have realized that criminals were targeting tourist car renters in certain areas of Miami and that a reasonable rental company in possession of those facts would understand that its customers would be exposed to unreasonable risk of harm if not warned ")].

B] **Terrorists** [See *Guidi v. Inter-Continental Hotels Corp.*⁸⁹(" In October 1993 (the guests) were in Egypt on business. While eating dinner in the restaurant of the Semiramis Inter-Continental Hotel...all three man were shot by an Egyptian gunman named Farahat...In addition to the three Americans,

Farahat shot a Syrian lawyer, a French lawyer and an Italian judge ")].

C] **Rapes** [See *Catalano v. N.W.A., Inc.*⁹⁰ (guest raped by resort employee " during their sailing excursion on a two-person sunfish sailboat "); *Atkinson v. Stateline Hotel Casino*, 2001 WL 224079 (Utah App. 2001)(intoxicated casino patron delivered to motel room of stranger who then raped her); *Pantages v. L.G. Airport Hotel*⁹¹(guest raped, sodomized and assaulted; \$1.875 million jury verdict); *Courtney v. Remler*⁹²(assault and rape during honeymoon); *Crocker v. Hilton International Barbados, Ltd.*⁹³(rape on hotel grounds; implied covenant of safety applies only to hotel guests); *Kukla v. Syfus Leasing Corp.*⁹⁴(hotel 60% liable for rape of guest); *Garzilli v. Howard Johnson's Motor Lodges, Inc.*⁹⁵(rape of famous singer); *Peters v. Holiday Inns, Inc.*⁹⁶(rape); *Loretti v. Holiday Inns, Inc.*⁹⁷(guest raped on " safe " beach); *Wilson v. Humphreys Cayman Ltd.*⁹⁸(guest raped and robbed in Cayman Islands); *Creteau v. Liberty Travel*⁹⁹ (tourist robbed and raped in Jamaica)].

D] **Sexual Assaults** [See *Shanzer v. Club Med Sales, Inc.*¹⁰⁰ (male guest sexually assaulted at Club Med wakes up in the morning sitting naked in " seashore's shallow waters "; no proof of prior criminal acts which resort's management could have protected against); *Armstrong v. La Quinta Inns, Inc.*¹⁰¹(guest

sexually assaulted); Doe v. Goff¹⁰²(sexual molestation of camper); Patel v. Northfield Ins. Co.¹⁰³(guest sexually assaulted); Carter v. Innisfree Hotel, Inc.¹⁰⁴(peeping Tom views guests' sexual activity through hole in mirror); Millan v. Residence Inn By Marriott¹⁰⁵(guest sexually attacks child of another guest); Donaldson v. Olympic Health Spa¹⁰⁶(" indecent touching " at health spa)].

E] **Robberies** [See Mallak v. Fairfield FMC Corp.¹⁰⁷(guest robbed of over \$1 million in jewelry in room); Ring v. Lexington Apartments¹⁰⁸(guest assaulted and robbed at gunpoint); Banks v. Hyatt Corp.¹⁰⁹(assault of guest at hotel entrance by robber); Kveragas v. Scottish Inns, Inc.¹¹⁰(guests robbed; failure to provide adequate doors and locks); Burnett v. Stagner Hotel Courts, Inc.¹¹¹(guests robbed); Pacific Diamond Co. v. Superior Court¹¹²(diamond salesman robbed)].

F] **Animals** [See Woods-Leber v. Hyatt Hotels of Puerto Rico¹¹³(mongoose attacks guest sunbathing at hotel pool); Maher v. Best Western Inn¹¹⁴(guest injured breaking up dog fight)].

G] **Assaults In The Hotel** [See Schreiber v. Camm¹¹⁵(guests at Jamaica vacation estate shot by security guard); Smith v. Sands Hotel & Casino¹¹⁶(patron assaulted in casino); Schrieber v. Walker¹¹⁷(invitee assaults another invitee at graduation

party at hotel); Prime Hospitality Corp., v. Simms¹¹⁸ (guest attacked in hotel hallway); Ellis v. Luxbury Hotels, Inc.¹¹⁹ (guest attacked in hotel room by estranged husband); Marmer v. Queen of New Orleans¹²⁰ (casino patron attacked in restroom); Hollander v. Days Inn Motel¹²¹ (festival performer assaulted while jogging near motel); Saucier v. Players Lake Charles, LLC¹²² (drunken patron removed from casino and arrested; excessive use of force); Canterino v. The Mirage Casino-Hotel¹²³ (gambler assaulted); Rednour v. Hilton Hotels Corp.¹²⁴ (guest speaking on public telephone has throat cut); Butler v. E.M.D. Enterprises, Inc.¹²⁵ (tavern patron has face slashed by another tavern patron); McAndrew v. Pierre Hotel¹²⁶ (non guest assaulted on sidewalk as entering hotel to register as guest); Dudley's Restaurant, Inc. v. United National Ins. Co.¹²⁷ (restaurant patron assaulted by other patrons); Kahane v. Marriott Hotel Corp.¹²⁸ (speaker at hotel murdered)].

H] **Assaults In Parking Lots** [See Frederick v. TPG Hospitality, Inc.¹²⁹ (guests attacked in hotel parking lot); Daly v. Denny's, Inc.¹³⁰ (patron of restaurant attacked in motel parking lot); Hardy v. Pier 99 Motor Inn¹³¹ (guests stabbed in hotel parking lot)].

I] **Safety Precautions In The Islands** [See Tip Sheet, Staying safe on the Islands¹³² " If an island vacation makes you

carefree, it may also make you careless. Don't let crime spoil your trip-in the Caribbean...

(1) Don't leave valuables unattended on the beach.

(2) Leave unnecessary credit cards at home.

(3) Stay away from public beaches at night. Stick to private hotel beaches.

(4) Use a concealed money pouch for passports and cash.

(5) Avoid crowded buses, which tend to attract pick-pockets, and don't resist handing over valuables: Robbers could turn violent if you do.

(6) Consider local mores and customs when wearing bathing suits and other revealing attire.

(7) Keep abreast of the news: Riots, strikes and general unrest can pose an increased threat to travelers, even if tourists are not specifically being targeted. Registering with the U.S. embassy on arrival takes only a few minutes and is worth it in case of emergency.

(8) Don't wear flashy or expensive jewelry, and put all valuables in the hotel safe.

(9) Don't buy illegal drugs. If you're caught, the U.S. consul cannot provide legal assistance or get you out of jail. Foreigners are sometimes charged as international traffickers, and on some islands, such as Barbados, the penalty can be as much as 20 years in prison. In many places there is no bail, and long judicial delays can mean years awaiting trials.

(10) Always register vessels with local government authorities, since yacht theft is a problem in some marinas.

(11) Consider carrying a mobile phone, both for emergency communications and to avoid having to use phone booths, which attract robbers.

(12) When renting a private villa, inquire about security. If there isn't any, consider hiring your own. "

Drownings & Other Related Injuries

Hotels, resorts and casinos often have pools and/or beaches. Guests are encouraged to use these facilities for swimming or meeting other guests. In the United States the standard of reasonable care applies to the operation of hotel pools and beaches. Consumers should be very careful, indeed, in using pools and beaches, particularly, public beaches adjacent to the hotel and resort [see **Warning** below]. Hotels and resorts may be under no obligation to provide lifeguards. If they do, however, they should be trained and certified as being able to perform all appropriate life saving measures and CPR techniques.

A] **Beaches** [See *Poleyeff v. Seville Beach Hotel Corp.*¹³³ (guest and rescuer drown off public beach in Miami); *Darby v. Compagnie Nationale Air France*¹³⁴ (guest drowned while swimming at Copacabana Beach, a public facility in Rio De Janeiro, Brazil);

Mayer v. Cornell University¹³⁵(tour participant drowns off Costa Rican beach during snorkeling expedition); Tarshis v. Lahaina Investment Corp.¹³⁶(hotel had duty to warn of dangerous surf conditions on beach); Fuhrer v. Gearhart¹³⁷(guest drowns in dangerous surf trying to rescue children)].

B] **Pools** [See Nowak v. Tak How Inc. Ltd.¹³⁸(guest drowned in Hong Kong hotel pool); Turner v. Parish of Jefferson¹³⁹(minor guests drowns in hotel pool); Goode v. Walt Disney World¹⁴⁰(drowning in theme park pool); Steele v. Inn of Vicksburg¹⁴¹(minor guest drowns in hotel pool; hotel satisfied duties of reasonable care in maintaining pool); Coleman v. Shaw¹⁴²(guest drowns in pool; violation of pool regulations is negligence per se)].

C] **Burning Chemicals** [See Denham v. Sampson Investments¹⁴³(guest's eyes injured by unknown chemicals in hotel swimming pool)].

D] **Boats** [See Geringer v. Wildhorn Ranch, Inc.¹⁴⁴(guests drown while on hotel paddlewheel boats); Calvo v. Sol Melia¹⁴⁵(Spanish swimmer struck by motorboat in Dominican Republic)].

E] **Diving Accidents** [See Edmonds v. Fodera¹⁴⁶(party guest injured diving into shallow end of pool); Utesch v. Atlas Motor

Inns, Inc.¹⁴⁷(dive into pool results in partial quadriplegia)].

Warning: Be Careful At Public Beaches Recommended By The Hotel

Guests are far better off using the hotel's pool or beach since the hotel is under an obligation to use reasonable care providing a safe swimming experience. Such may not be the rule when the hotel recommends the use of an adjacent public beach. Notwithstanding encouraging guests to use a public beach the hotel may have no obligation to warn of dangerous conditions at the public beach [See e.g.,

A] **Darby v. Compagnie Nationale Air France**¹⁴⁸(guest " drowned while swimming at Copacabana Beach, a public facility in Rio De Janeiro, Brazil. He and his wife " were guests at the Meridien Copacabana Hotel, which is separated from the beach by a four-lane public highway. The hotel marketed its proximity to the beach and encouraged guests to use it, even providing them with chairs, umbrellas, towels and a security escort service. It also furnished guests with pamphlets warning about sun exposure and crime on the beach. The pamphlets did not, however, say anything about possibly dangerous surf conditions "; Brazilian hotel " across the road from a public beach, use of which by hotel guests was encouraged and facilitated by the hotel (had no duty) to warn of rip tides that caused injury to...(guest)

swimming off that beach "; same hotel had no duty " to take reasonable care to discover the actual condition of the land under water in the area wherein(guests) were invited and permitted to bathe, and...warn them of its dangerous condition "; no assumed duty; " Moreover, that the hotel chose to warn its guests of the risks of sun exposure and crime does not create any duty to warn against hazards of the sea ")].

B] **Gardemal v. Westin Hotel Company**¹⁴⁹ (hotel staff member recommended guests go to Lover's Beach where two men drowned after being " swept into the Pacific Ocean by a rogue wave and thrown against the rocks ")].

C] **Adika v. Beekman Towers, Inc.**¹⁵⁰ (guest drowns off public beach; " In sum, Beekman Towers had no duty either to post a lifeguard on the public beach or to warn its guests of hazardous surf conditions in the ocean off of the public beach. It may be good practice for a hotel located near the ocean to provide its guests with information on ocean safety, but such a practice is not required under the facts of this case ")].

D] **Princess Hotels v. Superior Court**¹⁵¹ (drowning off of public beach; hotel has no duty to warn of dangerous ocean conditions)].

E] **Lupash v. City of Seal Beach**¹⁵² (participant drowns in junior lifeguard competition at public beach; " California's magnificent coastline contains a variety of conditions: soaring cliffs, craggy coves, fog-shrouded inlets, sheltered bays, crashing waves. With natural beauty come natural dangers as well, including the hazards caused by churned-out depressions, inshore trenches and sandbars...Despite these risks, since 1987, California courts have consistently held that public entities do not owe a general duty of care to the public to provide safe beaches or to warn against concealed dangers caused by natural conditions of the ocean, regardless of whether lifeguard services have been provided. Public policy promotes coastal access, and the government does not become a guarantor of public safety by providing certain services on unimproved property in its natural condition ")].

Food Poisoning, Water Contamination And Contraction Of Disease

Tainted food, contaminated water and disease can make the guest's stay quite uncomfortable and possibly a fatal experience [See **McFadden v. Staley**¹⁵³ (1,600 restaurant patrons may have been affected by adulterated food); **Tateosian v. Celebrity Cruise Services, Ltd.**¹⁵⁴ (cruise passenger sick from food poisoning); **Chambley v. Apple Restaurants, Inc.**¹⁵⁵ (condom in food); **Farrenholz v. Mad Crab, Inc.**¹⁵⁶ (outbreak of food

poisoning at the Mad Crab)].

Illnesses related to food poisoning, contaminated water and disease have been caused by

A] **Poisonous Fish** [See Hoch v. Venture Enterprises, Inc.¹⁵⁷ (poisonous hind fish; assumption of the risk); Feinstein v. Curtain Bluff Resort¹⁵⁸ (guest suffers ciguatera poisoning after eating fish while at Antigua hotel)].

B] **Foreign Objects** [See Odom v. Jebroa Enterprises¹⁵⁹ (restaurant not liable for foreign object in patron's lemonade); Ullman v. Starbucks Corp.¹⁶⁰ (drink contained pieces of glass); Bousso v. Iberia Lineas¹⁶¹ (airline passenger breaks tooth while eating meal)].

C] **Contaminated Water** [See Klein v. Marriott International, Inc.¹⁶² (guest ill from contaminated water served at Bermuda hotel); Amsellem v. Host Marriott Corp.¹⁶³ (water contamination at Bermuda hotel); Reis v. Club Med, Inc.¹⁶⁴ (contaminated water); Joachim v. Crater Lake Lodge, Inc.¹⁶⁵ (contraction of " Crater Lake crud " from contaminated water); Joachim v. Crater Lake Lodge, Inc.¹⁶⁶ (punitive damages awarded)].

D] **Unsanitary Food Preparation** [See Adler v. Royal Cruise

Line, Ltd.¹⁶⁷(cruise passengers ill because of unsanitary conditions)].

E] **Salmonella** [See Camasso v. Dorado Beach Hotel Corp.¹⁶⁸ (salmonella poisoning at Puerto Rico hotel); Jiles v. Churches Fried Chicken¹⁶⁹(patron poisoned by salmonella)].

F] **Shigella** [See Averitt v. Southland Motor Inn¹⁷⁰(failure to warn guests of ingestion of shigella)].

G] **Small Pox Fever** [See Gilbert v. Hoffman¹⁷¹(contraction of small pox at hotel)].

H] **Legionnaires' Disease** [See In re Horizon Cruises Litigation¹⁷²(Legionnaires' Disease on cruise ship, Horizon; consolidated mass tort alleging defective spa pool filter); Freeman v. Celebrity Cruises, Inc.¹⁷³(cruise passengers claim physical illnesses and emotional distress after learning of exposure to Legionnaires' disease)].

I] **Carbon Monoxide** [See Assicurazioni Generali v. Neil¹⁷⁴ (guests suffer carbon monoxide poisoning at Florida hotel)].

J] **Defective Ventilation Systems** [See Mullen v. Treasure

Chest Casino¹⁷⁵(employees suffer respiratory illnesses from defective ventilation system)].

K] **Pesticides** [See Viches v. MLT, Inc.¹⁷⁶(guests sprayed with pesticide at hotel)].

L] **Second Hand Smoke** [See Badillo v. American Tobacco Co.¹⁷⁷(casino employees exposed to second hand smoke file class action against tobacco companies charging fraud, negligence and strict products liability)].

M] **Aids** [See Dollar Inn, Inc. v. Slone¹⁷⁸(guest stabbed in thumb by hypodermic needle concealed inside the center tube of a roll of toilet paper; fear of aids)].

N] **Food Allergies** [See Flynn, Food Allergies: Protecting Kids¹⁷⁹].

Warning: Contact The Center For Disease Control Before Traveling

Prior to booking your trip be sure to contact the Center For Disease Control at www.cdc.gov and inquire about disease at the destination country and what precautions you should take to protect yourself and your family.

Fires And Smoke Inhalation

Although rare, disasters such as fires do occur. The standard of care for hotels will depend, in part, upon local fire and building codes. Guest injuries from fires cover a broad spectrum of situations [In re San Juan Dupont Plaza Hotel Fire Litigation¹⁸⁰; Thomalen v. Marriott Corp.¹⁸¹ (tour operator sponsors " Murder Mystery Weekend " during which a hotel guest is burned watching a fire eating act); Altamuro v. Milner Hotel, Inc.¹⁸² (bystander dies trying to rescue guest in burning room); Addis v. Steele¹⁸³ (guests injured from fire started by arsonist); Randali v. Edro Motel Corp.¹⁸⁴ (guest burned when frying pan catches fire); Justi v. Hyatt Hotel¹⁸⁵(guest's lung collapsed after descending 14 flights of stairs during fire alarm); Livingston v. Begay¹⁸⁶ (guests asphyxiated by space heater); Taieb v. Hilton Hotels Corp.¹⁸⁷(guest injured descending stairs during fire); Thornhill v. Ronnie I-45 Truck Stop¹⁸⁸(two truckers die in motel fire; \$4.3 million in damages)].

Heart Attacks, Suicides And Medical Malpractice

Hotel and resort guests may fall ill from a heart attack. If hotel personnel are called to render immediate medical assistance and the guest suffers further injury or dies, an action against the hotel for a failure to render proper medical assistance may

be appropriate [See *Blinzler v. Marriott International, Inc.*¹⁸⁹ (guest suffers heart attack; hotel liable for delay in calling emergency aid); *Room v. Caribe Hilton Hotel*¹⁹⁰ (guest has heart attack; delay in providing medical assistance); *Gingelestie v. Westin Hotel Co.*¹⁹¹ (hotel not liable for fatal heart of guest being transported from hotel to hospital); *Meshel v. Resorts International*¹⁹² (negligence charged in failing to revive guest suffering from cardiac arrest)].

In addition to failing to care for heart attack victims hotel staff may fail to adequately provide medical assistance to guests suffering from other diseases such as diabetes [See *Gianocostas v. RIU Hotels, S.A.*¹⁹³ (insulin-dependent diabetics guest became ill and referred to Doctor Correa International Touristic Medical Service where " clinic doctor did not appear to understand the words ' diabetic ' or ' diabetes ' "; medical malpractice claimed)].

On occasion guests may commit suicide while staying at a hotel [See *Donaldson v. YWCA*¹⁹⁴ (lodging house owed no duty to prevent residents from committing suicide); *Knoell v. Cervenik-Anderson Travel, Inc.*¹⁹⁵ (student tourist in Mazatlan, Mexico consumes alcohol for three days and jumps to death from balcony of hotel)].

Off Premises Accidents

Many hotels and resorts promote local tours and sports activities such as parasailing, snorkeling, scuba diving, snow or water skiing and so forth. These services are delivered off premises, typically, by foreign companies with no connection to the hotel and resort.

Warning: Be Careful Of Recommended Tours Or Sports Activities

Guests should not assume that the hotel or resort carefully selected the foreign transportation, tour or sports company whose services they are promoting. In fact, the foreign company may be unlicensed, uninsured, irresponsible and unavailable to lawsuits in the United States. The recommendation may be solely based upon a commission paid to the hotel or resort for each guest referred.

Inevitably when an accident occurs the hotel or resort will disclaim liability for any misconduct or negligence on the part of these service providers. Such disclaimers may be overcome if the traveler relied upon representations, in a brochure or made orally, about the competence or safety of a particular service provider or the hotel's or resort's apparent control over the provider [See *Stevenson v. Four Winds Travel, Inc.*¹⁹⁶ (tourist slips and falls on slimy pier during Amazon tour; tour operator may be liable for promising supervision from tour guide); *Pau v. Yosemite Park*¹⁹⁷ (bike accident in national park; injured biker relied upon brochure language about safety of bike trails);

Jacobson v. Princess Hotels International, Inc.¹⁹⁸ (accident at foreign franchisee hotel; franchiser may be liable by giving impression of sole ownership in brochure language of " our hotels "); Glasser v. Liberty Travel Service, Inc.¹⁹⁹ (Mexican bus crash; tour operator may be liable because it assumed control)].

Transportation Accidents

After leaving the hotel or resort the traveler will often use local transportation. Accidents occur involving:

A] **Tour Buses** [See Dubret v. Holland America Line Westours, Inc.²⁰⁰ (tour bus accident during shore excursion); Chouset v. American Airlines²⁰¹ (bus accident in Europe); Glasser v. Liberty Travel Services, Inc.²⁰² (bus crash in Mexico)].

B] **Taxis** [See Casey v. Sanborn's Inc. of Texas²⁰³ (Mexican taxi accident)].

C] **Rental Cars** [See Weiner v. B.O.A.C.²⁰⁴ (rental car accident in England)].

D] **Airplanes** [See Goessel v. Club Med Sales, Inc.²⁰⁵ (resort guest injured during delivery of air transportation services in

Mexico)].

E] **Motorscooters** [See DeRoche v. Commodore Cruise Line, Ltd.²⁰⁶ (cruise passenger injured during motorscooter ride in Cozumel, Mexico)].

F] **Helicopters** [See Six Passengers, Pilot Killed in Maui Tour Helicopter Crash²⁰⁷ (" Six passengers and a pilot were killed when a sightseeing helicopter from Blue Hawaiian Helicopters of Maui crashed in rugged mountains near here...Forty-seven people have died in Hawaii air tours crashes in the last eight years; 23 of those deaths in the last two years ")].

Sports Accidents

There are a variety of ways in which hotel and resort guests may injure themselves while participating in sports activities.

A] Horses & Camels

Hotels and resorts, typically, advertise the availability of romantic horse riding excursions along a deserted beach or a camel ride to the Egyptian pyramids. On occasion tourists will be thrown from such animals and sustain serious injuries [See Colby v. Norwegian Cruise Lines, Inc.²⁰⁸ (cruise passenger thrown from

horse in Jamaica); May v. Club Med Sales, Inc.²⁰⁹ (horse riding accident at Club Med resort); Tucker v. Whitaker Travel, Ltd.²¹⁰ (no duty to warn of horseback riding risks); Honeycutt v. Tour Carriage, Inc.²¹¹ (tourist thrown from horse during tour of Copper Canyon in Mexico); Dragon v. Wolline²¹² (Israeli citizen falls during horseback ride in Wisconsin); Amado v. Malibu Dude Ranch²¹³ (horse stung by bees throws rider); Barber v. Princess Hotels International, Inc.²¹⁴ (hotel not liable for horse riding accident); MacLachlin v. Marriott Corp.²¹⁵ (tourist thrown from camel on way to visit Pyramids at Giza, Egypt; negligence alleged in arranging camel ride and in providing inadequate medical treatment after accident)].

B] Water Sports

Hotels and resorts located near oceans, lakes and rivers will promote the availability of a variety of water sports activities including

1] **Swimming At Local Beaches** [See Darby v. Compagnie Nationale Air France²¹⁶ (guest drowns at Brazilian public beach recommended by hotel); Tarshis v. Lahaina Investment Corp.²¹⁷ (hotel has duty to warn of dangerous surf); Princess Hotels v. Superior Court²¹⁸ (guest at Mexican hotel drowns while swimming off public beach); Poleyeff v. Seville Beach Hotel Corp.²¹⁹

(guest and rescuer drown off public beach in Miami); Calvo v. Sol Melia, S.A.²²⁰ (Spanish tourist injured when struck by motorboat while swimming off of beach in Dominican Republic); Sperka v. Little Sabine Bay, Inc.²²¹ (swimmer strikes sand bar; hotel has no duty to warn of hidden sand bars); Adika v. Beekman Towers, Inc.²²² (innkeeper has no duty to warn of dangerous surf); Fuhrer v. Gearhart-By-The-Sea, Inc.²²³ (hotel guest drowns in " dangerous surf " trying to rescue children)].

2] **White Water Rafting** [See Spath v. Federal Insurance Co.²²⁴ (participant drowns during white-water rafting accident); Bennett v. Jack Dennis Whitewater Trips²²⁵ (rafting accident in Wyoming); Barker v. Goldberg²²⁶ (participant drowned in Rio Grande River in Mexico when white-water raft overturned); Goldstein v. D.D.B. Needham²²⁷ (five passengers killed during rafting accident in British Columbia ; Stroud v. River Runners, Ltd.²²⁸ (white-water rafting accident; disclaimer enforced); Spath v. Dillon Enters.²²⁹ (river rafting accident; release not enforced); Ferrari v. Grand Canyon Dories²³⁰ (injured rafting passenger assumed risk of injury); Fairchild v. Amundson²³¹ (white water rafting accident; implied assumption of the risk)].

3] **Scuba Diving** [See Szafarowicz v. Gotterup²³² (boating accident during scuba diving excursion); Torres v. National

Association of Underwater Instructors²³³(drowning during scuba class); Neely v. Club Med Management Services, Inc.²³⁴(American employed as scuba instructor at St. Lucia Club Med resort sucked into dive boat propellers); Sova v. Apple Vacations²³⁵ (tourist injures back during scuba dive); Cutchin v. Habitat Curacao²³⁶ (scuba accident at dive resort; release enforced); Thompson v. ITT Sheraton Corp.²³⁷ (scuba diving accident; release enforced); See also: Jenner, Diving Into Scuba Litigation²³⁸].

4] **Snorkeling** [See Sushsini v. Club Med, Inc.²³⁹(hotel guest abandoned during reef snorkeling injured walking on reef); Mayer v. Cornell University²⁴⁰(drowning during snorkeling expedition in Costa Rica); Dunham v. Hotelera Canco S.A.²⁴¹ (snorkeling accident off Mexican beach); Gardemal v. Westin Hotel Company²⁴²(" During their stay at the hotel, the Gardemals decided to go snorkeling with a group of guests...the concierge...directed the group to ' Lovers Beach ' which, unbeknownst to the group, was notorious for its rough surf and strong undercurrents. While climbing the beach's rocky shore, five men in the group were swept into the Pacific Ocean by a rogue wave and thrown against the rocks. Two of the men... drowned "); Healy v. Renaissance Hotel Operating Co.²⁴³(guest struck by motorboat while snorkeling); Aronson v. Hyatt International Corp.²⁴⁴(tourist injured during " wilderness snorkeling boat trip ")].

5] **Water Skiing** [See Wheeler v. Ho Sports, Inc.²⁴⁵ (participant drowns while wakeboarding; failure to warn about the adequacy of the lifevest); Bjork v. Mason²⁴⁶ (frayed and old tow rope may have caused waterskiing accident); McCollum v. Friendly Hills Travel Center²⁴⁷ (travel agent not liable for water skiing accident at resort); Melchert v. Clark²⁴⁸ (waterskiing accident when towrope snagged by another boat)].

6] **Jet Skiing/Personal Watercraft** [See Yamaha Motor Corp. v. Calhoun²⁴⁹ (death of jet ski operator off shore of Puerto Rico); In re Bay Runner Rentals, Inc.²⁵⁰ (watercraft accident); Johnson v. CHL²⁵¹ (watercraft accident); Land v. Yamaha Motor Corp.²⁵² (jet ski accident); Mashburn v. Royal Caribbean Cruises, Ltd.²⁵³ (jet ski accident); McLain v. Ortmeier²⁵⁴ (jet ski accident); See also: Brown, The Next Wave In Products Litigation²⁵⁵].

7] **Fishing** [See Rudolph v. Arizona B.A.S.S. Federation²⁵⁶ (jet skier killed by fishing contest participant racing to weigh-in station); Doane v. Helenville Mutual Ins. Co.²⁵⁷ (fishing accident)].

8] **Boating** [See LeBlanc v. Cleveland²⁵⁸ (occupants of kayak injured during collision with recreational motor boat); Catalano

v. N.W.A., Inc.²⁵⁹(guest raped by resort employee " during their sailing excursion on a two-person sunfish sailboat "); Geringer v. Wildhorn Ranch, Inc.²⁶⁰(hotel guests drown riding paddlewheel boats); Goodman v. Juniper Springs Canoe Rentals²⁶¹(canoeist slips and falls on bulkhead removing canoe from lake); Friedland v. Amoroso²⁶²(guest injured in defective sailboat); See also: Donius, Recreational boating accidents: Which law applies?, Trial Magazine, August 2001, p. 42].

9] **Tubing** [See Record v. Reason²⁶³(participant sustains spinal injury while tubing); Haugen v. Lazy K Enters.²⁶⁴(tubing accident)].

C]-**Winter Sports**

Hotels and resorts near mountains or woodlands may promote the availability of

1] **Snow Skiing** [See Eipp v. Jiminy Peak, Inc.²⁶⁵(ski area must be operated in a reasonably safe manner); Shukoski v. Indianhead Mt. Resort²⁶⁶(minor snowboarder sustains injuries); Doering v. Copper Mt., Inc.²⁶⁷(ski accident); Cooper v. United States Ski Ass'n²⁶⁸(ski accident; release signed by parents on behalf of injured minor skier enforced); Rayeski v. Gunstock Area²⁶⁹(skier collides with unpadded light pole); Ruepp v. West

Experienced, Inc.²⁷⁰ (accident during nighttime skiing); Bono v. Hunter Mountain Ski Bowl²⁷¹ (skier hits tree suffering fatal injuries); Anonymous v. Anonymous²⁷² (skier assaulted by three other hotel guests " in a closed-door hotel room "; " Getaway and Holiday Inn do not deny that they were aware of numerous ongoing parties... wherein alcohol and...marijuana...were allegedly consumed. It was following one of these private room parties that plaintiff, heavily intoxicated, lost consciousness and was allegedly assaulted "); Hughes v. Seven Springs Farm, Inc.²⁷³ (two skiers collide); Missar v. Camelback Ski Resort²⁷⁴ (ski accident; lift ticket disclaimer not enforced); See also: Chalat, Ski law for Beginners, Intermediates and Experts²⁷⁵].

2] **Snowmobiling** [See Grutkowski v. Steam Lake Guides & Outfitters, Inc.²⁷⁶ (participant dies during snowmobiling excursion); Kruse v. Iron Range Snowmobile²⁷⁷ (snowmobile accident); Anderson v. Eby²⁷⁸ (snowmobile accident during tour of National Park forest); State v. Barnes²⁷⁹ (intoxicated snowmobile driver); Campbell v. Schwartz²⁸⁰ (snowmobile accident and rescue attempt)].

3] **Tobogganing** [See Brett v. Great American Recreation, Inc.²⁸¹ (tobogganing accident); Cornell v. City of Albany²⁸² (tobogganing accident)].

4] **Ice & Roller Blade Skating** [See Carter v. Holiday Skating Center²⁸³(rollerblading accident); Roncal v. Rockefeller Center Properties, Inc.²⁸⁴(ice skating accident)].

D] **-Miscellaneous Sports Activities**

There are a wide variety of sporting activities which hotel and resort guests may participate in including

1] **Biking** [See Mishi v. Mount Snow, Ltd.²⁸⁵(mountain bike accident); Montaperto v. Split Rock Resort²⁸⁶(hotel guest falls while riding bicycle); Pau v. Yosemite Park²⁸⁷(bike accident in National Park); Jeremy v. State²⁸⁸(bike accident)].

2] **Hiking** [See Coughlin v. T.M.H. International²⁸⁹(spelunker takes a fall in a cavern); Stevenson v. Four Winds Travel, Inc.²⁹⁰(slip and fall on slimy pier in Amazon Jungle); Connolly v. Samuelson²⁹¹(slip and fall during Safari walk; release enforced); Lavine v. General Mills, Inc.²⁹²(slip and fall on slippery rocks in Fiji; release enforced); Jackson v. State of Florida²⁹³(slip and fall during walking tour of state park); Sands v. Bonnie View On Lake George, Inc.²⁹⁴(slip and fall on grass outside of hotel); Cohen v. Heritage Tours, Inc.²⁹⁵(slip and fall traversing stream in Canadian Rockies)].

3] **Parachuting & Parasailing** [See *Scrivener v. Sky's the Limit, Inc.*²⁹⁶(skydiving accident; release enforced); *Matter of See N Ski Tours, Inc.*²⁹⁷(parasailing accident); *Bacchiocchi v. Ranch Parachute Club, Ltd.*²⁹⁸(parachuting accident); *Chieco v. Paramarketing, Inc.*²⁹⁹(paragliding accident; release enforced); *Reynoso v. Paramarketing, Inc.*³⁰⁰ (parachuting accident; release not enforced); *Hernandez v. Holiday Inn, Inc.*³⁰¹(parasailing accident on beach in Mexico)].

4] **Golfing** [See *Montammy Golf Club v. Bruedan Corp.*³⁰²(golf cart flips over); *Jackson v. Livingston Country Club*³⁰³(golfing accident); *Defonce v. K.S.B. Arrowwood Realty Corp.*(golfing accident)].

Off Premises Accidents: Disclaimers & Assumption Of The Risk

Assuming the sports activity is sponsored or controlled by the hotel or resort then a negligence action may be appropriate based upon defective equipment, inadequate training or instruction, failure to rescue and failure to adequately treat an injured guest. Sports accidents away from the hotel or resort, however, raise important issues such as control and responsibility for the torts of unrelated independent contractors. In addition, the providers of sports activities may be insulated from liability based upon enforceable disclaimers

and assumption of the risk doctrine.

A] **Enforceable Disclaimers** [See *Everett v. Whitewater Mountain Resorts*³⁰⁴ (ski accident; disclaimer on lift ticket may be pleaded as defense); *Borden v. Phillips Borden v. Phillips*³⁰⁵ (scuba diver drowns; release enforced under Florida law); *Powers v. Mukpo*³⁰⁶(horse riding accident; release enforced); *Stroud v. River Runners, Ltd.*³⁰⁷(white-water rafting accident; disclaimer enforced); *Connolly v. Samuelson*³⁰⁸(slip and fall during Safari walk; release enforced); *Lavine v. General Mills, Inc.*³⁰⁹(slip and fall on slippery rocks in Fiji; release enforced); *Chieco v. Paramarketing, Inc.*³¹⁰(paragliding accident; release enforced); *Reynoso v. Paramarketing, Inc.*, *New York Law Journal*, Oct. 8, 1997, p. 28, col. 3 (N.Y. Sup.) (parachuting accident; release not enforced)].

B] **Assumption Of The Risk Doctrine.** The experienced sports activist may be subject to the defense of assumption of the risk or contributory negligence. The doctrine of assumption of the risk is usually applicable only when the risks are known or obvious to a person of considerable expertise [See *Barber v. Princess Hotels International, Inc.*³¹¹(guest thrown from horse sued for negligence; little sympathy for plaintiff who was " an experienced horseback rider "); *Ferrari v. Grand Canyon Dories*³¹²(rafting accident; injured passenger assumed the risk);

Record v. Reason³¹³(participant who sustained spinal injury from tubing accident assumed the risk; " tube riders engage in the activity of tubing in order to experience the thrill of whipping across the water at speeds which challenge their ability to stay on the tube "); Barton Lowenthal v. Catskill Funland, Inc.³¹⁴ (go-kart accident; " In riding the go-kart, the plaintiff... assumed the risks inherent in the activity...which included the prospect that the go-kart would bump into objects "); Surace v. Lostrappo³¹⁵(in-line skaters collide; " Participation in sports presumes the acceptance of the dangers and risks reasonably associated with the sport. One who participates in a sport is deemed as a matter of law to assume all known risks associated with the sport...Collisions and falls are common in the sport of in-line skating, especially in the case of a novice skater "); Berry v. Bally Total Fitness Corp.³¹⁶(participant in step-aerobics at health club assumed the risk); Bono v. Hunter Mountain Ski Bowl³¹⁷(expert skier " hit an ice patch, fell, struck a tree and suffered fatal injuries "; assumption of the risk); Bouchard v. Smiley Brothers, Inc.³¹⁸(experienced hiker who fell to her death assumed the risk inherent in hiking); Randall v. Mommouth Mountain Ski Resort³¹⁹(resort not entitled to assumption of the risk because its ski run hazards were atypical and non-obvious increasing the risks to skiers)].

Warning: Recreational Use Statutes Reduce Supplier's Liability

Consumers should be aware that some States have enacted Recreational Use Statutes to protect certain tourist industries such as winter sports providers from liability for some common types of accidents [See *Swenson v. Sunday River Skyway Corp.*³²⁰ (skier injured negotiating moguls; ski facility immune from liability under Maine's Skiers' and Tramway Passengers Responsibilities Act); *Kruse v. Iron Range Snowmobile*³²¹ (snowmobile accident; Michigan Recreational Use Act protects snowmobile club from liability from placement of warning signs); *Saldarini v. Wachusett Mountain Ski Area, Inc.*³²² (injured skier's claim barred by Ski Safety Act); *Jenkins v. Arkansas Power & Light Co.*³²³ (swimmer injured diving into shallow water; Arkansas Recreational Use Statute absolves utility from liability for " mere negligence "); *Cometti v. Hunter Mountain Festivals, Ltd.*³²⁴ (hiking accident; "...plaintiff was traversing defendant's premises for pleasure and exercise; New York's recreational use statute applied); *Shukoski v. Indianhead Mountain Resort, Inc.*³²⁵ (snowboarding accident; snowboard skiers are governed by the assumption of risk provisions of Michigan's Ski Area Safety Act "); *Tidgewell v. Loon Mountain Recreation Corp.*³²⁶ (Massachusetts' one year statute of limitations for actions against ski operators preempts New Hampshire two year statute of limitations); *Sytner v. State*³²⁷ (Safety in Skiing Code did not relieve ski operator of duty to warn of dangerous skiing conditions)].

Hotel Overbooking & Cancellation Fees

A common problem experienced by consumers is having confirmed reservations dishonored upon arriving at the hotel or resort. This occurrence known as hotel overbooking reflects a hotel policy of selling more rooms than are available at any given time. The industry explanation for this disruptive policy is that there are a certain number of travelers who make reservations and then either cancel or do not show up. Another explanation is that a popular hotel or resort may be stirring consumers to less popular hotels through a "bait & switch" scheme [See Dold v. Outrigger Hotel³²⁸]. Such explanations may not be well received by the traveler who has obtained a confirmed reservation, travels many hours, arrives at the hotel worn and weary and is denied a room because management has deliberately oversold the hotel.

Breach Of Contract & Damages

A promise by a hotel or resort to deliver a room in the future in return for payment or a promise to pay constitutes a binding contract. The hotel is obligated to deliver the room and the consumer is obligated to pay for it. When a consumer makes a reservation and then cancels, the hotel has a cause of action against the consumer [See Freeman v. Kiamesha Concord, Inc.³²⁹].

In cases involving the hotel's breach of a reservation's contract the primary issue is not liability but the measure of damages. The courts have taken different positions on the damages recoverable [See Kellogg v. Commodore Hotel, Inc.³³⁰ (damages for depression and nervous disorders allowable); Thomas v. Pick Hotels Corp.³³¹ (punitive damages allowable); Brown v. Hilton Hotels Corp.³³² (punitive damages, attorneys fees or damages for mental suffering not allowable); Dold v. Outrigger Hotel³³³ (damages for tortious breach of contract); Scher v. Liberty Travel Service, Inc.³³⁴ (\$6,000 in damages awarded); Semrod v. Compania Mexicana de Aviacion³³⁵ (airline overbooking; breach of contract damages included \$3,000 for loss of tangible pleasure of one vacation day, a food allowance of \$300 and a room allowance of \$250)].

Hotel Cancellation Policies

Recently, hotels have instituted tough cancellation policies requiring consumers to pay the rooms they reserve but don't show up for [See Wade, Hotels Stricter On Cancellations³³⁶ (" A colleague making a hotel reservation at the Wyndham Inner Harbor in Baltimore was told that if she changed her plans, she had to cancel 72 hours-three days-in advance to avoid being charged for one night's stay...these hotel policies have been unfolding over three to four years...The recent economic boom has

been creating the stricter policies: hotels generally have guests waiting who will eventually give and try elsewhere, so they force no-shows to declare early. Doug Jenkins, another Visa spokesman, called higher occupancy rates the driving factor in cancellation penalties ")].

Hotel/Resort Liability For Stolen Luggage & Personal Property

The **best advice** is not to carry any valuables, especially, jewelry³³⁷, particularly, in foreign destinations where a resort's liability for lost baggage or property may be problematical [See Wade, How Safe Is the Hotel Safe?, Practical Traveler, N.Y. Times Travel Section, March 14, 1999, p. 4. (" Last Sept. 1, Dr. Odi Matityahu and his wife, Liat, arrived in St. Thomas, the Virgin Islands, to celebrate her birthday. They checked into the Renaissance Grand Beach Resort about 3:00PM. Dr. Matityahu said that the hotel staff asked if they needed a safe for their valuables, and they were given the key to a wall safe in their room. They stored their valuables, including passports and jewelry, and went swimming. When they returned at 5:20PM, the room safe had been removed with a beer-can opener, which was left behind. The room door had not been forced, they said. This situation... illuminates aspects of hotel liability that may come as unwelcome news to travelers. Dr. Matityahu said that he and his wife got a hotel and a police report about the theft and that

the resort manager said there was nothing to worry about because the insurance company would take care of them. After the couple returned home to Plano, Texas...an insurance adjuster called to say the couple would be compensated for their losses-up to a total of \$200. Since Dr. Matityahu's list includes more than \$33,000 in jewelry, he refused to accept. The \$200 offer was not a random one. It is the limit of ' innkeeper liability ' in the Virgin Islands' legal code when guests entrust their valuables to the hotel for safekeeping and the valuables are lost through ' theft, damage, destruction or otherwise '...If valuables are not entrusted to the hotel, the guest is entitled to no compensation in the event of a loss "]).

Limited Liability For Baggage & Property Loss

Under English Common Law the hotel was held strictly liable for the loss of the guest's property³³⁸. Today, most States have enacted Innkeeper Statutes which limit a hotel or resort's liability for the loss or damage of the traveler's baggage or property. As for money and valuables, hotels are usually required to maintain a safe and to give proper and adequate notice of the safe's availability. If the hotel does not make a safe available, it loses the benefit of the liability limitation imposed by an Innkeeper's Statute [See e.g., *Zaldin v. Concorde Hotel*, 48 N.Y. 2d 107, 421 N.Y.S. 2d 858, 862, 397 N.E. 2d 370 (1979) (" The

legislative formula is uncomplicated. It says, straightforwardly, that ' whenever ' a safe is provided the liability limitation shall be applicable. Conversely, at those times when an innkeeper chooses not to provide a safe for the use of guests, he cannot claim the statutory protection ")].

Selected State Innkeepers' Statutes

Innkeepers' Statutes have been applied in many States including:

A] **Ohio** [See *Diamond v. Hyatt Corp.*³³⁹ (jewelry salesmen deposit \$450,213 worth of jewels in hotel safe deposit boxes which are subsequently emptied by thieves; Ohio innkeeper's statute limiting liability to \$500 may not apply; " Here, safety deposit boxes were used and the thefts occurred from those safety deposit boxes. The Hyatt could be found to have made a special arrangement to accept the jewelry by in fact accepting the jewelry for storage in its safety deposit boxes. The safety deposit boxes in question were positioned behind the registration desk. The contents of the safety deposit boxes were removed without apparent damage to the safety deposit boxes. Construing the evidence...most favorably to the appellants, employees of the Hyatt could be found negligent in failing to be aware of what was occurring a short distance away in the area where they had

accepted valuables for safe-keeping. Employees of the Hyatt also could be found to have been involved in the theft...")].

B] **Wisconsin** [See *Mallak v. Fairfield FMC Corp.*³⁴⁰ (guest robbed of over \$1 million in jewelry at gunpoint in his room; notice may be inadequate; " a guest who was subjected to a criminal act during the process of checking in. Just as the provisions for notice and a safe are no longer useful for a guest who has checked out, they cannot help a guest who has not even penetrated the interior of his room and had a chance to use them ")].

C] **District of Columbia** [See *Paraskevaides v. Four Seasons*³⁴¹ (guests locked valuables in their room safe which was broken into in their absence; District of Columbia innkeeper statute limiting liability enforced; " The bar on hotel liability of a guest's property loss is extinguished, under the statute, if the hotel (a) fails to display a copy of the statute and (b) fails to post the notice conspicuously, or (c) the property is that which a prudent guest would usually or commonly keep in their room with the reasonable expectation that the hotel would guard against its loss. Contrary to the plaintiffs' contentions none of these factors is fatal to the defendant's affirmative defense...Section 34-101 applies when the host hotel has either posted a ' printed copy of Section 34-101 (or summary

thereof)...the hotel did post a summary of Section 34-101 next to the safe in which the plaintiffs placed their valuables. This was sufficient to place the plaintiffs on notice..."]].

D] **Connecticut** [See Emerson v. Super 8 Motel³⁴²(guest's vehicle entrusted to hotel employees broken into and \$36,000 stolen; Connecticut innkeeper's statute applied)].

E] **Georgia** [See Chapparone v. First Florence Corp.³⁴³ (guests jewelry worth \$20,000 stolen from hotel room; Georgia innkeeper's statute enforced; hotel not responsible for valuables not deposited in safe)].

F] **Louisiana** [See Searcy v. La Quinta Motor Inns, Inc.³⁴⁴ (guests robbed; Louisiana innkeeper's statute not enforced; notice inadequate; \$4,938.95 awarded)].

G] **New York** [See Bleam v. Marriott Corp.³⁴⁵(guest's baseball cards and cash stolen; " the(guest) did not declare to any agent or employee of the(hotel) the value of the merchandise that he was keeping in his room, the (hotel's) liability is limited to \$500 (under New York's innkeeper's statute)" ; notice adequate)].

H] **California** [See Duvall v. Ritz Carlton Hotel³⁴⁶(jewelry

theft at hotel; California hotel liability limiting statute enforced)].

I] **Nevada** [See Pachinger v. MGM Grand Hotel³⁴⁷ (Nevada statute enforced)].

J] **Pennsylvania** [See Nicholaides v. University Hotel Associates³⁴⁸ (coin collection stolen; Pennsylvania hotel liability limiting statute enforced).

Notice To Deposit Valuables In Hotel Safe Must Be Adequate

Notice of the requirement to deposit valuables in the hotel's safe must appear in conspicuous areas such as on the back of the door or the guest's rooms and at the front desk. If the hotel or resort fails to adequately notify the guest then it may not rely upon the Innkeepers' Statute to limit its liability [See Chapparone v. First Florence Corp.³⁴⁹ (guests jewelry worth \$20,000 stolen from hotel room; Georgia innkeeper's statute enforced; notice posted on bathroom door); Searcy v. La Quinta Motor Inns, Inc.³⁵⁰ (guests robbed; Louisiana innkeeper's statute not enforced; " The photograph of the notice which the hotel alleged was posted in the registration area has a large light spot in the middle, but clearly only advises guests that the hotel is not responsible for the protection of personal property.

The notice is totally inadequate...this notice in this area does not contain either the complete text (of the statute) or the gist of the text "); World Diamond, Inc. v. Hyatt Corp.³⁵¹ (guests put \$450,213 worth of jewelry in safe deposit boxes which were subsequently cleaned out by thieves; notice requirements of Ohio innkeeper's statute complied with); Moog v. Hilton Hotels Corp.³⁵² (inadequate notice of statutory limits of liability; \$400,000 worth of jewelry stolen)].

Pets, Pets, Pets

Some hotels and motels will accommodate a guest's pet dog or cat. Policies differ widely and consumers should " Never take the word of a guidebook or Web site that a hotel accepts dogs. ' Ownership changes, management changes and the place isn't pet friendly anymore '...I like to get a written or faxed confirmation from the hotel that mentions the dog specifically "³⁵³. On the issue of liability for dog bites the hotel and the guest may be liable for injuries caused to other guests [See Maher v. Best Western Inn³⁵⁴ (guest's seeing eye dog attacked another guest's dog; hotel may be liable for creating risk of attack and taking no precautions to protect guests from risk)].

Misrepresentations Of Accommodations, Services & Facilities

The marketing of hotel and resort accommodations is highly competitive. As such hotels, resorts, tour operators and travel agents may misrepresent the rating, quality, location, the nature of the facilities and services and the food actually available at the hotel or resort. Misrepresentations made be found in

A. **Printed brochures** [See Irving Trust Co. v. Nationwide Leisure Corp.³⁵⁵ (brochures promised " superior first class " accommodations); Vallery v. Bermuda Star Line, Inc.³⁵⁶ (first class stateroom promised); Tarshis v. Lahaina Investment Corp.³⁵⁷ (guest injured in dangerous surf at beach relied upon brochure language " The Royal Lahaina Beach resort stretches along a 3-mile secluded white sand beach...The sea is safe and exhilarating for swimming "); Kessler v. National Enterprises, Inc.³⁵⁸ (resort time sharing; misrepresentations as to indoor and outdoor amenities and access to parking; breach of contract and fraud; contracts rescinded)];

B. **Made orally** (See Sigros v. Walt Disney World Co.³⁵⁹ (minor guest with cerebral palsy suffers discomfort because resort was misrepresented by travel agent and hotel representatives as having handicapped-accessible accommodations and facilities); Bergonzine v. Maui Classic Charters³⁶⁰ (350 lb. handicapped passenger breaks ankle; cruise line promised that cruise would be suitable for the handicapped); Irish v. Deep

Hollow Ltd.³⁶¹(horse riding accident while cantoring;
misrepresentations that horses would be kept to a walking
pace)];

C. **Implied by law** [See Touhey v. Trans National Travel³⁶²(
hotel unfinished; breach of implied warranty of habitability);
McKee v. Sheraton-Russell, Inc.³⁶³(safety standard of care varies
with grade and quality of hotel; guest relied upon promise of "
first class accommodations "); DeWolf v. Ford³⁶⁴(prices charged
and " grade of inn " create legal standards); Tobin v.
Slutsky³⁶⁵(" first class " accommodations creates legal
standard)].

Types Of Misrepresentations

A. **Bait & Switch Schemes.** Tour operators have used " bait
and switch schemes " in which highly desirable hotels are
advertised in tour brochures but, upon arrival, the promised
hotel is switched for an inferior hotel [See Dold v. Outrigger
Hotel³⁶⁶(hotel bait & switch scheme; beach hotel steered guests
to hotels considerable distance from beach); Berger v.
Nationwide Leisure Corp.³⁶⁷(tours to London, England; hotels
misrepresented as to proximity to " fashionable West End ")].

B. **Superlatives.** Hotels and resorts may be described as the

greatest, first class, beautiful, luxurious, exquisite or the best in the world. Whether these superlatives are actionable [See *Vallery v. Bermuda Star Line, Inc.*³⁶⁸ (inadequate stateroom and cruise ship facilities; terms such as first class, special, luxurious, beautiful and exquisite are actionable as misleading and deceptive business practices)] or mere puffing [See *Simon v. Cunard Line Ltd.*³⁶⁹ (representation that cruise ship was " greatest in the world " not actionable)] depends on just how bad the actual accommodations are.

C. **Ratings.** Hotel ratings are virtually meaningless. Nevertheless travelers rely upon these self-descriptions as if they were accurate evaluations of the hotel or resort. Most foreign countries have their own independent rating system for hotels. The difficulty in establishing the precise meaning of " superior first class " was established in *Irving Trust Co. v. Nationwide Leisure Corp.*³⁷⁰ (brochures promised " superior first class " accommodations).

D. **Location.** The location of the hotel including its proximity to beaches, historic sites, cultural centers or ski areas determines the room price which may be charged. As such hotels and tour operators may mislead the traveler by using less than accurate language in describing the hotel's location. For example, instead of describing the resort's location as five

miles from the beach the brochure may use language such as " on the north shore of Jamaica " with a map a dot on the north shore of Jamaica. The impression meant to be generated is that the hotel is on or near the beach when in fact it is not [See *Guadagno v. Diamond Tours & Travel, Inc.*³⁷¹ (misrepresented resort); *Thomson Travel Ltd. v. Roberts*³⁷² (brochure falsely stated that " hotel is right on the beach ")]. Brochures may also misrepresent the hotel's proximity to cultural centers such as the " fashionable West End " in London, England [*Berger v. Nationwide Leisure Corp.*³⁷³ (tours to London, England; hotels misrepresented as to proximity to " fashionable West End ")].

E. Facilities, Services & Activities. Most brochures will enumerate the nature of the facilities, services and sports activities available at the hotel or resort. Some of these may not, in fact, exist [See *Kessler v. National Enterprises, Inc.*³⁷⁴ (purchasers of resort time shares promised access to adjacent hotel tennis courts, indoor pool, exercise room, cocktail lounge, boat docks, outdoor pool, games rooms, restaurants and parking lot; after 8 years of 35 year interest in time share, access cut off to amenities and parking); *Gianocostas v. RIU Hotels*³⁷⁵ (insulin-dependent diabetic becomes ill during vacation featuring accommodations to at the Hotel Riu Mambo, is misdiagnosed, treated in dirty and inadequately supplied clinics (" The decedent's mother's perception was that

the (Dominican Republic) hospital (to which her daughter had been admitted) was filthy and the medical equipment ` very old `. Trash cans overflowed with garbage in the intensive care unit. ") and eventually dies; decedent's parents claim that the travel agent, tour operator and hotel misrepresented the availability of medical services; " Plaintiffs claim that the decedent told (travel agent) during these meetings that she was a diabetic and needed specific information about the availability of hotel medical services. Plaintiffs also allege that (travel agent) relied on (tour operator and hotel) extensive informational resources to answer the decedent's specific questions and to allay her concerns about available medical services. Plaintiffs further claim that the decedent chose her trip as a result of (hotel and tour operator) representations regarding their medical services "); Clarke and Greenwood v. Airtours³⁷⁶ (promised " 3 Star rooms with half board " in Tenerife misrepresented; no board, dirty rooms infested with cockroaches, wild dogs on hotel grounds, graffiti, glass near pool); Stewart v. Trans Air International³⁷⁷ (promised " four star " hotel misrepresented; no air conditioning, children slept on balcony, TV had only two Spanish language channels, no jacuzzi, sporting facilities unusable and food distasteful); Guadagno v. Diamond Tours & Travel, Inc.³⁷⁸ (misrepresented resort)].

F. **Safe Accommodations.** On occasion a hotel or tour operator may promise that the accommodations are " safe ". Such a promise may provide the basis of a breach of warranty claim of safety claim by an injured guest or tour participant [See Hayward v. Holiday Inns, Inc.³⁷⁹ (warranty of safety); Stevenson v. Four Winds Travel, Inc.³⁸⁰ (accident on slippery pier in Amazon; brochure promised supervision from tour guide); Glenview Park District v. Melhus³⁸¹ (canoeist who drowned during trip down river was promised that canoeing would " be perfectly safe "); Pau v. Yosemite Park³⁸² (bike accident; warranty of safe biking trail)].

Hotel & Resort Overcharges

On occasion hotels may violate Federal or State antitrust laws by fixing prices or otherwise overcharging their guests for the cost of their accommodations [See In re Hawaiian Hotel Room Rate Antitrust Litigation³⁸³ (room rate overcharges); Archibald v. Cinerama Hotels³⁸⁴ (action alleging overcharges at hotels for out of state residents); Key Club Associates v. Mayer³⁸⁵ (class of condominium owners sue management over billing for repairs, maintenance and replacement items in their units); Kiamesha Concord, Inc. v. Kahn³⁸⁶ (overcharges at hotel)]. In addition to manipulating room rates [See Shabby Travel Tactics³⁸⁷] hotels may overcharge their guests in delivering various services. Consumer Reports Travel Letter³⁸⁸ recently identified five

different " stealth fees " which hotels use to generate profits. " Even a good deal can turn sour when you factor in common extras. How sour? With taxes, parking fees and hotel surcharges on a few phone calls, a room bill of \$100 can balloon to \$150 ".

The five areas where hotels may tag on surprisingly high charges include (1) taxes and surcharges³⁸⁹, (2) parking³⁹⁰, (3) phone calls³⁹¹, (4) fitness center³⁹² and (5) room service³⁹³. Consumers should carefully investigate the hotel's pricing systems before making reservations.

Casinos : Common Consumer Complaints

Casinos provide a major source of entertainment for hotel and resort guests in several U.S. cities such Las Vegas, Nevada and Atlantic City, New Jersey, on several Indian Reservations and in many foreign destinations as well as on board cruise ships. Some of the problems experienced by casino patrons are similar to those experienced by hotel guests, i.e.,

A. Slips, Trips & Falls [See Ferrucci v. Atlantic City Showboat, Inc.³⁹⁴ (slip and fall over a bed at the Showboat Hotel & Casino in Atlantic City); Morogiannis v. Caesars World, Inc.³⁹⁵ (fall down staircase at Caesars World Casino in Atlantic City, New Jersey); Davis v. Players Lake Charles, Riverboat, Inc.³⁹⁶ (intoxicated patron fell down staircase at Players

Riverboat Casino in Lake Charles, Louisiana); Brewer v. Robinson Property Group, L.P.³⁹⁷(falls over money cart left in aisle); Spann v. Robinson Property Group, L.P.³⁹⁸(cocktail waitress spills hot coffee on patron's back); Crum v. Circus Circus Enterprises³⁹⁹(slot machine patron's hand crushed by change cart being pushed by employee at Circus Circus Hotel-Casino Theme Park in Las Vegas, Nevada); Neal v. Players Lake Charles, LLC⁴⁰⁰(84 year old patron fell and fractured left wrist in Players Casino); Thielmier v. Louisiana Riverboat Gaming⁴⁰¹(patron fell down stairs descending from performance stage); Buford v. Riverboat Corp. of Mississippi⁴⁰²(" Sixty-three year old Jasper Buford was on his way to partake of the \$1 breakfast special at the Isle of Capri Casino in Vicksburg...when he slipped and fell in one of the casino parking lot crosswalks "); Deerinwater v. Circus Circus Enterprises⁴⁰³(slip and fall on stairs during fire alarm); Riviera Operating Corp. v. Dawson⁴⁰⁴(slip and fall at Riviera Hotel & Casino in Las Vegas, Nevada)].

B. Rapes, Assaults & Robberies [See Marmer v. Queen of New Orleans⁴⁰⁵(patron attacked in restroom of Flamingo Casino in New Orleans); Canterino v. The Mirage Casino-Hotel⁴⁰⁶(patron beaten and robbed in hotel hallway of the Mirage Casino-Hotel in Las Vegas, Nevada); Atkinson v. Stateline Hotel & Casino & Resort⁴⁰⁷(casino transported drunken patron to motel room of a stranger who then raped her)].

C. Ejection For Intoxication & Rude Behavior [See Saucier v. Players Lake Charles, LLC⁴⁰⁸(drunken patron ejected and arrested charges use of excessive force; " (Casino's) actions of refusing to remove the handcuffs and carrying (guest) down three flights of stairs were not reasonable...It is not secret that (casino) encourages (patrons) to drink as means to facilitate gambling. Attractive young waitresses with fishnet stockings supply an endless fountain of alcohol to the patrons. On the night of the incident (patron) drank free beer for eight hours.(Casino) utilized the waitresses and the free beer to further their business and their tactics were to the detriment of (patron). It is obvious that (patron's) drinking resulted in him being confused and disoriented causing him to become boisterous and refusing to leave the casino "); Davis v. Smith⁴⁰⁹(drunken and rude patron ejected from casino)].

D. Theft Of Property [See Mauro v. GNLV Corp.⁴¹⁰(patrons injured chasing and apprehending thief that stole two rolls of coins from while playing slot machines at the Golden Nugget Casino)].

Casinos : Unique Problems Experienced By Patrons

There are, however, other problems experienced by patrons which are unique to casinos, i.e., (1) cheating and other frauds,

(2) collection of gambling debts and (3) barring card counters from blackjack games.

A. **Cheating & Other Frauds.** On occasion patrons may be cheated or otherwise defrauded by the casino when it

1] **Refuses to pay a \$1 million jackpot** won during " one free spin on the Million Dollar Wheel " [See *Gottlieb v. Tropicana Hotel And Casino*⁴¹¹].

2] **Uses loaded dice** [See *Berman v. Riverside Casino Corp.*⁴¹²].

3] **Uses a 53-card deck** [See *Zaika v. Del E. Webb Corp.*⁴¹³].

4] **Uses a " false shuffle "** [See *U.S.A. v. Hung Quoc Ly*⁴¹⁴].

5] **Uses " marked cards "** [See *Kelly v. First Astri Corp.*⁴¹⁵].

6] **Refuses to pay \$40,400 in blackjack winnings** [See *Chen v. Nevada State Gaming Control Board*⁴¹⁶].

7] Refuses to pay a \$1,061,812 slot machine jackpot

[See Erickson v. Desert Palace, Inc.⁴¹⁷].

8] Refuses to pay a \$1,000,000 slot machine jackpot of

[See Devon v. Unbelievable, Inc.⁴¹⁸].

9] Refuses to accept a patron's \$20,000 bet [See

Grand Casino Tunica v. Shindler⁴¹⁹].

2]-Collecting Gambling Debts

It is not uncommon for " high rollers " to receive credit from a casino as evidenced by the issuance of " markers " [See Carnival Leisure Industries, Ltd. v. Aubin⁴²⁰] so they may continue making bets [and continue losing] at the gaming tables. On occasion the casino may commence a lawsuit against the former " high roller " to collect a gambling debt [See GNOC Corp. v. Aboud⁴²¹ (Golden Nugget casino seeks to collect \$28,000 from patron); Carnival Leisure Industries, Ltd. v. Aubin⁴²² (casino seeks \$25,000 from patron); Mashantucket Pequot Gaming Enterprise v. Kennedy⁴²³ (casino seeks \$60,000 from patron); National Recovery Systems v. Nemchick⁴²⁴ (casino seeks \$5,000 from patron); Players Lake Charles, LLC v. Tribble⁴²⁵ (casino seeks \$63,559 from patron); Tuan Ngoc Nguyen v. State of Nevada⁴²⁶ (patron arrested and charged with passing bad checks at casino;

Mashantucket Pequot Gaming Enterprise v. Renzulli⁴²⁷ (casino seeks \$5,160 from patron)].

In response to such a lawsuit the " high roller " may defend himself by claiming he was intentionally fed alcohol or drugs to induce him to part with his money at the gaming tables. For example, in GNOC Corp. v. Aboud⁴²⁸ the patron counterclaimed to a collection lawsuit in the following manner. " The essence of Mr. Aboud's counterclaim is his allegation that the Golden Nugget ' fraudulently, intentionally and maliciously procured (his) intoxication...through the offering to him of alcoholic beverages...at the time (doctors) prescribed a narcotic drug to him...in an orchestrated effort to ' extract from (him) in his drugged state, all of his monies ".

3] **Blackjack & Card Counters**

The casino game of blackjack offers some players the opportunity of improving their odds of winning by counting cards. " Card-counters use intellect and memory to identify the time during the course of play when a player's odds of winning are better or worse " [See Doug Grant, Inc. v. Greate Bay Casino Corp.⁴²⁹]. Casinos have implemented procedures for identifying card counters and prohibiting them from playing blackjack [See Doug Grant, Inc. v. Greate Bay Casino Corp.⁴³⁰]. These procedures have been challenged by professional card counters on a variety

of grounds without much success [See *Doug Grant, Inc. v. Greate Bay Casino Corp.*⁴³¹].

FOOTNOTES

1. Thomas A. Dickerson is a Westchester County Judge, New York State, and author of Travel Law, Law Journal Press, N.Y., N.Y., 1981-2002, updated biannually, web site at <http://members.aol.com/travellaw/index.html>; Class Actions: The Law of 50 States, Law Journal Press, N.Y., N.Y., 1988-2002, updated annually, web site at <http://members.aol.com/class50/index.html>; and nearly 200 consumer law articles many of which are available at http://www.classactionlitigation.com/articles_of_interest.htm. Brenda V. Mechmann is Judge Dickerson's Principal Law Clerk and assisted in the preparation of this article.

2. See Dickerson & Mechmann, Theme Parks & Thrill Rides, The Consumer's Rights & Remedies, International Travel Law Journal, Issue 2, 2001 and at http://www.classactionlitigation.com/articles_of_interest.htm

3. See Dickerson, Resort Timesharing: The Consumer's Rights & Remedies, International Travel Law Journal, Issue 1, 2001 and at http://www.classactionlitigation.com/articles_of_interest.htm

4. See Home Exchange-The Free Vacation, Consumer Reports Travel Letter, November 2001, p. 12.

" Your next trip could include free accommodations and the chance to explore a destination as if you were a local. Those are the benefits of a home-exchange vacation: You stay in someone else's home, short or long-term, while your fellow exchanger lives at your place-for nothing more than a modest membership fee...How it works. Home-exchange companies facilitate the arrangements by offering listings of potential swaps on web sites and in printed directories. You can find an exchange partner by posting an ad yourself or answering someone else's. Not surprisingly, the Internet has helped home exchanges to become more popular. Online listings and e-mail now provide consumers with quicker and more convenient access to-and communication with-potential exchange partners...Dozens of home-exchange companies do business on the web and they differ in their membership costs as well as in the number and variety of listings they offer...The money you save on home exchanges can be substantial...You're eliminating not only lodging costs, but often car-rental tariffs, too, since many home-exchange

arrangements include use of a vehicle..."

See also: Schembari, Practical Traveler, Keys to Savings In a Home Swap, N.Y. Times, Travel Section, October 22, 2000, p. 4.

" Vacation home exchanges have grown into a big business, with dozens of organizations willing to help you match your home, mundane or not, with those of people in other parts of the world. I have swapped twice, in France and England, and had two very different experiences...' The huge advantage to exchanging is that you're not living out of a hotel room ', said Bill Barbour, co-author of ' Home Exchange Vacationing: Your Guide to Free Accommodations '...' You have a kitchen, someone's library, neighbors who are in and out helping. The first thing you know, your kids have new kids to play with...I...listed our homes on one of the many web sites for our London trip in August. While I used Trading Homes International, there are several other big ones, including Homelink International. For a fee that can range from \$30 to \$100, an agency will list your home in a book or on the Internet "

5. The assumption of a greater standard of care may be set forth implicitly such as promising " First Class " accommodations and failing to deliver security precautions commensurate therewith [See e.g., Tobin v. Slutsky, 509 F. 2d 1097 (2d. Cir. 1974); McKee v. Sharaton Russell, Inc., 268 F. 2d 688 (2d Cir. 1959)] or through explicit promises [See e.g., Bergonzine v. Maui Classic Charters, 1995 A.M.C. 2628 (D. Hawaii 1995) (350 lb. handicapped passenger breaks ankle; cruise line promised that cruise would be suitable for the handicapped); Friedland v. Amoroso, 630 So. 2d 1067 (Fla. App. 1994) (hotel assumed obligation to deliver a safe and defect free sailboat to guest); Atkinson v. Stateline Hotel Casino & Resort, 2001 WL 224079 (Utah App. 2001) (intoxicated casino patron transported to assailant's motel room where she was raped; casino may be liable for failing to determine nature of the relationship between drunken victim and assailant; " By voluntarily taking charge of plaintiff, a person unable to adequately protect herself, the (casino) assumed a duty of care to take reasonably prudent steps to ensure that it did not leave her in a worse position than the one in which it found her ").

6. See e.g., Luxen v. Holiday Inns, Inc., 566 F. Supp. 1484 (N.D. Ill. 1983) (guest falls down stairs; hotel's compliance with building code regarding hand rail on stairs not a bar to negligence action); Sheppard v. Crow-Barker-Paul, 968 P. 2d 612 (Ariz. App. 1998) (minor guest injured when plate glass in sliding door shatters; hotel liable under common law even if not

required to retrofit glass per safety glazing statute).

7. Sigros v. Walt Disney World Co., 2001 WL 28683 (D. Mass. 2001).

8. Bergonzine v. Maui Classic Charters, 1995 A.M.C. 2628 (D. Hawaii 1995)(350 lb. handicapped passenger breaks ankle; cruise line promised that cruise would be suitable for the handicapped).

9. Anderson v. Turton Development, Inc., 225 Ga. App. 270, 483 S.E. 2d 597 (1997).

10. Wade, Fewer Barriers For the Disabled, Practical Traveler, N.Y. Times Travel Section, Jan. 30, 2000, p. 4.

11. Blum, Study: Rooms for disabled travelers underused, Travel Weekly, Feb. 12, 2001, p. 34.

12. Wilson v. Best Travel [1993] 1 All ER 353.

13. Sheppard v. Crow-Barker-Paul, 968 P. 2d 612 (Ariz. App. 1998).

14. Jones v. Peyton Place, Inc., 675 So. 2d 754 (La. App. 1996).

15. Kenkins v. McLean Hotels, Inc., 859 F. 2d 398 (8th Cir. 1988).

16. Brasseaux v. Stand-By Corp., 402 So. 2d 140 (La. App. 1988).

17. Terrill v. Lincoln Motor, Inc., 183 N.J. Super. 55, 443 A. 2d 236 (1982).

18. Romero v. Holiday Inn, Utrecht, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998).

19. Bernard v. Marriott Corp., 1992 Conn. Super. LEXIS 1412 (1992).

20. Korsak v. Atlas Hotels, Inc., 2 Cal. App. 4th 1516, 3 Cal. Rptr. 2d 833 (1992).

21. Howerton v. Red Ribbon, Inc., 715 N.E. 2d 963 (Ind. App. 1999).

22. Kerr-Morris v. Equitable Real Estate, 736 N.E. 2d 552 (Ohio

23. Woodford v. Hilton Hotels Corp., 1996 WL 54232 (N.D.N.Y. 1996).
24. Ely v. Blevins, 706 F. 2d 479 (4th Cir. 1983).
25. Bidar v. Amfac, Inc., 669 P. 2d 154 (Hawaii 1983).
26. Merkur v. Wyndam International, Inc., 2001 WL 477268 (E.D.N.Y. 2001).
27. Quarles v. Columbia Sussex Corp., 1998 WL 120221 (E.D.N.Y. 1998).
28. Wheeler/Kolb Management Co. v. Poretsky, 216 Ga. App. 19, 453 S.E. 2d 104 (1995).
29. Esser v. McIntyre, 267 Ill. App. 3d 611, 204 Ill. Dec. 902, 642 N.E. 2d 803 (1994), aff'd 169 Ill. 2d 292, 661 N.E. 2d 1138 (1996).
30. McElheny v. Trans National Travel, 165 F. Supp. 2d 190 (D.R.I. 2001).
31. Delarosa v. Holiday Inn, 2000 WL 648615 (S.D.N.Y. 2000).
32. Bruno v. Merv Griffin's Resorts International Casino Hotel, 37 F. Supp. 2d 395 (E.D. Pa. 1999).
33. Ware v. Fairmont Hotel Co., 1998 WL 906703 (E.D. La. 1998).
34. Yuniter v. A & A Edgewater of Florida, 707 So. 2d 763 (Fla. App. 1998).
35. Francois v. Holiday Inn, Inc., 678 So. 2d 55 (La. App. 1996).
36. Ferrucci v. Atlantic City Showboat, Inc., 51 F. Supp. 2d 129 (D. Conn. 1999).
37. Taieb v. Hilton Hotels Corp., 92 A.D. 2d 762, 459 N.Y.S. 2d 760 (1983).
38. Morogiannis v. Caesars World, Inc., 1996 U.S. Dist. LEXIS 4660 (S.D.N.Y. 1995).
39. Davis v. Players Lake Charles Riverboat, 74 F. Supp. 2d 675 (W.D. La. 1999).

40. Manes v. Richard Coats, 941 P. 2d 120 (Alaska Sup. 1997).
41. Thielmier v. Louisiana Riverboat, 732 So. 2d 620 (La. App. 1999).
42. Deerinwater v. Circus Circus Enterprises, 21 P. 3d 646 (Okla. App. 2001).
43. Poteau v. Walt Disney World Co., 1999 U.S. Dist. LEXIS 12459 (E.D. Pa. 1999).
44. Malon v. Colony Ins. Co., 778 So. 2d 1014 (Fla. App. 2000).
45. Brewer v. Robinson, 1999 U.S. Dist. LEXIS 19764 (D. Miss. 1999).
46. Crum v. Circus Circus Enterprises, 231 F. 3d 1129 (9th Cir. 2000).
47. Ho v. Jim's Enterprises, 2001 Utah LEXIS 109 (Utah. Sup. 2001).
48. Spann v. Robinson Property Group, 1997 WL 456564 (N.D. Miss. 1997).
49. Barner v. Missouri Gaming Commission, 48 S.W. 3d 46 (Mo. App. 2001).
50. Catalano v. BRI, Inc., 724 F. Supp. 1580 (E.D. Mich. 1989).
51. Batterman v. Red Lion Hotels, Inc., 21 P. 3d 1174 (Wash. App. 2001).
52. Collazo v. Condado Plaza Hotel, 1996 WL 585579 (D.P.R. 1996).
53. Blansit v. Hyatt Corp., 874 F. 2d 1015 (5th Cir. 1989).
54. Nysted v. Patriot American Hospitality, Inc., 80 F. Supp. 2d 1012 (E.D. Wis. 2000).
55. Gavoni v. Dobbs House, Inc., 1999 WL 13397 (7th Cir. 1999).
56. Guilfore v. D.H. Homes Co., 631 So. 2d 491 (La. App. 1994).
57. Spinozzi v. ITT Sheraton Corp., 1999 WL 177503 (7th Cir. 1999).

58. Buford v. Riverboat Corp., 756 So. 2d 765 (Miss. Sup. 2000).
59. Kusmirek v. MGM Grand Hotel, Inc., 2001 U.S. Dist. LEXIS 7297 (9th Cir. 2001).
60. Smith v. Washington Sheraton Corp., 1998 WL 48853 (D.C. Cir. 1998).
61. Gates v. Royal Palace Hotel, 1998 Conn. Super LEXIS 3740 (1998).
62. Morin v. Traveler's Rest Motel, 704 A. 2d 1085 (Pa. Super. 1997).
63. Anderson v. Turton Development, Inc., 225 Ga. App. 270, 483 S.E. 2d 597 (1997).
64. Williams v. Lakeview Co., 199 Ariz. 1, 13 P. 3d 280 (2000).
65. Petitto v. Sands Hotel & Casino, Inc., 288 N.J. Super. 304, 672 A. 2d 253 (1996).
66. Ruppel v. Hyeon Jin, Inc., 272 Ill. App. 3d 527, 208 Ill. Dec. 951, 650 N.E. 2d 645 (1995).
67. Javits v. RSMO, 738 So. 2d 521 (Fla. App. 1999).
68. Jones v. Peyton Place, Inc., 675 So. 2d 754 (La. App. 1996).
69. Avery v. Cleveland Avenue Motel, Inc., 521 S.E. 2d 668 (Ga. App. 1999).
70. Jones v. Hyatt Corp., 681 So. 2d 381 (La. App. 1996).
71. Richardson v. Sport Shinko, 880 P. 2d 169 (Hawaii Sup. 1994).
72. Green v. Harrah's Casino, 774 So. 2d 1174 (La. App. 2000).
73. Ellsworth v. Hotel Corp., 236 Mich. App. 185, 600 N.W. 2d 129 (1999).
74. Vincelette v. Metropolitan Life Ins. Co., 968 P. 2d 275 (Mont. Sup. 1998).
75. Cooper v. Hilton International Co., 234 A.D. 2d 85, 650 N.Y.S. 2d 221 (1996).

76. Knoell v. Cerkvenik-Anderson Travel, Inc., 181 Ariz. 394, 891 P. 2d 861 (1994).
77. Powell v. Trans Global Tours, Inc., 594 N.W. 2d 252 (Minn. App. 1999).
78. Mount Vernon Fire Insurance Co. v. DLRH Associates, 967 F. Supp. 105 (S.D.N.Y. 1997).
79. Bennett v. Saegar Hotels, Inc., 229 A.D. 2d 909, 645 N.Y.S. 2d 678 (1996).
80. Endres v. Mingles Restaurant, 271 A.D. 2d 207, 706 N.Y.S. 2d 32 (2000).
81. Brown v. Johnson, 241 A.D. 2d 829, 660 N.Y.S. 2d 476 (1997).
82. Spangler v. Kehres, 667 N.E. 2d 991 (Ohio App. 1995).
83. Nelson v. Fairmont Hot Springs Resort, 763 P. 2d 1135 (Mont. Sup. 1988).
84. Jacobson v. Princess Hotels International, Inc., 101 A.D. 2d 757, 475 N.Y.S. 2d 849 (1984).
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336. Wade, Hotels Stricter On Cancellations, Practical Traveler, N.Y. Times Travel Section, Jan. 7, 2001, p. 4.
337. Mallak v. Fairfield FMC Corp., 33 F. Supp. 2d 748 (E.D. Wis. 1999) (The Wisconsin hotelkeeper's liability statute provides that a hotelkeeper ' is not liable to a guest for loss of money, jewelry, precious metals or stones...which are not offered for safekeeping ' of the hotelkeeper: (1) has doors on the rooms equipped with locks or bolts, (2) by notice printed in large plain English type and post conspicuously in each sleeping room, offers to receive valuable articles for safekeeping and warns

that the hotel is not liable for loss unless the articles are tendered for safekeeping and (3) has a safe of vault suitable for keeping the articles and accepts articles for safekeeping when tendered by a guest "), while on vacation since the liability of hotels varies widely and enforcement may be problematical, particularly, in foreign jurisdictions. Domestically, most States have enacted Innkeepers' Statutes which limit the hotel or resort's liability for the loss of the guests baggage and personal property).

338. *Diamond v. Hyatt Corp.*, 121 Ohio App. 3d 297, 699 N.E. 2d 980 (1997)("...we provide a brief background of the history of innkeeper liability. The common law rule was than an innkeeper is practically an insurer of a guest's property. Therefore, the innkeeper was liable for any loss of the guest's property unless it was alleged and proven by the innkeeper that the loss was caused by an act of God, a public enemy, or the guest's negligence, or occurred while the property was in the guest's exclusive custody and control...Such strict responsibility on the part of an innkeeper was the result of the public nature of an inn, the unsettled condition of the country in medieval England, and the meager facilities for travel. ").

339. *Diamond v. Hyatt Corp.*, 121 Ohio App. 3d 297, 699 N.E. 2d 980 (1997).

340. *Mallak v. Fairfield FMC Corp.*, 33 F. Supp. 2d 748 (E.D. Wis. 1999).

341. *Paraskevaides v. Four Seasons*, 2001 U.S. Dist. LEXIS 8876 (D.C.D.C. 2001).

342. *Emmerson v. Super 8 Motel*, 757 A. 2d 651 (Conn. App. 2000).

343. *Chapparone v. First Florence Corp.*, 504 S.E. 2d 761 (Ga. App. 1998).

344. *Searcy v. La Quinta Motor Inns, Inc.*, 676 So. 2d 1137 (La. App. 1996).

345. *Bleam v. Marriott Corp.*, 237 A.D. 2d 396, 655 N.Y.S. 2d 566 (1997).

346. *Duvall v. Ritz Carlton Hotel*, 946 F. 2d 418 (5th Cir. 1991).

347. *Pachinger v. MGM Grand Hotel*, 802 F. 2d 362 (9th Cir. 1986).

348. *Nicholaides v. University Hotel Associates*, 568 A. 2d 219 (Pa. Super. 1990).
349. *Chapparone v. First Florence Corp.*, 504 S.E. 2d 761 (Ga. App. 1998).
350. *Searcy v. La Quinta Motor Inns, Inc.*, 676 So. 2d 1137 (La. App. 1996).
351. *World Diamond, Inc. v. Hyatt Corp.*, 699 N.E. 2d 980 (Ohio App. 1997).
352. *Moog v. Hilton Hotels Corp.*, 1995 WL 232764 (S.D.N.Y.).
353. Wade, A Pet Vacation Without Growls, *Practical Traveler*, N.Y. Times Travel Section, Sept. 24, 2000, p. 4 (" Ask lots of questions. Some hotels limit pets by size, often 25 pounds; many insist that owners take dogs with them when they leave the room, which can put a crimp in a vacation...Is there a fee? Some hotels charge pet owners. It could be a nominal \$10; I've paid as much as \$50 at Residence Inn by Marriott in Richmond, Va (which now charges \$125) ").
354. *Maher v. Best Western Inn*, 717 So. 2d 97(Fla. App. 1998).
355. *Irving Trust Co. v. Nationwide Leisure Corp.*, 575 F. Supp. 261 (S.D.N.Y. 1983).
356. *Vallery v. Bermuda Star Line, Inc.*, 141 Misc. 2d 395, 532 N.Y.S. 2d 965 (1988).
357. *Tarshis v. Lahaina Investment Corp.*, 480 F. 2d 1019 (9th Cir. 1973).
358. *Kessler v. National Enterprises, Inc.*, 238 F. 3d 1006 (8th Cir. 2001).
359. *Sigros v. Walt Disney World Co.*, 2001 WL 28683 (D. Mass. 2001).
360. *Bergonzine v. Maui Classic Charters*, 1995 A.M.C. 2628 (D. Hawaii 1995)(350 lb. handicapped passenger breaks ankle; cruise line promised that cruise would be suitable for the handicapped).
361. *Irish v. Deep Hollow Ltd.*, 251 A.D. 2d 293, 671 N.Y.S. 2d 1024 (1998).

362. Touhey v. Trans National Travel, 47 Pa. D. & C. 3d 250 (Pa. Comm. Pleas 1987).
363. McKee v. Sheraton-Russell, Inc., 268 F. 2d 669 (2d Cir. 1959).
364. DeWolf v. Ford, 193 N.Y. 397, 86 N.E. 2d 527 (1908).
365. Tobin v. Slutsky, 506 F. 2d 1097 (2d Cir. 1974).
366. Dold v. Outrigger Hotel, 501 P. 2d 368 (Hawaii 1972).
367. Berger v. Nationwide Leisure Corp., 95 Misc. 2d 161, 407 N.Y.S. 2d 121 (1978), modified 102 Misc. 2d 340, 426 N.Y.S. 2d 365 (1980).
368. Vallery v. Bermuda Star Line, Inc., 141 Misc. 2d 395, 532 N.Y.S. 2d 965 (1988).
369. Simon v. Cunard Line Ltd., 75 A.D. 2d 283, 428 N.Y.S. 2d 952 (1980).
370. Irving Trust Co. v. Nationwide Leisure Corp., 575 F. Supp. 261 (S.D.N.Y. 1983).
371. Guadagno v. Diamond Tours & Travel, Inc., 89 Misc. 2d 697, 392 N.Y.S. 2d 783 (1976).
372. Thomson Travel Ltd. v. Roberts [1984] 148 JP 666.
373. Berger v. Nationwide Leisure Corp., 95 Misc. 2d 161, 407 N.Y.S. 2d 121 (1978), modified 102 Misc. 2d 340, 426 N.Y.S. 2d 365 (1980).
374. Kessler v. National Enterprises, Inc., 238 F. 3d 1006 (8th Cir. 2001).
375. Gianocostas v. RIU Hotels, 2001 WL 758695 (Mass. Super. 2001).
376. Clarke and Greenwood v. Airtours [1995] 4 CL 32.
377. Stewart v. Trans Air International [1994] CLY 1523.
378. Guadagno v. Diamond Tours & Travel, Inc., 89 Misc. 2d 697, 392 N.Y.S. 2d 783 (1976).

379. *Hayward v. Holiday Inns, Inc.*, 459 F. Supp. 634 (E.D. Va. 1978).
380. *Stevenson v. Four Winds Travel, Inc.*, 462 F. 2d 899 (5th Cir. 1972).
381. *Glenview Park District v. Melhus*, 540 F. 2d 1321 (7th Cir. 1976).
382. *Pau v. Yosemite Park*, 928 F. 2d 880 (9th Cir. 1991).
383. *In re Hawaiian Hotel Room Rate Antitrust Litigation*, 438 F. Supp. 935 (D. Hawaii 1977).
384. *Archibald v. Cinerama Hotels*, 73 Cal. App. 3d 152, 140 Cal. Rptr. 599 (1977).
385. *Key Club Associates v. Mayer*, 718 So. 2d 346 (Fla. App. 1998).
386. *Kiamesha Concord, Inc. v. Kahn*, 78 A.D. 2d 737, 432 N.Y.S. 2d 647 (1980).
387. See Shabby Travel Tactics, Consumer Reports Travel Letter, January 1997, p. 9.
 " Half-price hotel advertising. ' Per person, double occupancy ' is the hotel industry's answer to the airlines' ' each way ' ploy. The rate you actually pay for a room is twice the featured price; a traveler who occupies a room alone would have to pay much more. ' Per-person ' advertising has a long history in the tour and cruise market. Since transportation is a key component of a tour or cruise, the argument does , per-person pricing makes it easier to compare a tour price with the price of transportation and lodgings brought separately. We don't buy that, even for cruises and tours and certainly not for anything else: We see absolutely no excuse for per-person price advertising of hotel rooms or hotel-based packages. "
Pretax hotel-rate listing in Europe. In most of Europe (including the UK) hotels routinely include a value-added tax in the posted rate. That's generally a matter of law as well as of custom. Unfortunately, in their US reservation offices and industry directories, all to many hotels fail to include the tax in their quoted rates. Since VAT can be as high as 25%, travelers can be seriously misled when they compare rates-especially since only certain hotels include it. If the hotels don't submit honest prices, US directories and date utilities should insist on correcting the entries before they list them. "

388. See Suite Dreams, Consumer Reports Travel Letter, July 2001, pp. 12, 16-17.

389. Id. " Some travelers discover that taxes add as much as 14.9 percent to the final tab... Taxes are highest in major cities. Chicago leads with 14.9 percent... Some hotels, particularly in the West, have begun imposing an energy surcharge of about \$1.50 to \$3.50 per night because of the power crisis and rising utility rates ".

390. Id. " You expect free parking (and get it) at most motels, but in cities, all bets are off. When we asked big-city luxury and upscale hoteliers about parking fees, quotes ranged from \$12 to \$47 a day. If you park the car yourself rather than us a valet, you'll save money. "

391. Id. " We've seen surcharges of 50 percent on long-distance calls. Bring a phone card with you, and ask whether the surcharge applies when you use it. You may also save if you use the phone in the lobby for long-distance calls. Many chains charge nothing for local calls made from the room ".

See also: Wade, Hotel Phone Bill Can Be A Shock, Practical Traveler, N.Y. Times Travel Section, June 20, 1999, p. 4.

" Hotel telephone fees are starting to claim again. Although phone fees vary widely from hotel to hotel, they have become one of the three areas where hotels are seeking bigger profits, along with in-room safe and valet parking.

...It is not unusual for a hotel or resort to put a surcharge of 50 cents or \$1 on an 800-number call, which is the way many guests reach their own long-distance carriers.

Fees for using hotel-room phones have traced peaks and valleys in the last 10 years. A peak came in the 80's when hotels sold their phone services to the highest bidders among " alternate operator services " and guests were surprised by outlandish bills, as much as twice the actual cost. A valley came with regulations that guests be warned of such surcharges. People began using phone credit cards, circumventing the hotel's supplier. Many hotels and phone companies, especially those that put pay phones in remote areas, countered by blocking calls to the access codes of rival carriers. A drop in hotel phone surcharges followed federal ruling forbidding blocked access... As a result of the anti-blocking rules and the new access routes, the

(FCC) says that complaints about blocked access have all but disappeared. But hotel companies are permitted to put surcharges on calls to 800 numbers, providing they are applied equally to all 800 numbers... No one is likely to select a hotel on the basis of its phone fees... In July 1998, the (FCC) required that phone customers be able to learn in advance what a call is likely to cost, either through a sign on the phone or by dialing a code.

The smartest approach is to ask the hotel, or the hotel operator, what its charges are before making a potentially expensive call ".

See also: Which Calling Card, Consumer Reports Travel Letter, Feb. 98; Calling Cards Add Charges From Pay Phones, Consumer Reports Travel Letter, April 1998; Johnston, Cost of Staying In Touch Abroad, Practical Traveler, N.Y. Times Travel Section, March 15, 1998, p. 4.

392. Id. " Some hotels make you pay to sweat. At the Chicago Hilton...guests pay \$11 to use exercise equipment. "

393. Id. " You'll pay a princely sum to dine in your robe and slippers. At the Four Seasons in Manhattan, we ordered two scrambled eggs with bacon, fried potatoes and toast; and oatmeal with raisins and brown sugar. The food, along with a fresh flower, rolled in on a linen-covered cart with a warming tray. The dishes were Limoges; the tableware, silver. The menu listed the egg entree as \$18; the oatmeal, \$9.50. But wait. Tack on a \$6 delivery charge, 17 percent fee and tax. The total; \$40.94. And we didn't order coffee, \$6.50..."

394. Ferrucci v. Atlantic City Showboat, Inc., 51 F. Supp. 2d 129 (D. Conn. 1999).

395. Morogiannis v. Caesars World, Inc., 1995 U.S. Dist. LEXIS 4660 (S.D.N.Y. 1995).

396. Davis v. Players Lake Charles, Riverboat, Inc., 74 F. Supp. 2d 675 (W.D. La. 1999).

397. Brewer v. Robinson Property Group, L.P., 1999 U.S. Dist. LEXIS 19764 (N.D. Miss. 1999).

398. Spann v. Robinson Property Group, L.P., 1997 WL 456564 (N.D. Miss. 1997).

399. Crum v. Circus Circus Enterprises, 231 F. 3d 1129 (9th Cir. 2000).

400. Neal v. Players Lake Charles, LLC, 787 So. 2d 1213 (La. App. 2001).

401. Thielmier v. Louisiana Riverboat Gaming, 732 So. 2d 620 (La. App. 1999).

402. Buford v. Riverboat Corp. of Mississippi, 756 So. 2d 765 (Miss. Sup. 2000).
403. Deerinwater v. Circus Circus Enterprises, 21 P. 3d 646 (Okla. App. 2001).
404. Riviera Operating Corp. v. Dawson, 29 S.W. 3d 905 (Tex. App. 2000).
405. Marmer v. Queen of New Orleans, 787 So. 2d 1115 (La. App. 2001).
406. Canterino v. The Mirage Casino-Hotel, 16 P. 3d 415 (Nev. Sup. 2001).
407. Atkinson v. Stateline Hotel & Casino & Resort, 2001 WL 224079 (Utah App. 2001).
408. Saucier v. Players Lake Charles, LLC, 751 So. 2d 312 (La. App. 1999).
409. Davis v. Smith, 749 So. 2d 1186 (Miss. App. 1999).
410. Mauro v. GNLV Corp., 982 S.W. 2d 530 (Tex. App. 1998).
411. Gottlieb v. Tropicana Hotel And Casino, 109 F. Supp. 2d 324 (E.D. Pa. 2000).
412. Berman v. Riverside Casino Corp., 323 F. 2d 977 (9th Cir. 1963).
413. Zaika v. Del E. Webb Corp., 508 F. Supp. 1005 (D. Nev. 1981).
414. U.S.A. v. Hung Quoc Ly, 1998 U.S. App. LEXIS 6060 (9th Cir. 1998).
415. Kelly v. First Astri Corp., 72 Cal. App. 4th 462, 84 Cal. Rptr. 2d 810 (1999).
416. Chen v. Nevada State Gaming Control Board, 994 P. 2d 1151 (Nev. Sup. 2000).
417. Erickson v. Desert Palace, Inc., 942 F. 2d 694 (9th Cir. 1991).

418. *Devon v. Unbelievable, Inc.*, 820 F. Supp. 528 (D. Nev. 1993).
419. *Grand Casino Tunica v. Shindler*, 772 So. 2d 1036 (Miss. Sup. 2000).
420. *Carnival Leisure Industries, Ltd. v. Aubin*, 53 F. 3d 716 (5th Cir. 1995)(" A marker is a preprinted form, resembling a bank check or draft, that a gambler with preapproved credit signs while on the casino floor in order to obtain tokens or chips to play a casino game. If the player wins, he can redeem the marker with an equivalent amount of chips and he can then exchange the remainder of the chips for cash. A losing player can redeem the marker with any remaining casino chips he may have, and pay the balance with cash or by giving a personal check. If the marker is not paid within 30 days by cash, check or casino chips, the casino presents the marker for payment, as a check or draft, to the bank designated by the player on the initial appearance for casino credit ").
421. *GNOC Corp. v. Aboud*, 715 F. Supp. 644 (D.N.J. 1989).
422. *Carnival Leisure Industries, Ltd. v. Aubin*, 53 F. 3d 716 (5th Cir. 1995).
423. *Mashantucket Pequot Gaming Enterprise v. Kennedy*, 2000 Conn. Super. LEXIS 679 (Conn. Super. 2000).
424. *National Recovery Systems v. Nemchick*, 1982 P. D. & C. LEXIS 286 (Pa. Com. Pls. 1982).
425. *Players Lake Charles, LLC v. Tribble*, 779 So. 2d 1058 (La. App. 2001).
426. *Tuan Ngoc Nguyen v. State of Nevada*, 14 P. 3d 515 (Nev. Sup. 2000).
427. *Mashantucket Pequot Gaming Enterprise v. Renzulli*, 728 N.Y.S. 2d 901 (N.Y. Sup. 2001).
428. *GNOC Corp. v. Aboud*, 715 F. Supp. 644 (D.N.J. 1989).
429. *Doug Grant, Inc. v. Greate Bay Casino Corp.*, 232 F. 3d 173 (3d Cir. 2000).

430. Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F. 3d 173 (3d Cir. 2000) ("...it is in (the casino's) interest to decrease the card-counters' chances of determining whether a shoe is player-friendly by playing with fewer cards in the shoe, i.e., placing the cutting card as far from the back of the stack as permitted...It is also in the casino's interest to reshuffle prior to reaching the cutting card...These practices, however, come at a cost to the casino as the more often the dealer goes through the meticulous shuffling process, the shorter the actual time of play and thus the smaller the casino's profits. Appellants allege that the casinos maintain card-counting teams and/or video and computer surveillance equipment to identify card-counters and inform the dealers of their participation in a blackjack game so that the dealers can take countermeasures against them. Appellants challenge these practices, claiming they violate the New Jersey ' cheating games ' section of the Casino Control Act ").

431. Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F. 3d 173 (3d Cir. 2000).

" Unlike an ordinary RICO victim, in this case the allegedly injured plaintiffs, i.e., the players can avoid any injury simply by walking away from the alleged wrongdoers, the casinos, by not playing blackjack in casinos. In fact, that is what the casinos apparently want them to do, at least as long as they count cards. While this abstention would deprive them of the opportunity to enrich themselves at the casino's expense, surely it would be difficult to characterize that lost speculative opportunity as an injury to ' business or property '. If the appellants have played blackjack in the past, aware of the casino's countermeasures, and if they continue to play blackjack in the future in the hope of profiting by counting cards, they have suffered and will suffer self-inflicted wounds " .