Resort Fee Litigation Advisory Group: Impending eruption of litigation over Resort Fees? What’s the fuss?

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Click here for the latest articles on Resort Fee Litigation.

Note: If you are a consumer with a Resort Fee issue, please do NOT contact us! We do not represent consumers with complaints against hotels. We are part of the fabric of the hotel industry and are committed to informing, educating and assisting players in the hotel industry.

Impending eruption of government and private litigation over Resort Fees (mandatory service fees)

There were earthquakes and tremors for at least 17 years before Pompeii was destroyed in the catastrophic eruption of Mount Vesuvius in 79 AD. The past is prelude.

What are Resort Fees?

We define “Resort Fees” as any mandatory fees or surcharges to hotel guests that are not included in the stated price of the room. These Resort Fees are usually described as covering a bundle of services, facilities or amenities, but the key element is that these charges are not optional and do not depend upon whether a guest actually uses any of bundle’s benefits.

The FTC has described Resort Fees as part of one subset of a bigger problem involving two pricing practices: partitioned pricing and drip pricing. According to the FTC’s January 2017 Economic Analysis of Hotel Resort Fees, “Partitioned pricing involves dividing the price into multiple components without disclosing the total. Drip pricing is the practice of advertising only part of the product’s price upfront and revealing additional charges later as consumers go through the buying process.”

What is the Resort Fee issue?

The government is on a mission to eliminate the practice of hotels charging their guests undisclosed Resort Fees, and is going after hotels for massive fines and penalties.

The first warning signs of an explosion of litigation over Resort Fees go back some 17 years to about the year 2000, when Resort Fees began to gain popularity with hotels and started a wave of consumer complaints about mandatory surcharges or other fees automatically added to a guest’s hotel bill. Although mandatory service fees may have different names, the most popular name for them is Resort Fees.

We are accustomed to seeing litigation trends take form quickly, and there is reason to believe that a new pressure is gathering critical force on the Resort Fees issue. We will discuss this serious threat of litigation in detail later.
This is the first in a series of blogs that will explore some important aspects of Resort Fees, exploring the following topics:

- Why the eruption over Resort Fees?
- What are the recent developments that may signal a wave of government and private claims over Resort Fees?
- What are the guiding principles in evaluating the hazards of Resort Fees?
- Who are the players in the Hotel Industry and what are the complexities for them relating to Resort Fees?
- What action can you take to avoid or minimize adverse effects between and among the players?

**Why the eruption over Resort Fees?**

The basic argument about Resort Fees is whether they are a misleading practice that harms consumers and violates various consumer protection laws such as section 5 of the FTC Act, which declares unlawful any “unfair or deceptive acts or practices in or affecting commerce . . .” Many states have similar laws. The issue surrounds whether the hotel’s advance disclosures about its Resort Fees, if any, are adequate to avoid violations: Exactly what must be disclosed? How should it be disclosed? When should it be disclosed?

It doesn’t seem to be the Resort Fees, themselves, that are causing the problem. For example, a study by the American Hotel & Lodging Association (discussed below) found that 80% of consumers are actually willing to pay Resort Fees if the amenities are worth it. Moreover, guest satisfaction scores are approximately 90% for resorts that charge Resort Fees. And a majority (55%) of consumers who have stayed at hotels with Resort Fees in fact prefer the current method of breaking out the Resort Fee separately from the room price.

It’s the disclosure…arguably. Clearly, consumers should not be defrauded. But there are genuine issues about whether a particular hotel’s disclosure practice about Resort Fees would or could misled consumers, or cause them to suffer any harm. With the level of information generally provided today prior to the consumer booking a hotel reservation, there is a serious question as to whether anyone is being misled. And given prior indications from the FTC and general legal principles, there can be real, honest debate about the nature, timing and format of disclosures.

Nonetheless, recent government actions throw serious doubt over issues that many thought had been adequately resolved.

We will discuss the recent developments that may signal a wave of government and private claims over Resort Fees in the next article of this series.

**How to get help with Resort Fee litigation issues**

We understand the history and complexities of the Resort Fee litigation and we are advising industry stakeholders on these matters currently. If you would like some help to evaluate your situation and options, then call one of the members of our Resort Fee Litigation Advisory Group. There is no cost for an initial discussion.

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For more information about Resort Fee issues, including the latest updates, go to www.HotelLawBlog.com, scroll down the right-hand side under LEARN MORE ABOUT and click on “Resort Fee Litigation” where you will find all the articles on the subject.

For your convenience, here are links to Resort Fee articles that will provide a fairly comprehensive understanding of the history and evolution to the current situation:

- Nebraska sues Hilton over hotel “Resort Fees”
- Attorney General for DC sues Marriott International over hotel “Resort Fees”
- Impending eruption of litigation over Resort Fees? What’s the fuss?
- The FTC takes aim at hotel Resort Fees — The FTC 2017 Report
- National task force of 47 Attorneys General goes after hotel Resort Fees
- How Resort Fees became an explosive $2.7 billion issue
- How to avoid litigation on Resort Fees and other mandatory hotel charges

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. Please contact us if you would like to discuss any issues that affect your hotel interests or see how our experience might help you create value and avoid unnecessary pitfalls. Who’s your hotel lawyer?

Jim Butler is a founder of the JMBM law firm and chairman of its Real Estate Department. He founded and chairs the Firm’s Global Hospitality Group® and its EB-5 Finance Group which provide business and legal advice to owners, developers and investors of commercial real estate, particularly hotels, resorts, restaurants, spas and senior living. This
advice covers purchase, sale, development, financing, franchise, management, labor & employment, ADA, IP, and litigation.

Jim is recognized as one of the top hotel lawyers in the world and has led the Global Hospitality Group® in more than $87 billion of hotel transactions and more than 3,900 hotel properties located around the globe.

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