Resort Fee Litigation Advisory Group: The FTC takes aim at hotel Resort Fees (again) — The FTC 2017 Report

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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). Big shaking again. Is this the big one?

Two significant developments may signal an eruption of government and private claims over Resort Fees — (1) publication of the FTC 2017 Report and (2) commencement of proceedings regarding Resort Fees by a national task force of Attorneys General for 46 states plus the District of Columbia. This article focuses on the FTC Report. The next article will discuss the national task force.

The FTC issues its 2017 Report on Resort Fees

In January 2017, the FTC's Bureau of Economics published a 44-page report entitled “Economic Analysis of Hotel Resort Fees” (the "FTC 2017 Report" or the "Report").

The Report sets forth an aggressive regulatory position suggesting that it is a deceptive and misleading practice to advertise hotel rates without including Resort Fees, unless the total price (with Resort Fees) is the first and most prominently displayed price (in position and font characteristics) so consumers can easily comparison shop. It is not enough to disclose Resort Fees after the “room only” price even if this disclosure is made prior to booking a room. However, once the all-inclusive price has been disclosed, it is permissible to give a breakout of the total price into Resort Fee and other components.

The Report finds that “separating mandatory resort fees from posted room rates without first disclosing the total price is likely to harm consumers by increasing the search costs and cognitive costs of finding and choosing hotel accommodations.” The Report also finds that this drip pricing approach is unlikely to result in any benefits to offset the harm to consumers. Apparently, the Report's authors find that the harm to consumers who may incur greater search costs and/or make incompletely informed decisions (and pay more for a room) justifies damages or enforcement actions under section 5 of the FTC Act.

Some highlights from the FTC 2017 Report

Here are some bullet point highlights extracted from the Report.
Resort fees are per-room, per-night, mandatory fees charged by some hotels. According to the hotel industry, the purpose of the fees is to provide hotel customers with certain hotel services, such as Internet access, parking, and use of the hotel's health club.

However, these services could be provided without charging separately-disclosed resort fees by making them optional to customers for additional fees or, alternatively, bundling them with the room and including the cost of the services in the room rate.

By charging a mandatory resort fee, a hotel is bundling the services with the rooms, but is disclosing the fee for the services separately from the room rate.

Consumers and advocacy groups argue the fees are misleading because they are not included in the room rate. Hotels defend the fees by claiming that they provide resort services to guests at a discount relative to the cost of purchasing the services individually.

This Report examines the likely costs and benefits of disclosing Resort Fees separately from the room rate by reviewing economics and consumer behavior information on drip pricing and partitioned pricing.

The FTC refers to separate disclosure of room rate and Resort Fees as “drip pricing.” Drip pricing is the practice of advertising only part of a product's price upfront and revealing additional charges later as consumers go through the buying process.

“This analysis finds that separating mandatory resort fees from posted room rates without first disclosing the total price is likely to harm consumers by increasing the search costs and cognitive costs of finding and choosing hotel accommodations.”

“This analysis finds that separating resort fees from the room rate without first disclosing the total price is unlikely to result in benefits that offset the likely harm to consumers.”

Hotels could eliminate these costs to consumers by including the resort fee in the advertised price. They could still bundle the same resort services with the room and charge the same total price. They could also list the components of the total price separately, as long as the total price is the most prominently disclosed price. Hotels would also have the option, as they do now, of changing to unbundled, optional resort services, which would not be included in the advertised price.”

Click here for the FTC 2017 Report.

What is the legal impact of the FTC 2017 Report?

The legal effect of the Report is somewhat unclear. It is not a law or even a formal regulation or pronouncement of the FTC. The authorship of the Report is expressly attributed to Mary W. Sullivan, an economist with the Consumer Protection division of the Bureau of Economics of the FTC. The Report contains this disclaimer: “The views expressed in this paper are mine and do not necessarily reflect the views of the Commission or any individual Commissioner.”

Despite the disclaimer, it is difficult to believe that such a major effort would have been undertaken for the Report or that the Report would have been published without some kind of approval from the Commission. What support does the Report have from the FTC? Does the Trump administration’s more favorable business approach change any of this? By the merits of its own analysis and findings, does the Report carry any authority or probative weight for state or local government actions or private claims under the panoply of consumer protection laws available?

We do not know the answers to these questions, but the Report seems likely to encourage and support a wave of claims
over Resort Fees.

**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](http://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](http://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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