Resort Fee Litigation Advisory Group: Nebraska sues Hilton over hotel “Resort Fees”

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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 advise hotel industry clients on litigation, compliance and risk mitigation strategies. We have provided counsel on Attorney General investigations. We understand the best defenses to consumer and government agency claims that Resort Fee practices constitute violations of state consumer protection actions, the Federal Trade Commission Act and other causes of action based on misrepresentation, consumer fraud, and unfair business practices.

Another state Attorney General joins in the Resort Fee litigation – this time suing Hilton

On July 23, 2019, Attorney General Doug Patterson filed a lawsuit against Hilton, alleging that it has engaged in deceptive and misleading pricing practices and failure to disclose fees in violation of Nebraska’s consumer protection laws. The complaint seeks injunctive relief to force Hilton to advertise the true prices of its hotel rooms, provide damages for Nebraska consumers, statutory civil penalties of $2,000 for each violation, and costs for investigation and legal action. Click here to see the Nebraska complaint against Hilton.

This new lawsuit is particularly significant because it was filed just two weeks after the District of Columbia filed a similar suit against Marriott.

A new template for other Attorneys General and plaintiff’s class action lawyers?

Many industry observers believe that the two recent lawsuits against Marriott and Hilton provide a virtual “template” for other AGs and class action lawyers to mark up and file – potentially against all hotel franchise companies, hotel operators, and hotel owners involved with any hotel that has used Resort Fees or other mandatory fees or charges imposed on all hotel guests which are not included in the initially quoted room rate.

The conduct complained of in the DC and Nebraska lawsuits traces the pattern outlined by the January 2017 FTC Report as deceptive and misleading under the FTC Act and most state consumer protection laws (that are based on the FTC Act). Although these first two suits are against big hotel companies, they are just at the top of the pyramid and provide high-profile examples of targets for plaintiffs. Similar actions would likely exist against every other brand, operator or owner of a hotel using undisclosed Resort Fees in their advertised room rates.

In both of the recent AG actions, the complaints had similar allegations as to why the hotel company was liable. In the Nebraska complaint, the AG said:
Defendant is liable for this practice, regardless of whether the property charging the resort fee was owned, managed, or franchised by Defendant, as Defendant’s own policies strictly control which properties may charge resort fees, under what circumstances, and in what amounts.

Where does Resort Fee litigation go from here?

It is hard to divine where the Resort Fee litigation developments will lead, because it seemed almost certain that earlier events would have led to a resolution of the issues by now. But these harbingers failed to become turning points and that makes future predictions difficult.

It is mystifying to see how the Resort Fee issue continued to drift when there were events that most expected to trigger a blizzard of lawsuits and a resolution of the issues one way or the other. For example, consider the following:

- FTC Press Release of 11-28-12 and accompanying warning letter to 22 hotel companies (See "How Resort Fees became an explosive $2.7 billion issue"). Click here to see the FTC Press Release 11-28-12 and the FTC warning letter sent to 22 hotel companies 11-28-12
- Formation of Resort Fees Task Force by 47 Attorneys General and filing of an action to enforce a subpoena against Marriott (See "National task force of 47 Attorneys General goes after Resort Fees")
- FTC Report of January 2017 (See "The FTC takes aim at hotel Resort Fees (again) — The FTC 2017 Report")

And of course the AG litigation against Marriott and Hilton are just the latest developments.

Some possibilities

Perhaps one or all of the remaining 47 AGs in the National Resort Fees Task Force file suit. Do they sue every hotel company? Do they use one lawsuit to make an example for all other hotel companies to settle? Some have commented that state AGs have great motivation to pursue these lawsuits for two reasons – Resort Fees are extremely unpopular with consumers (and therefore government action to eliminate them will be well received), and most state laws provide for statutory penalties, which in many cases go to the state agency recovering the penalty and provide additional agency funding and job security in an era of perpetual budget crises.

Does the FTC step in? It has seemed that the FTC might take a lead role in Resort Fee litigation – both in 2012 and again in 2017. The FTC Report in 2017 laid out the blueprint used by the two AG actions filed so far. The FTC Act provides the model for most state consumer protection laws. Did the Trump administration quash FTC action? Will the FTC pick up the torch again?

Private party class actions. There is a very active plaintiff’s bar that thrives on contingent fee lawsuits and class actions. If you remember the energy surcharge cases or look at the lawsuits for breach of data privacy, you recognize the prospect.

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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Hotels we have worked on over the years. Visit our hotel photo gallery to see some of the more than 3,900 properties around the globe that the hotel lawyers of the Global Hospitality Group® have been involved with, on behalf of our clients. For a more comprehensive list of hotels properties and projects we have worked on, see our Credentials.