

# THARPE & HOWELL

## HOSPITALITY LAW NEWSLETTER

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### \$3.76 MILLION AWARDED AGAINST HOTEL FOR POOL RELATED NEGLIGENCE

In *The Estate of Derrick Marshall v. Rodeway Inn*, a jury recently awarded \$3.76 Million to the family of a 19 year old football player who died two years after suffering severe injuries from a near-drowning in a hotel swimming pool. In this case, the family of Derrick Marshall, who had been signed to play football for Alabama State University, alleges that employees of the hotel advised Derrick he could use the pool (although it had been ordered shut down by the Health Department.) Witnesses reported the pool was searched for 10 to 15 minutes in an effort to locate Mr. Marshall when he became missing, but the water was too cloudy for them to clearly see.

### JURY AWARDS \$10 MILLION FOR SERVING TOO MUCH ALCOHOL

In *Dan Maddy v. Ruby Tuesday, Inc.*, a jury awarded more than \$10 million dollars to a patron who was attacked by another patron who had become too drunk. In this case, plaintiff Maddy alleged (and surveillance footage confirmed) defendant Ruby Tuesday had served the customer an equivalent of 19 beers within a few hours of time - without the service of food. The extremely intoxicated patron attacked plaintiff Maddy with a glass, causing severe lacerations to his face and chest.

### RACE DISCRIMINATION CLAIM PROCEEDS AGAINST HOTEL

In *Alfreda Keck, et al. v. Graham Hotel Systems*, plaintiffs, who are African American, decided to marry and tentatively settled on a wedding date. The couple looked at various potential reception venues and decided to book their reception at the defendant hotel (which was then operating as the Crowne Plaza).

Plaintiffs allege they made numerous attempts to book their reception at the subject hotel, including several walk-in visits, the completion of inquiry forms, and numerous unreturned telephone calls, etc. However, the couple were constantly given the run-around and were never able to ever even speak with the Wedding Specialist or permitted to pay the required \$1,200 deposit and sign a contract.

As a result of this treatment, Mrs. Keck filed a complaint about the hotel with the Fair Housing Center. As an investigatory tool, the Housing Center sent four pairs of “testers” to the facility. Records indicate each pair was alike, except for race, with one tester couple being Caucasian and the other being African-American. Upon arrival, each tester inquired about having a wedding reception. During the first test, the African-American tester was unable to meet with the Wedding Specialist, but was encouraged to fill out an inquiry form. However, the Caucasian tester was able to meet with the Wedding Specialist, offered a ten-day hold on her desired reception date, *and* was invited to visit a wedding reception scheduled for the coming weekend.

During a second test approximately 8 months later, the African-American tester had to wait fifteen minutes to see the Wedding Specialist and was eventually told to return with her finance, while the Caucasian tester only waited two minutes and, as before, was invited to return to see a wedding that weekend. A third test a little over a month later resulted in the African American again being unable to meet with the Wedding Specialist and being told there was a \$12,000 food and beverage minimum for wedding receptions, while the Caucasian tester was able to meet with the Wedding Specialist and was offered a ten-day hold on her desired reception date. During the fourth test visit approximately one month later, both testers met with the Wedding Specialist, were told of the deposit required, and given a list of available reception dates. Following these tests, Mr. and Mrs. Keck filed a Complaint against the hotel for alleged discrimination based on race.

The defendant hotel filed a Motion for Summary Judgment, arguing its lack of service was merely due to business issues including a name change, and had nothing to do with plaintiffs’ particular race. The District Court accepted the hotel’s justifications, and granted the Motion for Summary Judgment. Plaintiffs appealed.

The Court of Appeal reversed the District Court’s findings and remanded the case for trial. It found a genuine issue of material fact *did* exist as to whether plaintiffs were merely victims of bad timing and had just slipped through the proverbial crack (resulting in bad service), or whether the hotel had in fact denied them the right to enter into a contract because of their race.

**EMPLOYER CAN BE HELD LIABLE FOR DAMAGES  
CAUSED BY BAD FAITH HANDLING OF WORKERS’  
COMPENSATION CLAIM**

In *Maria Mendoza v. McDonald’s Corporation*, employee Mendoza was injured while working at a McDonald’s Restaurant. Eventually, Ms. Mendoza was referred to an orthopedic surgeon who placed her on a non-work status. McDonald’s accepted the workers’ compensation claim and, as a self-insured employer, began paying her temporary total disability benefits.

In addition to other injuries suffered by Ms. Mendoza as a result of the incident, her orthopedic surgeon opined plaintiff also had carpal tunnel syndrome. The surgeon scheduled Ms. Mendoza for carpal tunnel surgery and sought McDonald's approval for that procedure. McDonald's however refused to approve the surgery, stating the carpal tunnel syndrome was not related to the incident. The orthopedic surgeon advised McDonald's that the condition *was* related to the incident, and warned that without the surgery, Ms. Mendoza could experience permanent dysfunction. Despite this clarification, McDonald's continued to deny the surgery and sent Mendoza a notice of claim status denying the carpal tunnel surgery as "not work related."

Despite its denial, McDonald's had an Independent Medical Examination conducted on Ms. Mendoza by another orthopedic surgeon. This surgeon recommended conservative, non-surgical treatment and opined Ms. Mendoza could return to (unspecified) light-duty work. If the conservative treatment proved unsuccessful, then he recommended endoscopic surgery.

Based on the results of the IME, McDonald's terminated Ms. Mendoza's temporary, total disability benefits and required her to return to work under unspecified light-duty restrictions. Ms. Mendoza however did not return to work, and instead relied on the continued recommendation of her original orthopedic surgeon who advised her not to go back to work. At some point, Ms. Mendoza requested a hearing before the Industrial Commission of Arizona for McDonald's failure to authorize the surgery and for its termination of her temporary, total disability claim.

Eventually, the Industrial Commission found in favor of Ms. Mendoza. Thereafter, she filed a Complaint against McDonald's alleging it had acted in bad faith in handling her workers' compensation claim. After a three week trial, the Jury found McDonald's had acted in bad faith and awarded Mendoza \$250,000 in compensatory damages. However, the Jury did not render an award for punitive damages - and Ms. Mendoza timely appealed.

In the Appeal McDonald's did not contest liability, and the Appellate Court ordered a new trial on the issue of compensatory and punitive damages only. In reaching its decision, the Appellate Court indicated the Trial Court should have instructed the Jury that Ms. Mendoza was entitled to damages for pain and suffering, past and future medical expenses, and lost earnings proximately caused by McDonald's bad faith actions (as opposed to having been caused by the injury itself). The Appellate Court also noted that the Trial Court should not have allowed McDonald's to withhold portions of its claims adjuster's files, and should have instructed the Jury that punitive damages may be assessed under certain circumstances evidencing bad faith.

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