

IFTTA NORTH AMERICA CONFERENCE

MARCH 7 – 8, 2019

Technology issues occupied the morning of the Eighth Annual Meeting of the North American section of the International Forum of Travel & Tourism Advocates (<http://iftta.org/>). Consistent with past practice, the March 7 and 8 event was held in Fort Lauderdale, Florida, with local lawyer Laurence Gore as host.

Excerpting from a longer presentation he will be making next month in Las Vegas, Gore dealt broadly with “**Technology Considerations in Travel Law**”, touching on “pineapples”, cruise medallions, and a California statute that will deal with privacy issues when it takes effect in 2020. He advised the group that, according to the Americans With Disabilities Act, if a brick-and-mortar outlet complies with the ADA, so too must its website.

The websites of large travel suppliers were the focus of this year’s presentation by lawyer and legal columnist Mark Pestronk. Looking at “**Online Contract Formation**”, he examined how so many online suppliers seem to subvert the basic premise of contract law the need for offer, followed by acceptance by unilaterally imposing terms and conditions AFTER consumer acceptance has been communicated. He looked at the law concerning shrink-wrap, clickwrap, and browse-wrap decisions, and applied the relevant principles to selected Travel websites.

Washington lawyer Chun Wright took the attendees into the future with “**The Next Frontier: An Overview of VR/AR in Travel, and Top Legal Issues**”. Her presentation on Virtual Reality and Augmented Reality was both legal and practical in its orientation, touching on issues of intellectual property, and also offering those in attendance an opportunity actually to experience VR in both Travel and non-Travel contexts.

Jon Ewing introduced the audience to Decision Science (“DS”) methodology, and explained its utility in many legal contexts. DS is designed to purge the emotion and self-delusion from the client’s decision-making process in a variety of

contexts, allowing the client then to make decisions on the basis of the facts that are distilled from the process. With his company, Next Level Mediation, he has applied DS in particular to the mediation process, which he explained in **“The Power of Remote Mediation and Decision Science”**.

Returning to her third IFTTA NA Conference, Mary Fran Love found that the title of her presentation (**“What’s Onside and What’s Offside, When Using Another’s Trade Mark”**) triggered a number of questions from those in attendance. In a fast-paced dialogue with the audience, she provided answers that were based on her Travel and non-Travel experience in her Intellectual Property practice.

Prof. John Thomas of F.I.U. chose **“The Law of Piracy”** for his topic this year. After explaining the difference between a pirate and a privateer and the way each operated, he touched on some of the more well-known historical examples of both. This chronological tracking allowed him to note the various treaties and laws that defined the legality and illegality of the practice, historically. Now fully illegal, piracy is a very real problem, involving some \$15 - \$18b. annually. Although rarely impacting cruise ships, there were 201 reported attacks in 2018.

Timothy Law then spoke of **“Duty of Care --- Canada”**, in the context of civil (not criminal) liability. As most of those in attendance were American, this generated a conversation regarding the similarities and differences in the Duty of Care concept in the two countries. He noted that a multi-jurisdictional understanding of the concept is necessary for a Travel Lawyer since both business and leisure travel often involve a number of different jurisdictions and, thus, the need to identify the applicable law with which to define the Duty of Care.

Moving from Tort Law to Contract Law, IFTTA NA Chapter President Daniel Zim spoke to **“Waiver Agreements: the Fine Points”**. He noted the constant friction between two strong public policy principles freedom of contract vs. consumer protection. He made the general observation that Courts tend not to favour waivers and that, in fact, legislation in Louisiana and Virginia make waivers void. He then examined closely some specific examples of relevant legislation in Texas, Hawaii, New York, and Alaska.

Returning to a high-profile Court case in which he has been involved for some time, Norm Bluth updated the group on “**Visa/MC Class Action Settlement Round No. 2**”. The case against the credit card companies, on behalf of merchants affected by those companies’ policies, had started in 2004. A preliminarily-approved settlement of \$7.25b. in 2012 was later overturned on appeal, and a new preliminary settlement of \$6.24b. was reached in January of this year. It may (or may not) be formalized next November 7.

Doug Crozier also provided an update of an earlier presentation. His topic was “**Canada’s Evolving Air Passenger Protection Rules**”. Since the IFTTA Conference in Cancun in November of 2018, more specifics have been released by the Canadian Transportation Agency. Crozier summarized where things stood last Autumn, then addressed the proposed rules, released in December, for both large (defined as those with lift of 1 million passengers for the two most recent years) and small carriers, in regard to issues of overbooking, delays and cancellations, tarmac delays, policies re minors who fly, etc.

As part of the day’s business meeting, Mark Pestronk led the American attendees through a Tourism-oriented questionnaire that has been circulated by John Downes, a Past President of IFTTA globally. Other IFTTA members have already responded with respect to the laws of their jurisdictions. There will now be a US response, reflecting the assembled wisdom of those in attendance.

The Ninth IFTTA NA Conference has tentatively been scheduled for March 5 and 6, 2020, in Fort Lauderdale.

For more information, please contact:

Laurence Gore (goreinternationallaw@gmail.com) or Doug Crozier (dcrozier@hclaw.com).