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**2013** THE **HOSPITALITY LAW**  
**CONFERENCE**  
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

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# MANAGING THE RISK: NEW BRAND ROLLOUT

# BIOGRAPHIES OF THE PRESENTERS



## **Todd E. Soloway, Esq.**

- Partner, Pryor Cashman LLP
- Chairman, Real Estate Litigation Group  
Chairman, Hospitality Litigation Group



## **Joshua D. Bernstein, Esq.**

- Partner, Pryor Cashman LLP
- Member of Real Estate Litigation Group  
and Hospitality Litigation Group

## **Notable Representations:**

Owner of Former St. Regis (now Ritz-Carlton), Ft. Lauderdale, Florida; Key International (owner of Eden Roc Hotel); Setai Hotels; Chatham Lodging; Thompson Hotels; Villa Owners at Dellis Cay, Turks & Caicos

# PRYOR CASHMAN'S RECENT HOSPITALITY TRANSACTIONS

- **Boulevard Hotel (Miami Beach, Florida)**
- **Bulfinch Hotel (Boston, Massachusetts)**
- **Embassy Suites Hotel (Valencia, California)**
- **Gatehouse Suites East Lansing Hotel (East Lansing, Michigan)**
- **Gatehouse Suites Grand Rapids Hotel (Kentwood, Michigan)**
- **Gatehouse Suites Indianapolis Hotel (Indianapolis, Indiana)**
- **Gatehouse Suites Troy Hotel (Troy, Michigan)**
- **Hampton Inn Poughkeepsie (Poughkeepsie, New York)**
- **Hampton Inn Westchester Oak Book Hotel (Westchester, Illinois)**
- **Hampton Inn Germantown (Gaithersburg, Maryland)**
- **San Marcos Hotel (Chandler, Arizona)**
- **Stay Inn Albany Latham Hotel (Albany, New York)**
- **The Surf Lodge (Montauk, New York)**
- **Avalon Hotel Beverly Hills (Beverly Hills, California)**
- **Chamberlain West Hollywood (West Hollywood, California)**
- **Hyatt Place Hotel (New Orleans, LA)**

# NEW BRANDING AND RE-BRANDING ROLLOUT

## EXAMPLES OF ROLLOUTS

- **New Brand**
- **Re-Brand**
- **Expanding Brand**

# ROLLOUT OF NEW BRANDS- GETTING READY

## Question: Are You Ready?

- **Brand Must be Ready**
  - **Intellectual Property; Operating Standards; Human Resources; OS&E**
- **Brand Standards Must be Ready**
  - **Design; Operating; FF&E; Food & Beverage**
- **Marketing Must be Ready**
- **Concept Must be Ready**
- **Executive Team Must be Fully Assembled**

# ROLLOUT OF NEW BRANDS- GETTING READY

- **Know the Brand**
  - **New, re-brand, or expansion?**
  - **Brand Standards**
- **Know the Long and Short Term Goals for Brand**
  - **Advice to Owners:**
    - **Speak to Other Owners if Possible**
    - **Refine Plans/Specs**
    - **Get Detailed Brand Guidance**
  - **Other Properties/Projects in the Brand**
- **Know the Long and Short Term Goals for Specific Hotel**
  - **Budget; Timelines; Unique Aspects of the Hotel**

# ROLLOUT OF NEW BRANDS- THE RISKS

- **Incomplete Brand Standards**
  - **Could Cause Significant Exposure if not Complete Prior to Rollout**
- **Recognition of Economic Realities**
  - **Brand Standards Need to be Appropriate for Marketplace**
    - **Cannot spend \$800,000 per key in Tulsa**
- **Corporate Structure**
  - **Must have Corporate Structure with Appropriate Executive Staff in Place (e.g., Technical Services Team; Pre-Opening Team; Human Resources Team)**
- **Insufficient Pipeline**
  - **Must have Pipeline of New Hotels/Conversions in Place to Create Critical Mass**

# MITIGATING RISKS IN ROLLING OUT



# TYPICAL CONTRACT CLAUSES MAY BE INSUFFICIENT AND/OR ENHANCE EXPOSURE

- **Obligation to Provide Brand Standards**
- **Review/Approval of Plans and Discretion in Rejection of Plans**
  - Discretion has its limits
- **Assurances that Operator is Knowledgeable and Experienced**

# LIMITING LIABILITY: CONTRACT DRAFTING

- **Have brand standards and personnel in place before rollout**
  - **Clarity of Department Heads**
- **If not possible:**
  - Disclose state of brand standards in contract; and**
  - Include provision requiring owner to adhere to brand standards as they are developed during construction**
- **Waiver of Consequential Damages**
  - **What are Consequential Damages**