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Partner and Co-Chair Hospitality Industry Team

- A veteran real estate lawyer who represents companies that develop, own, operate and finance hotels and resorts around the world.
- Described by clients in the *Chambers USA Guide* as "very practical and always accessible."
- Cliff speaks the language and fully understands every aspect of the hospitality industry

VIRTUAL



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Current Issues and Challenges in Hotel Management Agreements

FOR WHOSE ACCOUNT AND AT WHOSE RISK IS THE PROPERTY BEING OPERATED?

MANAGEMENT AGREEMENTS VS. LEASES

- Management: base + incentive + other (accounting; revenue management)
- Lease: results of operations net of rent (base + percentage + cam, taxes, insurance and utilities)

WHAT DOES IT TAKE TO WIN A DEAL TODAY?

SKIN IN THE GAME

- Key money
- Equity
- Debt
- Performance or deficit guaranties
- **COVID related changes**

AREN'T WE IN THIS DEAL TOGETHER?

ALIGNMENT OF RISKS/REWARDS

- Fee structures
- Base fees
- Incentive fees
- Value creation/success fees

HOW CAN WE GET OUT OF THIS DEAL?

TERMINABILITY

- For cause/default
- Without cause
- Performance tests
 - Thresholds (multi-pronged, multi-year)
 - Excuses
- On sale
- Franchise conversion
- Agency issues
 - Absolute power to terminate (if wrongful, with damages)
 - N.Y. Eden Rock case – personal services (because manager had too much discretion)
 - Agency coupled with an interest (coupled as to time, subject matter, persons) and not insubstantial

"THEY WHO HAVE THE GOLD MAKE THE RULES"

FINANCING MATTERS

- Recognition
- Subordination
- Access to cash
 - Lock boxes and account control agreements
- COVID related cash issues
 - Cap ex deferrals
 - Waiver of brand standards
 - New “cleanliness” standards
 - Use of reserves

I WORK FOR WHO?

EMPLOYMENT MATTERS

- Who is the employer – certain liabilities
- Joint employer issues
- WARN issues
- Work rules

NO, THEY ARE MINE!

GUEST/CUSTOMER DATA

- The age old question: who "owns" the guest/customer
- Data protection: Europe, California

WHAT'S NEXT?

TECHNOLOGY/SOCIAL MEDIA/ARTIFICIAL INTELLIGENCE

- Mobil check in
- Table top ordering
- Reviews

OH YES, AND THERE ARE THE BRANDS...

BRAND ISSUES; FRANCHISES; LICENSES;
CELEBRITY CHEFS

- New brands
- Brand standards
- Territorial restrictions
- Operational matters
- Capital expenditures, exceptions and the exceptions to the exceptions

AND I DO HAVE SOME MISCELLANEOUS ITEMS THAT DID NOT FIT ANYWHERE ELSE.

MISCELLANEOUS

- Resort fees
- OTAs
- Airbnb and other short term rental businesses