

The
HOSPITALITY LAW
CONFERENCE

Hospitality Industry Management Agreement Update;

*The Owner-Manger Relationship in a Post-Pandemic and Potentially Recessionary
Environment*

Cliff Risman

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Cliff Risman

FOLEY & Lardner LLP

Partner and Co-Chair Hospitality industry team

Dallas, Texas

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

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)
- Fee and rent non-payment, partial payment, and forbearance

WHAT DOES IT TAKE TO WIN A DEAL TODAY?

SKIN IN THE GAME

- Equity
- Debt
- Performance or deficit guaranties
- COVID related changes in new agreements – the buzzword is “alignment”

AREN'T WE IN THIS DEAL TOGETHER

ALIGNMENT OF RISKS/REWARDS

- Fee structures
- Base fees
- Incentive fees
- Value creation/success fees
- The buzzword is still “alignment”; minimum fees not based on revenues or performance



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 to much discretion)
 - Agency coupled with an interest (coupled as to time, subject matter, persons) and not insubstantial
- Force majeure and its applicability to various issues and provisions
- The “trailing 12/24/36” months in light of 2020-2022 operating results and various calculations



“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
 - Lender negotiating leverage has increased

I WORK FOR WHO?

EMPLOYMENT MATTERS

- Who is the employer – certain liabilities
- Joint employer issues
- WARN issues
- Work rules
- Health & safety protocols
- Getting employees back to work; finding new employees in a tight labor market
- Closure/repurposing issues



WHAT'S NEXT?

CAPITAL MARKETS; INTEREST RATE INCREASES AND PENDING DEBT MATURITIES

- Glut of upcoming CMBS maturities
- Current interest rate environment and refinancing difficulties
- Hold on tight; receiverships, workouts, short sales and foreclosures



OH YES, AND THERE ARE THE BRANDS.....

BRAND ISSUES; FRANCHISES; LICENSES; CELEBRITY CHEFS

- New brands
- Brand standards
- Territorial restrictions
- Capital expenditures, exceptions and the exceptions to the exceptions
- Intellectual property
- Operational matters; how the world has changed



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Foley.com
crisman@foley.com
T. 214.999.4287

Thank you!