Litigation and disputes between hotel owners and operators are on the rise.

Why?

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Hotel Lawyer: Hotel Management Agreement litigation and controversies are on the rise.

I was recently interviewed by Jason Freed of HotelNewsNow (a division of Smith Travel Research) for his article, Economic woes drive owner-operator disputes and it got me thinking.

Hotel lawyers will tell you that there are always disputes going on between hotel owners and operators, and that most of them are resolved at the bargaining table without any legal action.

Some disputes advance into litigation with the filing of a complaint, and others go to arbitration. The choice between litigation and arbitration is normally determined by the terms of the management agreement. Operators seem to prefer arbitration and they have pushed to create a trend to arbitrate. The arbitrations are “private” and tend to be missed by the press and are conducted in secrecy.

But the number of owner-operator battles has really escalated over the past few years. This is not just a matter of these disputes getting more media attention. There are a lot more disputes. What you see in the press is just the tip of the iceberg.

The root cause of owner-operator disputes

While each dispute has a specific cause or issue, at the heart of the matter you will find the belief that the operator is not operating the hotel in a satisfactory manner and is treating the owner unfairly.

Operators don't want to give up their lucrative management agreements and many of them can't or won't change their actions to satisfy owners who bear all the financial risk of the hotel investment. In times like these, owners may find themselves dipping heavily into other funds to meet negative operating cash flows or mortgage payments. Many face foreclosure — and loss of their entire investment — with the operator's sub-par performance. They feel cheated when operators continue to take all their money “off the top” (from gross revenues) and the operators won't cooperate to improve the situation.

The role of the economy

Clearly, bad economic times create a lot more friction between hotel owners and operators. When everyone is making lots of money, most people don’t feel desperate to correct every wrong. When hotel operations hit the skids, and owners have to write checks to keep the doors open, they want fast and responsive cooperation on critical issues.

Our current economic “recovery” is one of the slowest in history. Recovery in the hotel industry has been very uneven
depending on the hotel’s location, property type, market and other factors. Where hotels are performing better, friction between hotel owners and operators tends to ease. But for many, the improvement is neither big enough nor fast enough to quell the owner’s dissatisfaction over operator shortcomings. As a result, we see the trend of hotel management agreement disputes continuing and increasing for quite a while.

**Operator as fiduciary**

Some owner-operator lawsuits pivot on the fiduciary responsibility of the operator. This is an important legal concept for hotel owners to grasp. Jason Freed’s article included a sidebar I wrote on this very topic and I will share it with you in my next blog post.

You will find a lot more valuable information related to this topic on the Hotel Law Blog under the topic “Hotel Management and Franchise agreements”, including a classic article on the 5 biggest mistakes a hotel owner can make.

Also see The HMA Handbook: Hotel Management Agreements for Owners, Developers, Investors and Lenders.

**Articles on Hotel Law Blog about terminating hotel management agreements**

- Marriott Loses Appeal in Eden Roc Case: Why all long-term hotel management agreements are now terminable.
- How to terminate a hotel management agreement: A Tale of Two Hotels — Marriott’s Edition Waikiki and Fairmont’s Turnberry Isle Resort
- Terminating hotel operators: M Edition lawsuit against Marriott has a new twist — Marriott is replaced overnight
- More on M Waikiki Edition lawsuit against Marriott – What Marriott’s General Counsel says
- M Waikiki’s Edition lawsuit against Marriott and Ian Schrager – an owner’s HMA dispute with Marriott
- Terminating hotel operators: Turnberry Resort drops Fairmont flag
- Hotel management agreement terminations — Is there a better way?
- Terminating hotel management agreements when things don’t work? Not easy, but not impossible either.
- Hotel bankruptcy trump card. Terminating hotel management agreements without liability — the alchemy of lead to gold for troubled hotels and hotel loans?
- Ritz-Carlton Bali hotel management agreement termination further court order
Ritz-Carlton breached contractual and fiduciary duties under hotel management agreement giving rise to free termination, $10.3 million in damages plus attorneys fees. When will hotel operators “get it”?

How to terminate a hotel management agreement when an operator really deserves it!

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. We’ve done more than $87 billion of hotel transactions and have developed innovative solutions to unlock value from hotels. Who’s your hotel lawyer?

Our Perspective. We represent hotel lenders, owners and investors. We have helped our clients find business and legal solutions for more than $87 billion of hotel transactions, involving more than 3,900 properties all over the world. For more information, please contact Jim Butler at jbutler@jmbm.com or +1 (310) 201-3526.

Jim Butler is a founding partner of JMBM, and Chairman of its Global Hospitality Group® and Chinese Investment Group™. Jim is one of the top hospitality attorneys in the world. GOOGLE “hotel lawyer” and you will see why.

Jim and his team are more than “just” great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider. They know who to call and how to reach them.