Paul Hastings

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HOSPITALITY RRREPORT

SERVING HOTEL AND OTHER HOSPITALITY CLIENTS WORLDWIDE

CHAIR'S CORNER

"Stay Alive till 95!" If you've been in the hospitality sector for the last 20 years like I have, you remember the battle cry of that period. What did we do? Hotel and resort workouts, foreclosures and bankruptcies...over and over and over again for five long years.

Well, we have indeed entered into a similar era that we hope is not as long or deep as it was back then, but I fear it may be worse. So the new mantra may be "Stay Lean till 2013" or such other catch phrase of our time, but suffice it to say we are in this together and we must pitch in and do our best to represent our varied interests in this industry to the best of our ability.

To that end, we are pleased to announce that we are not only expanding our ranks within the RR&R Practice Group here at Paul Hastings but also working hard to expand our expertise around the world (by moving our Real Estate Department Chair Philip Feder to our London office).

Our efforts continue to pay off as the Paul Hastings RR&R Practice Group was again named as one of only two in the top tier of leisure and hospitality practices for 2007/2008 by Chambers USA (see a copy of the Chambers listing at the end of this Hospitality RRReport). And if I can toot my own horn a little as well, I was just named (together with Philip Feder) one of the Top 100 Lawyers in the State of California by two of the state's leading legal publications.

We at Paul Hastings have an extensive workout, foreclosure and bankruptcy expertise throughout our 18 offices located around the world and across all disciplines of the firm (including not only real estate but also hospitality-related litigation, corporate, labor, tax and IP). in that vein, I believe you will find the articles in this issue of our Hospitality RRReport to be insightful and authoritative.

Finally, have a happy and healthy New Year and we will see you at ALIS in San Diego.

Rick S. Kirkbride, Chair
Resort, Restaurant & Recreation Practice Group
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An Explanation of the Current Downturn and Where the Opportunities Exist

By Philip N. Feder and Jeremy Hilsman

The 2008 Nobel Prize winner in Economics and *New York Times* columnist Paul Krugman succinctly laid out the four major causes of the ongoing financial crisis.

First, the housing bubble's earsplitting burst resulted in a drastic increase in residential defaults and foreclosures and simultaneously triggered an equally severe decrease in residential mortgaged-backed securities prices. As these prices declined, a second element of the financial crisis emerged -- banks and other financial institutions maintained little or no capital, a problem exacerbated by excessive borrowing during the bubble years. Consequently, these same institutions, now with insufficient capital, are unable or unwilling to provide credit, the fuel needed to power the U.S. and global economy. Finally, as financial institutions began to market and sell assets (including mortgaged-backed securities) in an attempt to increase capital and reduce debt, asset prices fell further, thereby deteriorating the same institutions' financial positions – a paradoxical and vicious cycle.

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Based on our knowledge of the markets and conversations with our private equity clients in the U.S., Europe and Asia about the state of the world and the financial markets, we have learned many things—all of which are applicable to the hotel and hospitality industry.

The effects on the hotel industry, most experts agree, will be a lagging indicator. RevPAR has already seen declines, and they promise to be deeper and more widespread as the recession takes hold.

Transaction Flow: Deal flow in and out of the hotel sector has slowed to an absolute crawl. The lack of financing in the markets and trust between counterparties has caused most deals to fail before they begin. No hotel or private equity professional is willing to risk his or her job to make an investment in this market.

Asset Pricing: Neither hotel developers nor private equity players will jump into the ring until they see a pricing floor. A floor cannot be reached until sellers are willing to look realistically at their valuations. The spread between the bid and the ask price remains wide, a factor exacerbated by the fact that no one is actively buying. Simply stated, no market exists. No one is willing to dip their toes in the water because it is colder than ice.

Implementation of Government Bailouts: The question remains how various governments will implement their newly legislated powers. Some think the governments will order banks and other financial institutions to divest their assets at fire sale prices while others believe they will form an RTC-like "bad bank" into which toxic debt will be deposited and then sold at a discount. Preliminary indications are that both the U.S. and the U.K. will take one or both actions, but the timing of such actions remains highly uncertain. As so much debt is enveloped in securitization transactions that few understand, the task for the governments and the markets is difficult. Some think it will ultimately take a deep pocketed investor to buy out the bondholders at crushing discounts thereby removing the securitization straitjacket of voluminous documents out of the hands of servicers and into the capable hands of someone who actually understands the underlying real estate collateral.

Investment Strategies: After the market hits a perceived floor, hotel developers and private equity players plan to execute market strategies ranging from recapitalizing distressed hospitality companies to purchasing distressed debt on hotel properties directly.

Targeting Troubled Companies: In selecting this route, clients expect to target corporate entities that own portfolios of hotels or a substantial amount of real estate burdened with balance sheets depleted by excess leverage and imminent loan maturities. Undoubtedly, clients will focus first on those companies with capable management infrastructure. With new capital infusions, clients plan to quickly turn these companies around by negotiating discounted loan payoffs or more favorable financing. This strategy will likely include hotel developers and operators caught in the financial squeeze.

Targeting Debt Directly: Other clients will focus on the acquisition of the distressed debt directly. In implementing this strategy, clients will face a choice. They may choose to hold the debt in hopes that based on the discounted purchase price the cash returns will exceed 20% per annum or more on the senior tranche. Alternatively, they may focus instead on foreclosure of the debt on a path to direct ownership of the real estate. If governments exert pressure on banks to sell loans at a discount, tremendous opportunities could result for private equity firms in situations where tenants have good credit with the continued ability and willingness to pay. At this time, clients appear less willing to consider acquisition of subordinated or mezzanine debt given the added difficulty in valuations.

Global Locations Considered by Hotel Private Equity Players: Each location set forth below provides hotel and private equity clients with different risks and opportunities.

United States: As the U.S. is still perceived as an emerging market, the majority believe that yields and cap rates must rise before further investment occurs. Of course, there are significant regional differences; however, major population centers will remain favored when compared to more speculative developments. One private equity firm reported that it is buying land at tremendous discounts with a long term holding strategy.

Western Europe: In Western Europe, and particularly the U.K., there have been significant valuation declines over the last 18 months. Some hotel owners and private equity clients believe that the U.K. and Germany present the best buying opportunities in the upcoming months. France falls in the next tier of investment preference, unless President Sarkozy acts quickly to shore up the French banking system. Many believe that the market in Italy and Spain is far from the bottom. With respect to Spain, this assessment results in part from the staggering inventory levels.

Central and Eastern Europe: Currently, hotel owners and private equity clients are wary of Central and Eastern Europe. Investment appears unjustified given the risk-return analysis and the high yields in the U.S. and Western Europe.

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Asia: Asia is one of the bright spots in the world, particularly Japan. Due to government reluctance to force recognition of defaulted loan products, Japanese banks have been practically dormant for the past 10 years. Consequently, Japanese banks' balance sheets are comparatively healthy resulting in a general willingness to finance transactions in Japan. China's economy has slowed considerably, and the appetite for risky investments there has quieted. Southeast Asia is not viewed as a viable investment alternative as the risk-return level renders the region uncompetitive.

U.S. Elections: Until the lame duck Bush Administration is replaced, including the Treasury Secretary, no clients expect any appreciable uptick in real estate investment. After a new administration is sworn in on January 20, 2009, we expect a new declaration on the existence of a larger financial crisis and a plan to address it. While Treasury Secretary Paulson and Federal Reserve Chairman Bernanke are lauded for their efforts, the new administration will review the problems with a fresh perspective but within the context of the infrastructure built by Paulson.

Paul Hastings, unlike most practitioners in the world, has been through this before. The last generation of lawyers has seen an unprecedented expansion of the hotel and real estate industry fueled by the Wall Street securitization financing machine, and now the fall. We have seen the last fall in the late 1980s and early 1990s in our representation of the original real estate private equity funds in their purchases from the Resolution Trust Corporation and the subsequent workout and restructuring of that debt. Paul, Hastings is uniquely qualified to assist hotel operating companies and private equity firms and others who seek to capitalize on the fall in the markets, where tremendous opportunities exist.

The Swinging Pendulum of Hotel Management Agreement Negotiations

By Jacqueline Fleischer

Introduction

The legal and business terms of Hotel Management Agreements reflect as much (if not more) about the state of the hotel financing and development worlds as they do about underlying Owner-Operator relationships. Soon after the severe decline experienced by the hospitality industry beginning in late 2001, limiting business investment generally and presenting challenging times for both Owners and Operators, Hotel Management Agreements became increasingly more balanced: Owners began "winning" shorter terms without automatic renewals, lower fees ramping up during stabilization, and incentive fees based on true bottom-line net operating income after a set return to Owner on its investment; Operators tried protecting themselves from premature termination as a result of poor performance caused by a force majeure event, sale and foreclosure.

By 2003, negotiations between Owners and Operators became almost standardized, with expectations of reasonably Owner-favorable terms by both parties.

By late 2003, securitization and the other financing vehicles that flooded the real estate market generally also provided more than ample financing for hotel and resort development. As a result, in the subsequent five years, Operators began to regain leverage and became emboldened to demand more and more in the negotiation of Hotel Management Agreements. HMAs started to contain newly-required termination rights for failure to maintain brand standards (ultimately, almost solely in Operator's discretion), incentive management fees and capital budgets that disregarded Owner ROIs, and ultra-resistant performance clauses. Tourism and economic growth rates throughout the globe created a demand for a wide-range of hotel and mixed-use projects, some funded traditionally, and others via new condo-hotel and residential-based structures. Consequently, more and more Owners competed for the same sought-after brands, and Operators could create a bidding war over key terms in their negotiation of HMAs with potential Owners.

I. History Revisited

As we enter an economic slowdown that affects the entire globe, in the absence of both securitized debt financing and branded (or un-branded!) residential sales, the select few Owners who can reach the Hotel Management Agreement negotiating table will regain the position of pre-2003 Owners and reclaim the balanced-yet-Owner-favorable terms that characterized Hotel Management Agreements earlier in the decade and in the "stay alive till 95" days of the prior decade. While we cannot expect Operators to forsake entirely the key provisions of Hotel Management Agreements that afford them the brand protections they have successfully fixed as staples in such agreements, Operators will be forced to adopt a new-found flexibility that affords both Owners and their lenders the basic terms required in order to finance and continually capitalize their hospitality-based real estate assets. The following list represents the key terms in Hotel Management Agreements that will swing in Owner's favor until current market conditions regain the momentum found during the booming economy of the last five years.

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The Swinging Pendulum of Hotel Management Agreement Negotiations (cont'd)

1. Termination for Failure to Finance, Obtain Entitlements or Obtain a Satisfactory GMP

Operators have become increasingly reluctant to grant Owners termination rights during the pre-opening phases of a project. In many cases, where Operators agree to grant such rights, they have attached hefty liquidated damages payments or termination penalties. Given the difficulty in obtaining financing in today's market and the number of unknowns during the pre-construction phase, Owners will be able to require that Operators grant a fee-free termination right for failure to finance, failure to obtain entitlements, and failure to obtain a GMP construction contract to Owner's satisfaction by a target date. Given the dearth of deals for Operators to announce (and therefore a sharp decrease in the opportunity cost to Operators entering into Hotel Management Agreements on a given project that may not proceed to construction), Operators will elect to execute Hotel Management Agreements containing pre-opening cancellation rights (as between granting such rights or not executing the agreement altogether and therefore missing out on the goodwill that the associated press release would likely bring).

2. Financing Limitations

As the capital markets flooded the hospitality industry with various forms of financing vehicles over the past five years, Operators have become increasingly protective of their flags' stability at a heavily-financed property as well as the extent of their control over cash flow for operations and capital expenditures. Accordingly, Operators began to impose strict loan-to-value ratio limitations and debt service coverage requirements that ultimately dictated Owner's financing structures. Gone will be the days of Operators being able to artificially limit the type of financing that will be desired by Owners and their lenders. The new financing limitations will be dictated primarily by Owners' lenders, and we can expect that market forces will naturally (though unintentionally) ensure that Operators are not exposed to the risks of over-leveraged projects.

3. Subordination and Non-Disturbance

In the era of "Stay Alive till 95" and post 9/11, Operators, as a collective, resigned themselves to the fact that lenders would expect to have their management agreements subordinated to the lien of their mortgage without the benefit of a non-disturbance agreement. However, amidst increasing loan-to-value ratios of the last five years, Operators began to demand full non-disturbance and refused to afford lenders the right to terminate their agreements upon foreclosure. After the "great crash of 2008," lenders will surely again be demanding (no matter the climate of the financial markets) that management agreements (though not fees to debt service) be subordinated to the lien of the applicable mortgage (both the then current mortgage and all future mortgages) without non-disturbance. To the extent an Operator for whatever reason has the leverage to condition its subordination on the grant of non-disturbance, the new terms thereof will be dictated outright by lenders, with non-disturbance provisions being for the benefit Operators, at best, only above specified loan-to-value ratios.

4. Term

Over the past five years, the standard operating term has been extended from a base of 20 years (with extension only upon mutual approval of the parties) to a base of 30 years plus up to two 10-year extensions. With increased demand for new branded hotel projects over the past five years, Operators have pushed for automatic term extensions provided there is no existing event of default. Savvy Owners have pushed for term extensions only upon the Operator achieving applicable performance termination thresholds, or, ideally, only upon achieving an NOI-based performance test independent of the performance termination thresholds. With Owners regaining leverage in negotiations with Operators, Owners will successfully resist automatic extensions and will allow for extension of the HMA either upon achieving a minimum return to Owner, or, ideally, in Owner's sole discretion.

5. Management Fees

Base Management Fees have hovered between 3% and 4% for over a decade, depending on the brand. While we do not expect Base Management Fees to decrease below 3% on account of the financial climate, we can expect to see Owners receiving on an increasingly consistent basis a Base Management Fee structure that ramps up during stabilization (mimicking the "honeymoon period" of the Performance Test).

More importantly, Operators will no longer be able to justify a GOP-based Incentive Management Fee. With market conditions changing, Owners will consistently obtain NOI-based Incentive Management Fee structures (fully "below the line" and after a return to Owner on total project costs).

6. Performance Termination Clauses

What has come to be known as the "Performance Test" was characterized a decade ago by an Operator's failure to achieve, in any two out of three years, two out of three of the following:

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The Swinging Pendulum of Hotel Management Agreement Negotiations (cont'd)

(i) minimum levels of NOI ; (ii) GOP at a prescribed percentage of gross revenue; and (iii) RevPAR commensurate with the hotel's competitive set (or a failure of two out of the foregoing three tests). The last five years has seen a strict shift to a 2-prong conjunctive "and" test, an abandonment of NOI-based prongs, and an attempt to reduce the GOP thresholds. While an abandonment of the RevPAR prong is unlikely, Owners may see a replacement of the GOP prong for the Owner-favored NOI prong (more akin to the way extension terms are earned), thus giving the Performance Test real teeth and a renewed meaning.

7. Termination Upon Sale

Once a standard right included in every brand's term sheet, an Owner's right to terminate upon the sale of the hotel to a bona fide third party has become a Hotel Management Agreement relic. However, with the increasing reluctance to finance projects altogether, Owners (and if they don't, their lenders) will insist on the right to terminate the Hotel Management Agreement upon the sale of the hotel (and upon payment of a termination fee proportionate to the number of years remaining in the term), particularly in the event the Owner was unable to obtain the right to terminate upon foreclosure or negotiate a performance clause with real teeth. Just as Owner's right to terminate upon sale was typical of the 2003 Hotel Management Agreement, so too will it return to 2009 Hotel Management Agreements.

8. Key Money

Given the financial hurdles that Owners are now forced to overcome – not only in securing debt, but also in obtaining equity – Operators will once again be looking to incentives in order to bring Owners to the negotiating table. Operators will yet again offer $1,000,000 to $5,000,000 in Key Money in exchange for the right to operate a well-financed project.

9. Capital Expenditures

A final trace of the post-2001 model that will be revisited under the current financial crisis is revived Owner control over capital expenditures and spending out of the FF&E Reserve. Owners (and their lenders) will require stronger limitations on replacements of FF&E and spending out of the FF&E Reserve (i.e., no capital replacements prior to the end of an item's useful life; no expenditures in any one category in excess of a designated threshold amount; and approvals over spending in excess of the FF&E Budget even if funds are available).

10. Pre-Opening and Technical Services

Technical Services Fees and Pre-Opening reimbursements to Operators are among the most common Owner frustrations during project document negotiations. The most recent of pre-opening fee trends has been for Operators to insist on a fee based on a percentage of total project costs instead of a de minimus price per key. As negotiations shift in Owner's favor, Owners will be able to revert to the price-per-key model, driving down the overall pre-opening and technical services fee.

II. Conclusion

While the current financial climate will inevitably immobilize some developers in the short term, there is a silver lining for those developers who reach the Hotel Management Agreement negotiating table: relying on the post-2001 model outlined above, Owners will be able to capitalize on their enhanced leverage and strike long-term Hotel Management Agreement deals with Operators that will lead to significantly more profitable and marketable projects that will outlive the current financial crisis.

Impact of Bankruptcy Code Changes on the Hotel Industry

By Jeffrey D. Diener

From mid-2002 through early-2007, the hotel industry experienced unprecedented growth. Demand for hotels and accompanying mixed-use development far outstripped supply and, as a result, there was a tremendous amount of new hotel construction during this period. Much of it was luxury, 4+ star, mixed-use inventory. Lenders freely offered loans of 75%+ of the appraised value, the flags were in such high demand that they negotiated management terms to 40+ years, and existing owners were able to cash out.

Fast forward to present day and times have changed dramatically. The debt markets are in a virtual shutdown, the flags are adjusting their demands, new construction has been all but halted and it has become a buyers' market, assuming they've got cash. Unlike office space where the effects of today's market are not felt immediately because of long-term leases, the hotel industry already is feeling the squeeze. Expense accounts for business travelers have been sharply reduced, holiday parties have been cancelled or significantly scaled back, convention business is declining rapidly, leisure travel is down and bookings are being cancelled at an amazing rate.[1]

For some, the current economy spells trouble, for others, opportunity. Although some have weathered, and others have thrived in, similar storms before, this one is different in at least two ways significant to the hotel industry. First, this downturn is fueled by a credit crisis built upon a dramatic real estate run-up. Second, the United States Bankruptcy Code (11 U.S.C. §101, et seq., the "Code")[2] has undergone substantial revisions since the previous downturns.

Owners, opportunistic investors and lenders have many options to consider in this market, a key one of which is bankruptcy. The balance of this article is dedicated to those Code provisions of particular importance to hoteliers and hoteliers-to-be.

The Costs

Filing for bankruptcy protection under Chapter 11 of the Code has become an expensive proposition.[3] Debtors' counsel fees for large cases can run into the millions of dollars. Because of the complicated nature of a hotel bankruptcy case, in addition to bankruptcy counsel, hotel debtors often have to retain chief restructuring officers, employment law special counsel, liquor license special counsel and, in the case of casinos, gaming law special counsel. Also, debtors are required to pay United States Trustee fees until a final decree is entered, something that might not happen for a long time after a plan of reorganization is confirmed or the bankruptcy case is dismissed.

Accordingly, if you are contemplating a Chapter 11 filing, be sure to file while you still have sufficient cash on hand to cover such expenses.

Hotels Are Generally Not Treated as Single Asset Real Estate ("SARE") Cases

Whether a case qualifies for SARE status is critical to determining third parties' rights to pursue legal claims against the debtor. Generally, the automatic stay prohibiting legal actions against a SARE debtor can be lifted as soon as 90 days after the filing of a petition for relief under Chapter 11 of the Code.[4] 11 U.S.C. §362(d)(3). In contrast, the automatic stay against a non-SARE debtor, subject to certain exceptions, cannot be lifted until the earliest of the time (a) the case is closed, (b) the case is dismissed and (c) a discharge is granted or denied. 11 U.S.C. §362(c)(2).

Pursuant to the Bankruptcy Reform Act of 1994 (the "1994 Act"), Congress amended the Code to include a definition for "single asset real estate" as follows: "real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor [who is not a family farmer] and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000."[5] 11 U.S.C. §101(51B) (former). Concurrently, the Code was amended such that a mortgage lender may be granted relief from the automatic stay against a debtor in a SARE case, unless, by the later of (a) the date that is 90 days after the entry of the order for relief under the Code (or such later date as may be ordered by the court for cause) and (b) 30 days after the court determines that the debtor is subject to §362(d)(3), the debtor has either (y) filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time or (z) commenced monthly payments to each creditor whose claim is secured by such real estate and are in amounts equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate.[6] 11 U.S.C. §362(d)(3). Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Act"), the $4 Million secured debt cap component of the SARE definition was deleted thereby significantly expanding the scope of such cases.

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Impact of Bankruptcy Code Changes on the Hotel Industry (cont'd)

Case law is not entirely consistent with respect to determining which types of projects fall within the definition of SARE. However, to the benefit of hotel owners and to the detriment of lenders, case law is fairly consistent in determining that hotels, ski resorts, golf courses and marinas **do not** fall within the meaning of such definition.[7] Since managing a hotel is generally an active, labor intensive process geared toward providing customer services, a strong argument could be made that the operation of a hotel is a business "other than the business of operating the real property." In In re CBJ Development, Inc., the court concluded that "restaurant, bar and gift shop constitute significant other business, sufficient to remove the [h]otel from the definition of [SARE]." In re CBJ Development, Inc. at 473. Accordingly, a case could be made that motels and other limited service hotels would qualify as SARE cases.

Today Hotel Room Revenues Constitute Cash Collateral and Are Subject to Restricted Use

Pursuant to the 1994 Act, the definition of "cash collateral" was amended to include "fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties."[8] Why is this important? During a Chapter 11 case, unless a court orders otherwise, **property of the estate** (i.e., property that does not constitute cash collateral) **may be used, sold or leased** in the ordinary course of business **without a court order**. [9] On the other hand, a **debtor may not use, sell or lease cash collateral** unless and until either (a) the creditor with an interest therein consents thereto or (b) after notice and a hearing, the court authorizes such use, sale or lease. 11 U.S.C. §363(c)(2). Accordingly, prior to the 1994 Act, a hotel owner-debtor was able to use postpetition hotel room revenues without consent from its secured creditor(s) or court authorization. However, today, a similarly situated hotel owner-debtor must receive either (a) consent from any party(ies) with an interest in the hotel or (b) court authorization prior to using hotel room revenues. Typically, as part of its first day pleadings [10], a debtor can and should file a motion for entry of an interim order to use cash collateral. If granted, a debtor can then use, at least on a limited or restricted basis, cash collateral until there is sufficient time to provide parties in interest at least 15 days prior notice of a final hearing. Federal Rules of Bankruptcy Procedure, Rule 4001(b).

How Can A Lender Perfect an Interest in Hotel Room Revenues?

The perfection by a lender of an interest in hotel room revenues hinges on whether such revenues constitute rent or accounts receivable, an issue not addressed by either the 1994 Act or the 2005 Act. If hotel revenues constitute rent, then the interest in such revenues must be perfected under local real estate law.[11] If hotel revenues constitute accounts receivable, then the interest must be perfected by filing in accordance with the Uniform Commercial Code.[12] Lenders would be well-advised to perfect under both systems and prepare their loan documents to expressly create a security interest in hotel revenues.

On a related note, §552(b), in which the postpetition effect of a prepetition security interest is described, was revised pursuant to the 1994 Act to clarify that postpetition rent and hotel revenues are subject to a prepetition security interest regardless of whether the security interest was perfected under applicable state law procedures.[13, 14, 15]

Management Agreements, Other Executory Contracts and Leases[16]

Pursuant to §365, subject to meeting certain conditions, a debtor has three options with respect to prepetition executory contracts and unexpired leases: (1) Assume, (2) Assign and (3) Reject.[17] A brief description of how these three options work using a hotel management agreement ("HMA") as an example follows.[18]

Assume: If the HMA has terms favorable to the hotel owner-debtor, then the owner-debtor would want to consider assuming the HMA during the Chapter 11 case in order to bind the manager to the terms thereof. If the owner-debtor is in default of the HMA, at the time of assumption, he must (1) receive court approval upon notice and a hearing, (2) cure, or provide adequate assurance of the prompt cure of, any defaults, (3) compensate, or provide adequate assurance of prompt compensation for, any actual losses resulting from the default under the HMA, and (4) provide adequate assurance of future performance under the HMA. 11 U.S.C. §365(B)(1). The requirements to cure and compensate **do not** apply to any default that is a breach of a provision relating to the insolvency or financial condition of the debtor, the commencement of the Chapter 11 case, the satisfaction of any penalty rate or the performance of any nonmonetary obligations (regardless of any provisions in the HMA to the contrary). 11 U.S.C. §365(b)(2).[19]

Assign: The owner-debtor has the right to assign the HMA (for

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example, in connection with a sale of the hotel) notwithstanding a provision in the HMA to the contrary. 11 U.S.C. §365(f)(1). Furthermore, any provision in the HMA conditioning an assignment or providing for modified terms upon an assignment would likely be unenforceable and superseded by the Code. 11 U.S.C. §365(f)(3). In order to assign the HMA, the owner-debtor must (1) assume the HMA and, accordingly, meet the assumption requirements set forth above and (2) provide the nondebtor party with adequate assurance of future performance by the assignee regardless of whether there has been a default under the HMA. 11 U.S.C. §365(f)(2). Courts have varying standards for what constitutes "adequate assurance" and the analysis is based on the specific set of facts and circumstances. Some courts may require an assignee to provide a deposit, financial statements or other forms of assurance, whereas others may be satisfied that this condition is met so long as an assignee can demonstrate greater ability to perform than can the debtor.

Reject: This is the option that most owner-debtors likely will find appealing with respect to HMAs as it enables them to be freed of manager-friendly HMAs. Rejection (which requires court approval upon notice and a hearing) of the HMA would constitute a breach thereof and excuse the debtor from any future performance of obligations thereunder. 11 U.S.C. §365(g). Even though such breach occurs postpetition, it would be treated as a prepetition breach entitling the nondebtor party (i.e., the manager) only to a prepetition general unsecured claim (instead of an administrative expense claim)[20]. Accordingly, any termination fees provided for in the HMA likely would be unenforceable or constitute only a prepetition claim.

There are at least two non-bankruptcy issues to consider when determining how to proceed with respect to an HMA in the bankruptcy context. First, did any of the investors in the owner-debtor (the owner-debtor is typically a special purpose limited liability company) execute a personal guaranty or did a non-bankrupt affiliate execute a guaranty in support of the HMA? If so, such guaranty probably contains a provision allowing the manager to seek payment from such individual(s) or non-bankrupt affiliate in the event that the owner files a petition for relief under the Code or terminates the HMA (i.e., the manager can seek any termination fees provided for in the HMA from such parties). Second, any agreement between the owner's lender and the manager would be unaffected by the owner filing. Therefore, if such parties executed a subordination and non-disturbance agreement, the terms thereof generally would remain enforceable, including any agreement by the lender not to take certain actions with respect to the owner filing for bankruptcy protection or during the owner-debtor's bankruptcy case.

Condominium Purchase and Sale Agreements ("PSAs")

Condominium PSAs generally constitute executory contracts subject to the treatment described above (i.e., assumption, assignment or rejection). A PSA is not executory if the purchaser has obtained a specific performance or similar judgment with respect thereto.[21] However, court decisions are not entirely consistent as to whether a PSA is executory if conveying title is seller's only remaining obligation.[22] Accordingly, the analysis regarding whether a PSA constitutes an executory contract will hinge on the jurisdiction and the specific facts.

Most importantly to an owner-debtor with an executed PSA, where the deposit has been paid, but delivery and final payment is still pending, regardless of any language to the contrary contained in such PSA, the commencement of the Chapter 11 case does not constitute cause for a nondebtor purchaser to terminate such PSA.[23]

Collective Bargaining Agreements ("CBAs")

A debtor can make interim changes to or reject a CBA only in accordance with the provisions of §1113.[24, 25] Accordingly, if a provision of a CBA prohibits the sale of substantially all of the debtor's assets or contains some other sale restriction, such sale cannot occur until the CBA has either been modified to address such issue or rejected in accordance with the terms of §1113. Additionally, to the extent that an unrejected CBA provides for successor liability, a third-party purchaser would be subject to the terms thereof.[26]

Upon notice and a hearing, a court may authorize a debtor "to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a [CBA]" if such changes are "essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate". 11 U.S.C. §1113(e) (emphasis added). These interim changes are usually of limited duration, but extensions can be granted.[27]

A court shall approve an application for the rejection of a CBA only if the court finds that:

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1. The debtor, prior to the hearing, made a proposal that fulfills the requirements of §1113(b)(1)[28];
2. The authorized representative of the employees refused to accept such proposal without good cause; and
3. The balance of the equities clearly favors rejection of such agreement.

11 U.S.C. §1113(c).

Further, the courts have generally found that the following nine requirements must be met in order to approve rejection of a CBA and that the debtor bears the burden of persuasion with respect thereto:

1. The debtor in possession must make a proposal to the union to modify the CBA.
2. The proposal must be based on the most complete and reliable information available at the time of the proposal.
3. The proposed modifications must be necessary to permit the reorganization of the debtor.
4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5. The debtor must provide to the union such relevant information as is necessary to evaluate the proposal.
6. Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing CBA, the debtor must meet at reasonable times with the union.
7. At the meetings, the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the CBA.
8. The union must have refused to accept the proposal without good cause.
9. The balance of the equities must clearly favor rejection of the CBA.

In re American Provision Co., 44 B.R. 907 at 909 (Bankr. D. Minn. 1984).

Wages and the Worker Adjustment and Retraining Act (29 U.S.C.S. §2101 et seq., the "WARN Act")

Certain wages earned prepetition and employee benefit plan contributions made prepetition are entitled to priority status. Pursuant to §507(a)(4), wage, salary or commission claims, including vacation, severance and sick leave pay earned by an individual within 180 days before the filing of the petition date, up to a maximum of $10,950, are entitled to fourth priority status.[29] The balance of any such claim is entitled to prepetition general unsecured claim status. Contributions to employee benefit plans arising from services rendered within 180 days before the filing date are entitled to fifth priority status. 11 U.S.C. §507(a)(5). However, each individual employee's aggregate priority claim for wages and contributions is limited to $10,950.[30] 11 U.S.C. §507(a)(5)(B)(ii).

An important issue with respect to wage claims is the treatment of claims under the WARN Act.[31] In particular, should that portion of WARN Act claims occurring postpetition be entitled to administrative expense priority?[32] 11 U.S.C. §503(b)(1)(A).

Prior to the 2005 Act, case law generally held that, to the extent that no postpetition services were provided by employees, WARN Act claims constituted wages entitled to priority up to the cap set forth in §507(a)(4) and any excess amount should be treated as a general unsecured claim.[33] Based on the addition of §503(b)(1)(A)(ii) pursuant to the 2005 Act, some claimants have argued that the entire postpetition portion of a WARN Act claim is entitled to administrative priority even when no postpetition services were rendered.[34] However, the court in In re First Magnus Fin. Corp. recently rejected such position and held that when no postpetition services were rendered, even if some of the 60 day liability period under the WARN Act ran into the postpetition period, claims with respect thereto were not entitled to administrative expense priority.[35] That said, in light of current economic circumstances, query whether such holding will be challenged or legislation will be enacted in response thereto in the near future.

Sales Under §363, Can They Still Be Made "Free and Clear" of All Liens?

One of the most cost efficient ways to purchase assets from a debtor is through a sale in accordance with §363 (as opposed to through confirmation of a plan of reorganization or state law foreclosures). Pursuant to §363, upon notice and a hearing (and often times involving an auction and "stalking horse" bidder),

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Impact of Bankruptcy Code Changes on the Hotel Industry (cont'd)

a debtor may sell property of the estate. 11 U.S.C. §363(b)(1). Furthermore, such sale generally can be made "free and clear of any interest in such property". 11 U.S.C. §363(f). Finally, assuming the appropriate language is included in the order approving a sale, a good faith purchaser and the validity of a sale are afforded protection from reversal or modification on appeal. 11 U.S.C. §363(m). However, these protections have been called into question recently in the Ninth Circuit[36] with respect to the sale of assets when the total amount of secured claims exceeds the sale price. Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25 (9th Cir. B.A.P. 2008).

In In re PW, LLC, the court held that the approval of a sale to a senior mortgagee free and clear of claims held by an objecting junior mortgagee was not reviewable based on the doctrine of equitable mootness. However, based on a very narrow reading of the Code, the court further held that the doctrine of equitable mootness did not apply to an appellate review of whether such sale could be consummated free and clear of the junior lienholder's lien. Accordingly, the senior mortgagee could be required to keep the subject real property, but subject to the junior liens which it thought had been released pursuant to the bankruptcy court order approving the sale. Although this decision is in stark contrast to the balance of case law on the subject, any potential purchaser of assets pursuant to a §363 sale should take into account whether any issues/disputes exist with respect to junior lienholders when formulating its acquisition strategy, especially in the Ninth Circuit.

§363 Sales Are No Longer Exempt From Stamp and Similar Taxes

In order for a bankruptcy sale to be exempt from stamp and similar taxes, it must be made under a confirmed plan of reorganization. 11 U.S.C. §1146(a). As described above, asset sales done prior to plan confirmation are typically done pursuant to §363. Until recently, courts disagreed as to whether the tax exemption granted pursuant to §1146 applies to §363 sales. However, in June 2008, the Supreme Court ruled that the §1146 tax exemption **does not** apply to a sale made pursuant to §363 prior to plan confirmation regardless of whether such sale is eventually approved under a confirmed plan of reorganization. Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326 (2008). Therefore, tax considerations need to be balanced with timing considerations (i.e., whether it is advantageous to move quickly and incur stamp and similar tax liability as part of a §363 sale or wait to consummate a proposed sale as part of a plan confirmation).

Conclusion

The hotel industry, along with the balance of the real estate world, is going through major changes. Changes tend to present opportunities for those who are prepared to capitalize on them. The focus of this article is on a few specific Code provisions that have a major impact on hotel bankruptcy cases. In particular, the discussed sections address real estate, hotel revenues, management agreements, labor and sales issues. However, there are many other issues which can affect bankruptcy cases generally (utilities, critical vendors, taxes, etc.). Anyone involved, or trying to become involved, in the hotel business at this time would be at a strategic disadvantage if he or she does not have a comprehensive understanding of the revised Code.

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Endnotes

[1]Joe Sharkey, Dim Days for Luxury Hotels, N.Y. Times, October 28, 2008; Joe Sharkey, The Credit Squeeze Compresses Travel, Too, N.Y. Times, October 21, 2008; Kitty Bean Yancey, Destinations & Diversions, USA Today, October 23, 2008.

[2]References herein to sections are to sections of the Code unless otherwise specified.

[3]Filing a pre-packaged or pre-arranged bankruptcy (whereby a debtor and its lenders have worked out agreeable restructuring terms prior to the bankruptcy filing) may result in significant cost savings during the bankruptcy case. However, negotiating these requires a great deal of effort and cooperation on the front end.

[4]When a party files for relief under Chapter 11 of the Code, third parties who previously have filed causes of action or intend to file a cause of action against the debtor are precluded from or automatically stayed from continuing to pursue or initiating, as the case may be, such causes of action unless they are granted relief from the automatic stay by the bankruptcy court presiding over the Chapter 11 case. 11 U.S.C. §362.

[5]The "single asset real estate" case amendments were made by Congress in response to filings of single asset cases of questionable good faith, usually filed after foreclosure proceedings have been initiated, with slim likelihood of reorganizations which amounted to nothing more than delay tactics. See In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986) for further discussion.

[6]In light of the "later of" language, a debtor should carefully consider if and when it should file a motion for a determination that the debtor

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is not subject to SARE. A lender should not file a motion for relief from the automatic stay until after the 90 days/30 days (as may be applicable) because it will likely be denied prior thereto.

[7]See e.g., In re Kkemko, Inc., 181 B.R. 47 (Bankr. S.D.Ohio 1995) (court held that a marina is not a SARE because it sells concessions and gas and stores, repairs and winterizes boats), In re Club Golf Ptnrs., L.P., WL 1176010 (Bankr. E.D.Tex., 2007), In re CBJ Development, Inc., 202 B.R. 467 (9th Cir. B.A.P. 1996), and In re Prairie Hills Golf & Ski Club, Inc., (255 B.R. 228, Bankr. D.Neb. 2000) (court held that debtor which develops and sells residential lots, constructs and maintains roads to golf, ski and residential areas, mows grass and removes snow from the golf course and residential areas, develops the golf and ski areas, sells liquor in the clubhouse, and leases the golf and ski facilities to a third party is not a SARE estate). In comparison, for a very broad determination of SARE, see In re Kara Homes, Inc., 363 B.R. 399 (Bankr. D.N.J. 2007), in which a bankruptcy court held that a debtor and its subsidiaries involved in the acquisition of developable land and development, design, marketing and sale of multiple single-family residences qualified as a SARE case.

[8]11 U.S.C. §363(a).

[9]Upon request by a party with an interest in non-cash collateral, a court must prohibit or condition use of such non-cash collateral as is necessary to provide adequate protection of such interest. 11 U.S.C. §363(e).

[10]First day pleadings are pleadings filed concurrently with a voluntary petition for relief under the Code.

[11]Perfection of rents in this manner typically takes the form of a recorded assignment of leases and rents, either as a separate document or in the related mortgage or deed of trust.

[12]See Collier on Bankruptcy, 15th Ed. Rev., P363.03(3)(b)(i); see also Great-West Life & Annuity Assurance Co. v. Parke Imperial Canton, 177 B.R. 843 (N.D.Ohio 1994).

[13]The change with respect to perfection was effected by deleting the reference to "applicable nonbankruptcy law." Prior to enactment of the 1994 Act, in Butner v. United States, the United States Supreme Court held that whether a security interest in property extended to rents derived therefrom should be decided under state law. Butner v. United States, 440 U.S. 48 (1979).

[14]The change with respect to 1979hotel revenues was effected by adding "fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties" as being subject to a prepetition security interest to the extent provided in the underlying security agreement. §552(b).

[15]It should be noted that a security interest should be properly perfected in order to maintain priority to other potential claims.

[16]Purchase and sale agreements and collective bargaining agreements are executory contracts but are discussed in the following sections.

[17]Although "executory contract" is not defined in the Code, the definition by Professor Vern Countryman is commonly accepted and expressed as: "A contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." Countryman, *Executory Contracts in Bankruptcy, Part 1, 57* Minn. L. Rev. 439, 460 (1973).

[18]Similar but specific provisions apply to unexpired leases.

[19]Certain types of contracts (loan agreements, secured transactions, personal contracts, and leases and other contracts that have terminated prior to entry of the order for bankruptcy relief) may not be assumed. 11 U.S.C. §365(c).

[20]Administrative expense claims are postpetition claims afforded higher priority in the payment scheme that are prepetition general unsecured claims.

[21]See In re High Country Resorts, 94 B.R. 193 (Bankr. D.N.M. 1988); In re Kendall Grove Joint Venture, 59 B.R. 407 (S.D.Fla 1986).

[22]See In re Alexander, 670 F.2d 885 (9th Cir. 1982); In re Kane, 248 B.R. 216 (1st Cir. B.A.P. 2000).

[23]However, in many cases, an owner-debtor is probably in violation of other PSA terms (such as CC&R violations or construction completion dates) which may cause the nondebtor purchaser to have the right to terminate.

[24]A debtor cannot "unilaterally terminate or alter any provisions of a [CBA] prior to compliance with the provisions of [§1113]." 11 U.S.C. §1113(f).

[25]As assumption is only discussed briefly in §1113, some courts have held that assumption of a CBA can only be accomplished in accordance with §365. See In re Family Snacks, Inc., 257 B.R. 884 (8th Cir. B.A.P. 2001).

[26]See In re Anchor Resolution Corp., 197 F.3d 76 (3d Cir. 1999); see also Glass, Molders, Etc. v. Owens-Illinois, Inc., 758 F. Supp. 962 (D.N.J. 1991); see also In re CF&I Fabricators, 163 B.R. 858 (Bankr. D.Utah 1994).

[27]In re Landmark Hotel & Casino, Inc., 78 B.R. 575 (9th Cir. B.A.P. 1987).

[28]The proposal must: (a) be based on the most complete and reliable information available at the time of such proposal; (b) provide for those modifications in the employee benefits and protections that are necessary to permit the debtor reorganization; and (c) assure that all affected parties are treated fairly and equitably. 11 U.S.C. §1113(b)(1).

[29]The priority amount of such type of claims is periodically increased.

[30]For example, if an employee has a $5,950 wage claim and a $9,000 employee benefit plan contribution claim, he would be entitled to priority with respect to the entire amount of the wage claim and $5,000 of the plan contribution claim (total priority claim of $10,950) and the $4,000 plan contribution claim balance would be treated as a general unsecured claim.

[31]The purpose of the WARN Act is to provide "protection to workers, their families and communities by requiring employers to provide notification 60 calendar days in advance of plant closings and mass layoffs. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market." *20 C.F.R. § 639.1(a).*

[32]For example, if an employee was terminated 10 days prior to a bankruptcy filing, should the 50 days of the total 60 day claim allowed under the WARN Act be entitled to administrative expense priority?

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[33]See In Re Kitty Hawk Inc., 255 B.R. 428 (Bankr. N.D.Tex. 2000).

[34]11 U.S.C. §503(b) is, in pertinent part, as follows: "(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under §502(f) of this title, including--

(1) (A) the actual, necessary costs and expenes of preserving the estate including--
(i) wages, salaries, and commissions for services rendered after the commencement of the case; and
(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title".

[35]In re First Magnus Fin. Corp., 390 B.R. 667 (Bankr. D.Ariz. 2008). The holding in this case depended in part on the statutory interpretation of the word "and" joining §503(b)(1)(A)(i) and §503(b)(1)(A)(ii).

[36]The Ninth Circuit includes California, Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam and the Northern Mariana Islands.

Rick's RRReview

By Rick S. Kirkbride
(the "wanna be" hotel, restaurant, golf course, spa, and anything with a liquor license critic)

As some of you know, not with the intention of imitating Steve Rushmore (if you don't know about his decades long passion for writing about "roadside cafes," Google him!), I write reviews of hotels and resorts in which I've stayed or visited. But I do so not because of Steve but instead because of a person and a particularly sad plane ride I took though Asia some years ago.

Those of you who have known me for at least five years now will surely remember the events that occurred during HICAP culminating when I learned of the death of a beloved associate in our RR&R Practice Group while walking the dark but pungent streets of Viet Nam. I will never forget the sights, sounds and smells of that evening, and on a lonely flight the next day that was essentially an emotional roller coaster traveling against time from Tokyo and Shanghai (all made even more dramatic by listening—at full volume—to Jodi Mitchell's "Travelogue"), I was inspired to not only write in his memory in the then edition of the Hospitality RRReport, but also to slow things down a bit and write about the other people, places and things I see while traveling the world in this sometimes crazy but all beautiful business of ours (by the way, if you don't believe me, the next time you are on a long flight and sad—or at least drunk—and alone, put your iPod buds in or your Bose headset over your ears, play "Travelogue"—or better yet her more recent "Both Sides Now"—and try, just try, not to pour your heart (if not your eyes) out to your often time best friend Mac!).

In any event, I'm not particularly sad (nor drunk) on this flight and even though I'm not writing to review any of the hotels in Dubai that we just visited while attending the Arabian Hotel Investment Conference (you will note that the only time I have to write these is on those long plane rides when I run out of work!), I continue to be shocked by the sheer size and scope of what continues to develop in not only Dubai but now in Abu Dhabi.

This was my fourth trip to Dubai in as many years and the landscape makes CityCenter in Las Vegas (which is the largest private development in U.S. history) look like a small corner of a large city…with the entire city simultaneously under development. In fact, Dubai is a much larger development than all of Las Vegas, and to be much much larger…all of which is being developed in space of not more than ten years.

But frankly, few works can even begin to describe what you will see, and you can understand it only if you see it with you own eyes (preferably after Atlantis and the tram down the trunk

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of the Jumeirah Palm and perhaps the almost 200-floor Burg tower are open—Atlantis and the tram are supposed to open this fall and the Burj tower sometime next year).

If you want to read my review of the iconic and definitive Dubai hotel (Burj al Arab), see the last Winter/Spring edition of the Hospitality RRReport. As to this trip and this article, I would rather continue my globetrotting and be brief re Dubai hospitality. Let's just say that each and every hotel that you see is simply bigger and more extravagant than the last hotel you visited of the same brand.

On this trip we visited both the Jumeirah Emirates Towers and the new Raffles Hotel & Resort (at Noble House), neither of which is beachfront but both of which are located in major business and shopping districts. For pure business but with location, service and amenities that are second to none, and particularly if you have not stayed at a Jumeirah hotel before, try the Jumeirah Hotel located within the Emirates Towers. But if you want to be in a business district but yet with dramatic architecture and design, superior service, food and shopping, try Raffles.

Although Abu Dhabi is a more conservative culture and religion, the younger members of the ruling family are planning a landscape no less dramatic and perhaps even larger in size and scope, so it will be very interesting to watch and know that the hotel brands have yet another playground of no-holds barred (including, apparently, at least with regard to construction costs) development and operations.

Working back in time, however, my trip after HICAP this past year took us to Cambodia (we tried to visit Laos as well, but don't even think about it on a three day excursion), a place and time even more distant from our recent trips to India and Vietnam, and a place living in an entirely different millennium from the sophistication and precision of nearby Singapore.

Actually, although the roads leading from the airport to the main city are all what you would (or would not) expect them to be, and although the city itself is as raw and gritty as any third-world countries you might have visited, there are four hotels near the center of town that individually and collectively are as sophisticated as any in Singapore and as lovely, indigenous, zen or "W"-like (with apologies perhaps to all involved, but for lack of any better description of a genre, I will stick to the "W" analogy).

And each of them, as noted above, are completely different and only one will fit your personal taste and style.

First, and the easiest to describe, is Raffles, a hotel that essentially recreates the same original and historic ambiance of its big brother in Singapore but of course in the middle of an urban jungle (no, not like the streets of LA; think a lovely hotel in the middle of a small dusty town which itself is located in the middle of a jungle!).

Second and my favorite hotel (and for an experience that felt as connected to the natural habitat surrounding the resort but with a level of service and sophistication no less than the others), was the La Résidence d'Angkor. Perhaps it was the extensive use of indigenous redwoods throughout, or the early evening cocktails

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on the open air seating areas that look out over the large swaths of rain forest both near and far, or the pitter patter of the gentle rains bouncing off the thatched roofs while we slept, but it just felt right (and, by the way, it was the least expensive of the bunch) for the location.

Third was the Amansara, very zen-like and otherwise everything you would expect from an Asian Aman experience (if you've never stayed at an Aman, make your first visit to the Amansara in Turks & Caicos, it is the most refined of all Amans to date and there is nothing like it in the world).

Finally, and the hotel which was by far the most surprising, was a hotel owned and operated by a local group. Although I really enjoyed my stay at Amansara, if I had to go back or elect to have a "W" - like experience but interpreted with Asian flavors and themes, supported by stylish but yet superb dining, spa and other amenities, I would stay at Hotel de la Paix.

Of course, outside of each and every one of these establishments is a three wheel "tuk tuk" that will instantly transport you back to the dirty streets and somewhat surreal life most live in this part of the developing world (although a small taxi will eventually take you and your limited luggage back to the airport…I say limited as I know you follow my rule of "no checking" "no matter" how long the trip!).

We are about ready to land in Los Angeles…that other jungle. To finish is just to say that wherever you are and whatever your station in life, you must see the world and see it with passion and open eyes. I hope in my own little way my reviews will not only help but also inspire.

Paul Hastings is proud to have our Leisure & Hospitality Practice ranked as one of the top two practices in the nation by Chambers USA 2008.

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The Firm: When it comes to hospitality matters, Paul Hastings continues to impress sources with its dedication to the sector. The firm houses a committed team that concentrates on the owner side of the market. It regularly acts for buyers, sellers and developers in everything ranging from the acquisition and sale of companies to the leasing and operation of properties. The group's client list includes private equity and capital market funds, in addition to numerous boutique hotel brands. Aided by its international network of offices, the team carries out work on both global and domestic scales.
The Lawyers: Los Angeles-based Rick Kirkbride receives a wealth of positive feedback regarding the strength and depth of his practice. Said to have "a determined approach to negotiations," he is valued for his "ability to always get the deal done." Kirkbride has regular speaking engagements at seminars and conferences, and enjoys a varied practice dealing with all manner of leisure entities, including hotels and restaurants, golf clubs and amusements parks. He manages projects across the globe and is currently handling assignments as far apart as Dubai and Las Vegas.

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