

Travel, Tourism and Hospitality Law

Y
NEWS

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(Travel, Tourism and Hospitality Law) of the
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Hotels in receivership

This session, which was extremely well attended, offered a fascinating insight into the highly complex financial and business relationships which underpin the modern hotel enterprise.

Redress for consumers and tour operators

Representing Committee Y was Laura Christa, Christa & Jackson, Los Angeles, USA, who spoke on the repercussions for tour operators and consumers of hotel bankruptcy. In particular, she contributed to the debate on the issue of whether existing reservations could or would be honoured when the hotel went into receivership. For instance, in some markets, especially where heavy demand is anticipated such as during the spring break in Florida, popular convention months in Las Vegas or the autumn months in New York City, tour operators purchase large blocks of rooms. If those rooms are suddenly unavailable, the consumer, under the European Package Travel Directive, typically can look directly to the tour operator for redress. Under various state statutes, the same is true in

general in the US. But the tour operator is likely to look to one or more of the parties for redress, including tort type damages if it can sustain a claim of mishandling of the funds.

Questions from the floor

The other speakers were Peter Andersen (Dragsted Schluter Helmer Nielsen, Copenhagen, Denmark), Mark Broude (Schulte, Roth & Zabel, New York, USA), Gary Duval (Graham & Dunn, Seattle, USA) and Steven Goldman (Marriott International Inc, Bethesda, USA), who also answered a number of questions from the floor. Issues arising included:

- If forced into insolvency and/or if consumers have to look to a tour operator's bond to recover damages, could the claims of the bondholder be subrogated to permit the bondholder to go after one or more of the parties?
- Can the tour operator go after the franchisor if the franchisee is insolvent?

On the other hand if the parties decided to honour reservations, but the brand of the hotel changes, what issues are raised?

- What obligations will the new franchisee have to honour certificates earned for free stays at the previously branded property? What disclaimers are in place to permit the reflagged property from having to honour such certificates? Before reflagging, the parties will want to negotiate some accommodation to avoid alienating consumers.

Also discussed was how does the reflagged property make up for the fact that the room it provides may nevertheless not provide the frequent stay benefits that the prior franchisee did?

- Would there be an obligation to direct those reservations to a property operating under the original brand (if available in the vicinity) that will provide those benefits?
- More than likely, the new franchisee would not be obliged to provide more than the room, but the previous franchisor would be likely to suffer a loss of good will and potential claims.
- Presumably, the handling of future reservations that include frequent stay benefits should be addressed in negotiations between the parties prior to reflagging.