

# Hospitality Brief

A Quarterly Newsletter on the Hospitality Industry

## Jan's Journal

### Owner Management Contracts

A management contract by definition is an arrangement under which operational control of an enterprise is vested by contract in a separate enterprise which performs the necessary managerial functions in return for a fee. What the definition doesn't include is the part that says management contracts involve not just selling a method of doing things but involves actually doing them.

When you turn the keys of your hotel over to a management company, you have the right to expect that the property will be competently operated. I define competence as the ability to maximize long-term revenues while minimizing long-term expenses. While most hotel management companies are able to operate in accordance with this definition, what do you do when your operator does not? Hopefully you have included one or more performance clauses within the management contract, which will enable you to terminate the operator and find someone who will do a better job.

Most hotel management companies will not voluntarily include a performance clause within their standard contract. This provision usually comes at the insistence of the owner and generally requires intensive negotiations to structure a workable arrangement whereby the hotel owner is protected and the management company has a performance standard that is fair and related to events and circumstances that are controllable.

Hotel management contract performance clauses typically contain four components: the criteria standard; an

implementation period; ability for operator to cure; and exceptions to termination. But which of these components, if any are insurable? Further...are they insurable for the owner or the operator or both? Three very good questions and three very good reasons to make sure your legal counsel is very carefully scrutinizing the contracts and that you are working with your insurance broker to procure the answers before finalizing them.

In addition to the insurability issues surrounding the performance clause, owners and operators must also consider the indemnification provision of a hotel management contract. Indemnification is usually attempted to deal with third party claims such as those brought by guests (for lost property or injury), governments (e.g., liquor license or fire & safety violations), or employees (sexual harassment or wrongful termination). It identifies when and how the owner will be responsible for a claim against the manager, and when the manager will be responsible for a claim against the owner.

But what does the indemnification provision do that isn't included in the rest of the contract? It may alter or reverse the "normal" result in third party claims.

In about 80%-90% of current hotel management contracts, the manager is technically and legally the "employer" for the hotel's employees -- the hotel staff and management are on the official payroll of the manager or one of its subsidiaries, and the manager recruits, hires, fires, trains and supervises the employees.

If an employee filed a claim against the manager for discrimination or sexual harassment, the employer would normally be responsible for such claims. After all, it is the employer. But a common indemnification provision might say that the owner has to indemnify

### In This Issue:

- Jan's Journal – Owner Management Contracts
- Upcoming Conferences
- Slip, Trip and Fall Prevention
- Supplier Financial Viability Services

the operator against any such claims by employees. Many owners find this extraordinary, inasmuch as any wrongful action would most likely be caused by the manager itself.

The theory of such a common indemnification provision by the owner of the manager is that "the manager is not paid enough to assume this kind of liability." The manager feels that it is just acting as the agent of the owner as an accommodation to the owner, and the owner should pay for all employments cost, benefits, and even such legal claims.

In the end, the terms of the hotel management contract typically govern the relationship of hotel owner and operator for many decades and are hard to change once cast. It is for that reason, that they should not be entered into lightly or unadvisedly.

For further information, please don't hesitate to contact a member of Marsh's Hospitality & Gaming Practice.

*Jan Schnabel, global leader for Marsh's Hospitality & Gaming Practice*

# Hospitality Brief

## Hospitality Brief

Volume 6, No. 3  
Third Quarter 2009

Quarterly Newsletter published for Marsh's hospitality and gaming clients, covering the hotel, resort, restaurant, and gaming industries.

### Marsh's Hospitality & Gaming Practice

#### United States

**Janice L. Schnabel**  
Practice Leader  
Portland, Oregon  
503 248 6490  
Janice.L.Schnabel@marsh.com

**Tanya L. Penner**  
Growth Knowledge Manager  
Portland, Oregon  
503 248 1233  
Tanya.L.Penner@marsh.com

**Julie A. Engebretson**  
Hospitality Placement Advisor  
Wausau, Wisconsin  
715 298 2043  
Julie.Engebretson@marsh.com

#### Canada

**Brian A. Biddle**  
Practice Leader  
Vancouver, Canada  
604 692 4877  
Brian.Biddle@marsh.com

#### Mexico

**Francisco Troncoso**  
Practice Leader  
Cuauhtémoc, México, D.F.  
52 555 999 4499  
Francisco.Troncoso@marsh.com

The information contained in this publication is based on sources we believe reliable, but we do not guarantee its accuracy. This publication provides only a general overview of subjects covered, should be understood to be general observations based solely on our experience as insurance brokers and risk consultants, is not intended to be taken as advice regarding any individual situation, and should not be relied upon as such. Statements concerning medical and/or legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as medical and/or legal advice, which we are not authorized to provide. Insureds should consult their own qualified insurance, medical and/or legal advisors regarding specific coverage and other issues. All insurance coverage is subject to the terms, conditions, and exclusions of the applicable individual policies. Marsh cannot provide any assurance that insurance can be obtained for any particular client or for any particular risk.

© 2009 Marsh Inc. All rights reserved  
MA9-10280

## Hospitality Quiz

See if you know the answers to these hospitality quiz questions. (Answers are provided on the last page.)

1. Do listing prices without dollar signs increase sales?
2. What is the single largest category of property crime in America?
3. How can restaurant operators leverage on-line ordering?
4. How is the recession affecting restaurant consumption patterns among kids?



## Upcoming Conferences

As members of the American Hotel & Lodging Association, the National Restaurant Association, the International Franchise Association, the Asian American Hotel Owners Association, the National Indian Gaming Association, the Hospitality & Gaming Practice wants you to know about upcoming conferences and meetings:

- The Lodging Conference  
Phoenix, AZ  
September 22-25, 2009
- World Waterpark Association  
Annual Conference  
Walt Disney World, FL  
October 22-23, 2009
- International Hotel/Motel  
& Restaurant Show  
Jacob K Javitz Convention Center, NYC  
November 7-10, 2009
- Restaurant Finance &  
Development Conference  
Las Vegas, NV  
November 9-11, 2009
- G2E - Global Gaming Expo  
Las Vegas Convention Center  
November 17-19, 2009

## Did you know?

Running a water faucet for five minutes uses nearly as much energy as running a 60 watt light bulb for 14 hours.

Source: National Restaurant Association

## 12 Common Mistakes in Slip, Trip, and Fall Prevention

Slips, trips and falls are routinely one of the top causes of injuries in workplaces. They also subtract from a company's bottom line due to medical and workers' comp insurance, lost productivity and retraining costs.

Here are 12 common mistakes made by companies when it comes to slip, trip and fall prevention:

**Mistake #12:** Starting from scratch. There's no need to. One place to start: consensus standards, such as ASTM's Practice for Safe Walking Surfaces and ANSI's Standard for the Provision of Slip Resistance on Walking/Working Surfaces.

**Mistake #11:** Missing the opportunity to control walking style. Employees need to be reminded not to run and to keep their eyes on their walking path, especially while carrying items.

**Mistake #10:** Relying on ineffective measurements. Best practice: Test flooring as it will be installed and used, under expected conditions (including wetness).

**Mistake #9:** Short flight stairs and other elevation changes. Stairs with three or fewer steps need to be marked with contrasting color to other walking surfaces and be well lit. Seriously consider eliminating any change in level that's 1/4 inch or greater.

**Mistake #8:** Footwear. Shoes meant for both indoor and outdoor working conditions may not provide the best protection against slip, trips and falls in either circumstance because of their design compromises. Shoe features that need to be considered are: tread pattern, tread composition, sole height, support, lacing and adjustment method.

**Mistake #7:** Ignoring pre-loss indicators. Slippery floors often lead to a lot of near-misses without injury before an incident



with injury occurs. Attention needs to be paid to near-misses.

**Mistake #6:** Less than adequate housekeeping. Any slip, trip and fall prevention program needs to include a serious statement of commitment to keeping walking/working surfaces clean.

**Mistake #5:** Relying on single-factor solutions. While it may seem prudent to focus on the largest potential cause of slips, trips and falls in a particular facility, secondary factors shouldn't be ignored after the primary one is addressed. Example: If a floor's finish is addressed, the facility should still look into floor treatments, footwear, warnings and spill response.

**Mistake #4:** Unresponsive contaminant control. Contaminants aren't just chemicals. In some facilities they may be weather-related or food. Elimination of the contaminant should be considered first, followed by reduction and then dealing with the contaminants once they're present.

**Mistake #3:** Lack of proper cleaning procedures. Problems with cleaning range from poor spill response to improper daily cleaning to insufficient or nonexistent deep cleaning.

**Mistake #2:** Selecting flooring inappropriate for the application. If a flooring sample can be installed to test under actual conditions, that's ideal. If that's not possible, find other examples of similar installations to yours.

**Mistake #1:** Lack of proper follow-up. Selecting the proper flooring and establishing policies to prevent slips, trips and falls are the right places to start. But policies must be reinforced and updated if necessary. Companies should follow up on near-misses as well as injuries.

*Reprinted with permission from David Natalizia, Dynamic Safety Inc., Castle Rock, CO, [www.dynamicsafety.com](http://www.dynamicsafety.com), 800-558-5003.*

**Marsh Solution:** So "step" into action...create your own Slip Trip Elimination Program. Outlined below are a few "steps" you can take to minimize or even eliminate slip and trip hazards.

Stop the floor from getting wet or slippery to begin with.

1. Maintain equipment to prevent leaks.
2. Make sure you have a system in place for prompt reporting of equipment leaks or breaks that could cause water, oil or other fluid leaks.
3. Don't allow things to boil over – be sure to clean them up immediately when they do. Use lids or covers when transporting liquid substances.
4. Remember...ice melts!
5. Make sure that routine cleaning times don't interfere with busy or production times.

Deal with wet or contaminated floors that do occur.

1. Clean up spillages immediately. This includes spills in both the front and back of the house.
2. Don't leave wet floors wet after cleaning – clean them to a dry finish if possible.
3. If a clean-to-dry finish is not possible, be sure to use wet floor signs or cones to keep people out of the area until the floor is completely dry.
4. Use cleaning methods that don't spread the problem. Small spills are typically better dealt with using a paper towel rather than a mop.

5. Make sure mop buckets are emptied after each use to avoid spreading dirty, cold water over an already slippery area.

Recognize and eliminate tripping hazards.

1. Practice good housekeeping and inspect floors for holes, damage or uneven surfaces such as loose or broken tiles.
2. Highlight any level changes to make them more obvious.
3. Use high-visibility paint or zone tape to highlight edges or sheer drops.
4. Make any slopes or ramps as gradual as possible and clearly visible.
5. When using or ordering mats, when possible, make sure you choose widths and lengths to fit the area. Otherwise, make sure that they are cut to fit the area, including cuts to fit kitchen equipment, table legs, drains, etc.

In summary, keep in mind... most slip injuries happen on wet/greasy floors; most trip injuries are due to poor housekeeping. Having a plan in place to deal with both of these problems will go a long way to prevent them, even when the pace of work increases.

Slip and trip injuries may statistically be among the most common in the hospitality industry but putting into place the solutions outlined above will help your company avoid becoming a part of that statistic.

## Supplier Financial Viability Services

The challenging economic environment leaves firms vulnerable to financially distressed suppliers and customers throughout the world. As businesses reassess the value of their hyper-extended supply chains, they should have a strong understanding of the ability of their customers, suppliers, and their suppliers' suppliers to meet their contractual obligations.

For hospitality industry companies, the sudden, unexpected loss of a key supplier can cause significant lapses in service, triggering short term profit reductions. More importantly, the often overlooked problem is the permanent loss of customers – guests choosing to seek alternative lodging accommodations in the future, patrons dining at other restaurants, etc. – due to service issues created by a break in the supply chain. Permanent customer losses can damage the business' reputation and thus reduce the value of the business' brand and hurt its customer relationships. Since a hospitality company's two primary intangible assets are its brand and customer relationships, any drop in either of these asset values can lead to decreased cash flow and a reduction in shareholder value.

Financial viability assessments often are a critical first step in a company's efforts to improve its supply chain literacy and resiliency. Given some of the recent, unexpected failures of key trading partners experienced by many firms, organizations should consider measuring net asset value to evaluate the financial viability of a supplier or customer instead of the traditional approaches to vendor liquidity assessments and customer credit screening. Measuring net asset value typically provides the best insight as to a company remaining a viable operating entity.

To help clients assess their supply chain, Marsh Risk Consulting's (MRC's) Valuation Services and Supply Chain Risk Management practices offer a solution that incorporates a range of financial viability measures which are customized to fit a company's specific requirements. An initial high-level screening of a large number of suppliers or customers can help identify potential problems while quickly measuring hundreds of trading partners. Utilizing minimal data and basing the analysis on revenue multiples that reflect fair market value, this approach can be performed expeditiously, with little intrusion to suppliers and customers. If the high-level analysis indicates potential viability issues for some suppliers or customers, a subsequent step can be implemented in which a full valuation of the identified suppliers or customers is performed to assess financial viability.

Typical steps in implementing a high level analysis include:

- Identification of key suppliers;
- Collection of revenues, earnings before interest and taxes ("EBIT"), and debt from each supplier;
- Selection of comparable companies based on factors including business description, geographic location, etc.;
- Regression analysis of the EBIT margin and implied revenue multiple for each comparable company;
- Application of revenue multiples to each supplier based on the results of the regression analysis and the supplier's EBIT margin;
- Estimation of enterprise value based on the product of the applicable revenue multiple (based on the regression analysis) for each supplier and the supplier's revenue; and

- Comparison of the enterprise value to the level of debt.

Once the analysis is complete, suppliers are categorized as one of the following:

- Pass – enterprise value exceeded debt by 20 percent
- Borderline – enterprise value exceeded debt by less than 20 percent
- Fail – debt exceeded enterprise value

MRC's designed approach can be flexible to adapt to the client's specific facts and circumstances, and can be applied in a variety of situations, including:

- As a stand-alone assessment of the financial viability of suppliers and customers
- As a complement to existing financial viability measures
- In support of a firm's efforts to procure and structure trade credit insurance
- As an independent evaluation of customers' ability to satisfy accounts payables

The global downturn in the economy has caused organizations worldwide to closely scrutinize trading partners and the traditional approaches to measuring financial viability; taking a new approach to an ever expanding problem by using a value-based approach could provide a useful tool in this effort.

*For more information on Marsh's supplier/customer financial viability solution, contact Phil Antoon, MRC's Valuation Services Practice Leader, at 212.833.3300 or Gary Lynch, MRC's Supply Chain Risk Management Practice Leader, at 212.345.6053.*

## Quiz Answers

1. Yes. Diners spent more money when menu prices were listed as just a numeral compared with when prices were listed with a dollar sign or spelled out with the word "dollars," according to a Cornell University study. "Dollars" or the dollar sign reminded people they were going to be spending money.
2. Theft by employees. During the current economic downturn, as salaries fail to keep up with inflation levels, people have less money available for everyday items such as food and fuel, and then resort to stealing. But many employees who are caught are fired from their jobs but aren't criminally prosecuted. Source: USA Today.
3. On-line ordering is taking over the restaurant industry as another way operators can add brand value. According to a recent survey by Food Action Group, 87 percent of consumers said they plan to use the service more. Fifty-six percent of respondents said they use the service because they are time strapped while 24 percent said they prefer the service because it alleviates having to leave a tip. On-line ordering gives consumers the ability to order food without the hassle of telephone calls, and the service caters to a generation that favors Internet communication. Source: Fast Casual.
4. According to new data from The NPD Group's Consumer Reports on Eating Share Trends (CREST), Children are eating fewer meals that include toys and ordering less from children's menus (orders for meals including a toy declined by 11% and kids' menu orders declined 4%, while combo meals were down just 2% and 99-cent value meals increased by 9%). That's partly because people are eating out less overall (traffic for parties with kids declined by 5% during the three months ending in February 2009 compared to the same period last year), but also because children are developing more sophisticated tastes.