

## EVENTS

### ALIS Returns To its Century Plaza Roots

More than 1,400 hotel industry owners, operators, brand executives and dealmakers will be at the second Americas Lodging Investment Summit on Jan. 27-29 in Los Angeles. This year's event will be held at the Century Plaza Hotel & Spa and St. Regis Hotel & Spa, site of the former UCLA Hotel Investment Conference, a forerunner to ALIS.

The conference will combine education, discussion and networking, along with a little Hollywood pizzazz. Among the highlights:

- A keynote luncheon speech by Barry Diller, chairman and CEO of USA Interactive.
- ATM-ALIS Talks Money, a session on where to find capital;
- ALIS University, a tutorial by 10 authors of the soon-to-be released *Hotel Investments, Issues & Perspectives*;
- ALIS Awards to honor transactions of the year;
- Special appearances by Bill Marriott and Las Vegas mogul Steve Wynn;
- ALIS on Ice, a unique fundraiser for hotel education.

The conference will feature more than 50 sessions and 150 speakers. Sponsors are the American Hotel & Lodging Association and Burba Hotel Network. For more information, go to [www.ALISconference.com](http://www.ALISconference.com)

## FRANCHISE & MANAGEMENT LAW

### How to Avoid the Nightmare of Litigation



**Barrett-Cuetara:**  
*Solve the critical issues upfront.*

Every hotel owner, franchisor and operator wants to avoid the ultimate nightmare—litigation. Not only is litigation costly and personal to each side, but it can be very time-consuming. How can you avoid or at least minimize litigation? Avoiding litigation is never guaranteed, but full disclosure by both franchisor and hotel operator goes a long way to reduce the risks.

In the context of a franchise agreement, while many issues are ripe for litigation, one important topic relates to conversions of hotels from one brand to another. If the franchise agreement provides the franchisee with the right to open the hotel upon “substantial completion” of the renovations, do the parties actually know when the hotel may open?

Does substantial completion mean 100 percent of the improvements must be completed before the hotel may open? Does it mean 80 percent? Unless they both define the term “substantial completion,” chances are a franchisor and franchisee will differ on a hotel’s opening date. The owner will want the hotel to open as soon as possible to generate cash flow. To ensure brand standards are met, however, the franchisor could insist that substantial completion means all improvements are complete before the hotel can open under the new flag.

Another issue concerns a franchisor’s obligation under the franchise agreement to generate a percentage of annual gross room revenues from its reservation system for a franchisee’s hotel. The question is whether only the franchisor’s reservation system will provide the gross room revenues or whether the franchisor can include in the calculation reservations made through the global distribution system.

Disputes may arise if the franchisor wants to use GDS reservations towards its annual gross room revenue obligation. If this provision is unclear, a franchisee might seek to terminate the franchise agreement without the obligation of a termination fee.

In the arena of hotel management agreements, the famous Woodley Road case continues to be a hot issue. In that suit, the hotel owner alleged that the operator took rebates and/or commissions from vendors without disclosing or distributing pro-rata shares to the owner. In other words, the owner claimed the operator “obtained secret kickbacks,” engaged in “accounting irregularities” and concealed such practices from the owner.

Although operators may feel justified in taking rebates and/or commissions from vendors, arguing that bulk-buying power of multiple hotels managed by the operators reduces the per-unit costs to owners, a jury may find otherwise. A jury may find that not only did the operator breach the agency relationship between the operator (the agent) and the owner (its principal), but more importantly, the operator also breached the fiduciary duties it owed to the owner.

If a franchisor, hotel operator or owner wants to buck the trend of litigation, then these kind of controversial issues must be addressed on the front-end. ■■■

*Richard Barrett-Cuetara, Esq., is senior counsel to the Dallas-based law firm of Cowles & Thompson. Barrett-Cuetara has extensive experience in the hospitality arena, representing owners, franchisors, franchisees and hotel management companies in disputes throughout the U.S.*

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## CALENDAR

### JANUARY

- 24** First Annual Hospitality Law Conference, University of Houston Conrad N. Hilton College. Information: [www.hospitalitylawyer.com](http://www.hospitalitylawyer.com)
- 27-29** The Americas

- Lodging Investment Summit (ALIS), Century Plaza Hotel, Los Angeles. Information: [www.ALISconference.com](http://www.ALISconference.com)
- 28** HSMIA Travel Awards Night Dinner, Marriott Marquis, New York City. Information: [www.hsmia.org](http://www.hsmia.org)

- 28-30** 27th annual Hotel, Motel and Restaurant Supply Show of the Southeast, Myrtle Beach (SC) Convention Center. Contact: 843/448-9483
- 30-Feb. 1** Hotel Brokers International Annual Meeting, Aladdin Hotel, Las Vegas. Contact: 800/821-5191