

## INDUSTRY INSIDER

### Q&A with Todd Soloway Pryor Cashman LLP

By Stefani C. O'Connor  
*Executive News Editor*

Attorney Todd Soloway, a partner at New York City-based Pryor Cashman LLP, is chair of the firm's hospitality practice. The veteran litigator is a noted legal representative and counselor who has assisted numerous hoteliers and industry players both in the United States and internationally on a variety of legal fronts over the past decade, including Tishman Hotels, Vornado Realty Trust, HNA Hospitality, sbe Entertainment, Highgate Hotels, Chatham Lodging Trust, DiamondRock Hospitality Co., The Moinian Group, Eden Roc LLLP and Fel-Cor Lodging Trust Inc. An author of articles on issues of importance to the lodging industry, Soloway's purview also includes corporate deal-making, negotiation of management and franchise agreements and labor and employment matters.

Soloway also serves on the company's executive committee, heads the real estate litigation practice and is a member of the firm's litigation and real estate groups.

**Pryor Cashman has a long-standing reputation across a wide variety of practice areas and industries. What was the vision behind creating a hotel and hospitality practice and why is helming that practice appealing to you?** At Pryor Cashman, we pride ourselves on the entrepreneurial spirit that is embedded in the DNA of the firm. And the hospitality industry meshes perfectly with our culture. On a personal level, I have always been drawn to the practice areas where business and law intersect. And I pride myself—as does our hospitality group—on sound business judgment rooted in the philosophy that we are intently focused on helping our clients achieve their business goals through our legal representation. That is our unwavering vision, and I am convinced that the expansion of our presence as go-to attorneys in the industry is due to the fact that our clients appreciate and recognize our business-minded approach.

**From your perspective, are hoteliers more or less litigious than other groups?** I am not certain that they are any more or less litigious, but there are inherent issues in the relationships and the ongoing business concerns in the industry that lend themselves to dispute-resolution processes—both because of the sheer number of contractual relationships spun off of every hotel, the nature of the relationships between the parties, and because of the substance of the standard contracts employed. Frequently, owners are entrusting operators with substantial subjective discretion to run the owner's hotel;

the parties frequently have substantial sums invested and owners want to see return on that investment; and there are a veritable plethora of decisions to be made on a daily, weekly, monthly and annual basis that can become the subject of disagreement. This is fertile terrain for litigation.

**What legal (i.e., actionable) issues most often bring industry players to your doorstep?** We field a wide variety of issues every day. While our successful representation of the owners of the Eden Roc and the former St. Regis in Ft. Lauderdale has firmly ensconced us as the standard-bearer for owners who are disappointed with the performance of their operators and are seeking to hold the operators accountable by enforcing contractual rights, our footprint has expanded exponentially beyond that. The current trends include data-breach liability issues; labor and employment; ERISA (withdrawal liability is becoming an increasingly prominent issue); and because of our in-depth understanding of the contracts, our transactional presence is growing rapidly as we are called upon to handle transactions of every stripe: corporate M&A (consolidation currently abounds in the industry); acquisitions; dispositions; financing; and the negotiation of management and franchise agreements. We also have a large presence in the restaurant food and beverage space where we represent a who's who of restaurant groups and chefs. And, yes, a few of the more entrepreneurial brands have engaged us to represent them as well.

**Do you think the issues that face the hospitality industry have changed significantly over the past, say, five or so years? And if so, what do you think is driving those changes?** Yes, I think the issues have changed in large measure because the forces driving the issues have changed. Most recently, the merger between Starwood and Marriott has triggered a host of issues, including renewed focus on how operators can honor their fiduciary and contractual obligations while simultaneously serving so many different owners—and frequently in the same market. It also has triggered disputes relating to areas of protection (AOP) clauses and labor union organizing—and it also is setting off a wave of mergers with many more to come, in my opinion.

In addition, Airbnb has contributed another layer of complexity to the market. Hotel owners are suffering at the hands of Airbnb's hotel-by-another-name business model. And municipalities across the country are working to address the myriad issues that home sharing brings with it. These include, among other things, insurance coverage, housing shortages, violations



of local ordinances, tax collection and serious safety concerns. These issues, I believe, will continue to unfold over the coming years.

**The industry has been enjoying an extended period of robust performance growth and profitable returns. What sort of activity have you been seeing in terms of demand for the practice's services beyond a court action?** We have seen strong demand for our corporate services with a particular focus on mergers and acquisitions. No doubt there will be more mergers as the market attempts to scale up to meet the growing market share of Marriott and Accor. And with the seemingly unending parade of new brands every year, we are seeing a lot of activity in negotiating management and franchise agreements, often in conjunction with significant development projects.

**In general, has the proliferation of new/emerging brands created any significant legal issues for owners/operators vis-à-vis areas of protection, PIPs, etc.?** The most prevalent issues in dealing with new brands revolved around the supposed "standards" imposed by the brand; potential violations of AOP clauses; and whether these new brands have the personnel bench strength to perform up to the levels required and expected. As to the former, from both the owner's and brand's perspective, whenever a new brand is involved with a development or repositioning of a property, the parties need to know as precisely as possible the scope of the development standards, the costs of achieving those standards and, most important, if the standards are met, will the revenue justify the expenditure? Too often, that equation is figured out on the fly—and then it's too late.

Substantively, we have seen a number of instances where the brand looks exciting on the surface, but does not have the personnel to

carry out the job. This can lead to issues where owners feel that the brand is not meeting its contractual obligations through inadequate sales and marketing strategies, poor revenue management and reservation systems, extensive use of OTAs—all of which can have a negative impact on the bottom line.

**What should hoteliers, management companies, et. al., be on the lookout for at the federal level that may bring impact?** The elephant in the room is the presidency and immigration policy (including the EB-5 program). Time will tell if this puts a chill on travel, which will manifest itself in failed performance under these contracts—if performance is off, owners, managers and franchisors will be looking to each other for assistance under their contracts.

**Are there particular outside influencers you see creating churn on the legal front for the hospitality industry, e.g., hackers, increased home sharing, lawsuit-inclined guests, technology glitches, etc.?** What's your best advice on how to cope with all of this? Clearly, Airbnb, VRBO and the rest of the home-sharing businesses are disrupting the ordinary course of business. If owners and brands do not act aggressively to curtail illegal competition, then they should be prepared to suffer the consequences. There is very little doubt in this lawyer's mind that Airbnb's operations in New York City violate local law, but the question that remains is: Who will take them on?

With the advent of massive technology comes exposure for data-breach liability. All of the players are working through how to shift the risks of that liability through the relevant contracts and insurance coverage. I am sure these issues will continue to unfold as the case law and contract negotiations catch up with the times. **HB**