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HOTELS

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1. Airlines and Hotels

What may seem surprising at first sight - this juxtaposition of airline and hotels -, becomes somewhat less surprising when you take a look at the latest ranking by "Hotels & Restaurants International": Lufthansa Hotels (22 Hotels, 9240 rooms) moved up to rank 50 worldwide and to number one position in the Federal Republik of Germany

It is within their full service concept that Lufthansa provides services for all stages of the journey - and that - apart from flying, catering and rent-a-car - also includes hotel accomodation. There is a choice of

- international de luxe class (Kempinski, Inter-Continental)
- upper intermediate class (Penta) and
- a group of specially selected holiday hotels (Serena Lodges).

This symbiosis of airline and hotels is by the way not unique to Lufthansa. Just to name a few paralleles in Europe:

Air France - Méridien
KLM - Goden Tulip
Swissair - Swissôtel
SAS - SAS Hotels, Hamburg Plaza and a newly acquired
"proximity" to the Inter-Continental group via Seibu
Season

There are other hotel groups with airline participation , e. g.: Ramada, Westin, Hilton International. It looks as though Japanese investors, breweries and airlines are the three most expansive forces in the hotel business.

Not only can you effect your hotel reservation through the airline systems - most of you will be familiar with a variety of airline presence in those hotels: brochures, reservation offices, ticket and baggage check-in counters etc.

The degree of airline ownership in these hotels varies tremendously: some are wholly owned, in most of them the airlines have a share - either as owners or operators, some hotels are declared "partner hotels", some are just franchise operations.

It's really in this area where my interest in the hotel side starts and I have a dual interest:

first , as Director Corporate Insurance, I have to analyze the (economic) risk to Lufthansa that such an ownership may carry. Consequently we start by vetting every relevant contractual agreement i.r.o. insurance and liability aspects. We also have to advise on specific liability "environments" in certain countries. (I shall revert to this aspect lateron.)

second , as Managing Director of Albatros , the wholly owned insurance broking subsidiary of Lufthansa, I have to

- provide the respective hotels with risk management advice

- make sure that what insurance cover still needs to be taken out reflects the "state of art" conditionwise and is as reasonably priced as possible
- support the hotels in the case of claims

The fact that - as a broker - I retain the commission part of the insurance premium within the Lufthansa group is nice but not essential.

So, what can I possibly tell you about hotel insurance without running the risk of the "teach your elders to suck eggs" - syndrome. And we are pretty close to the reception by the Principality of Monaco.

I thought I would do two things: first, talk you through a very much "hands-on" check-list cum manual, then go into one of its elements in a more detailed way.

2. Hotel Insurance check-list/manual

We share the wide-spread horror of re-inventing the wheel every time around. So, we developed an insurance check-list for the hotel-related side of our business. As it is the nature of such lists,

- it provides a common talking ground between advisor and all the assureds,
- prevents oversights,
- avoids double insurance,
- saves time when an additional hotel or hotel chain is to be added to the fold and
- produces a certain uniformity for a specific branch of business. I am going to show you a very much condensed version of this animal, which in the beginning also serves as a risk questionnaire and - after the fact, some modifications and enhanced by a glossary - as an insurance manual for the hotel manager. In theory, that would not make it necessary to phone us on every insurance-related question that may pop up ...

see attached hard copies of visuals

3. Exemplary Class of Insurance (excess liability)

I would like to talk to you about one specific class of insurance in a more detailed way. I chose excess liability for one simple reason: it is more closely related to what I would like to call "the U.S. factor" than any of the other classes. By that I refer to the specific risk you run

- if you own or have shares in hotels in the U. S. or
- if the hotels outside the U. S. that you may be associated with have a substantial share of U. S. guests. (Experience has shown that Americans bring suit in U. S. courts, even if the event did not occur in the U. S.).

When the expansion of members of our hotel group took them to the U. S. we looked at the potential liabilities of the hotels as well as of the airline. Other European airlines were doing the same. Soon, we were sitting together with

their insurance managers and Marsh & McLennan in New York, looking at things. I can't say that I liked what I saw.

By the way, a great deal of this part of my presentation is based on Marsh & McLennan's findings and our discussions with them, so I would like to register my gratitude for that kind of support.

If people are killed or seriously injured in a hotel catastrophe, courts will look to recover large sums of money on their behalf. Those most able to pay are the most vulnerable. In addition, if there is inadequate insurance to cover the damage, compensatory or punitive, courts will look to any party even remotely connected with adequate insurance or assets ("deep pocket" theory)

Most European hotels - and indeed some U. S. hotels, too - have a certain level of self-insured retention (SIR) and a primary liability cover of up to say US \$ 3 - 5 million. Those in favour of luxury may even have an excess liability layer of a few more million \$.

For European conditions, that is usually quite adequate - until you start considering the "U. S. factor".

Four major hotel catastrophes in the U. S. illustrate the seriousness of the need for adequate insurance protection:

- MGM Grand, Las Vegas, 1980 (fire)
84 killed, more than 700 injured
At the end of the day over 450 lawsuits were brought, representing 1311 claimants - against MGM and 112 other defendants. These defendants included many who simply serviced the hotel or provided supplies. And it did not matter whether they had to pay any of the final sum, they all had to defend themselves:
 - defence costs \$ 15 million and
 - settlement costs \$ 110 million
- Stouffer's Inn, Harrison N. Y., 1980 (fire)
26 killed, 14 injured
 - defence costs \$ 5 million and
 - settlement costs \$ 48 million
- Hyatt Regency, Kansas City, 1981 (collapsed skywalks)
114 killed, over 200 injured
 - defence costs \$ 20 million and
 - settlement costs \$ 124 millionPayments were even made to those who were simply in the area at the time of the collapse, but who were not injured (mental anguish).
- Dupont Plaza, San Juan/Puerto Rico, 1987 (fire)
96 killed, over 200 injured
There have been numerous suits filed against almost 150 defendants. The hotel only carried US \$ 30 million in liability insurance. The final settlement could be as much as \$ 500 million. (Actual suits have been filed for \$ 1,8 billion).

Will this considerable exposure be reduced in the case of franchise agreements? Chances are, that neither the franchisor nor the owner will be better off - however, the number of potential defendants will presumably increase.

Three factors will determine whether, in the event of a catastrophe at a U. S. franchise hotel, the franchisor could be held liable by a U. S. court, and could be sued even outside of the U. S.

- agency
 - agency
 - jurisdiction
 - service of process
- agency: A franchisor can be held liable for the act of its franchisee, its agent (actual agency), or if it has created the appearance that the franchise is its agent (apparent agency).
- jurisdiction: When suits are filed after a catastrophe, the question will be raised as to whether the state has jurisdiction over the person or entity being sued.
The basis of decision to establish jurisdiction is, in brief, demonstrating that the entity has sufficient, continuous, purposeful activity in the state.
Many States have a mean to extend their jurisdiction, called "Long-Arm" statutes.
- service of process: A number of States provide methods of serving parties who are subject to their jurisdiction, but are located in foreign states or countries. In addition, the Hague Treaty provides a method of serving entities located in signatory nations.

Contractual provisions between franchisor and franchisee limiting liability will not be binding on third parties.

To close, one method to cope with this sort of liability environment is to buy excess liability cover over and above the existing (and hopefully uniform) SIR's and primaries. Obviously, buying such cover for a whole group or - even better - for a number of groups on a global basis provides a better purchasing power, more than likely broadens the coverage and reduces the premium burden per hotel.

That, in any case, is what a group of airlines did for their hotels.

Thank you for your patience.