

# Pandemic complicates contract talks with meetings venues

*Associations should be wary of making large deposits up front, push hotels to include terms obligating them to resell unused rooms*

By **Walt Williams**

In the wake of the COVID-19 pandemic, hotels, conference centers and other meetings venues are growing less lenient with cancellation and refund policies, meaning events organizers need to pay particular attention when negotiating force majeure and other contract language, according to consultants and attorneys.

The pandemic led to a costly flood of events cancellations last year that devastated hotels, restaurants and other businesses that rely on the industry. Now as business travel slowly picks up and associations negotiate contracts for future events, hotels and conference centers are doing what they can to minimize their risk.

“Hotels may have been a little more lenient last year because things were just so uncertain; we were in uncharted territory,” said Jennifer Collins, CEO of JDC Events, which provides contract negotiation services. But now hotels are being stricter about waiving or renegotiating contracts, she said: “It’s going to have to be another (government) mandate of some sort where it just makes it impossible for you to come into their states or their locality.”

Contract disputes can be costly for all parties involved. The Mechanical Contractors Association of America sued Hilton Worldwide Holdings, the hospitality company’s franchisor arm, in federal court last year after MCAA canceled a convention in Hawaii because of the pandemic. The association invoked force

majeure language in its contract to recoup more than \$1 million in room deposits for event attendees, according to the news site Law360. (Force majeure frees a party from liability when unforeseen or extraordinary circumstances prevent a contract from being fulfilled.)

The hotel was unable to pay so MCAA loaned it \$1 million for the refunds, but the venue reportedly kept the money and hit the association with an additional \$679,295 cancellation fee. The two sides are still in court.

Most associations negotiate venue contracts years in advance but the pandemic has cast a long shadow over future events. Hotels, for example, have lost more than 500,000 workers who are not expected to return before year’s end, according to figures released by the American Hotel & Lodging Association. That staffing shortage could have an impact on services.

“Something that you may not have seen before in the contract—that is now important to include—are clauses or some sort of language that really deals with, for instance, demand for adequate assurance of performance,” Collins said. “We want to make sure the hotels perform



Collins



Steinberg

and that they have the staff to perform for your meeting or event.”

Andrew Steinberg, an associate at the law firm Venable who works with nonprofit groups, said he is seeing more demand among both

associations and event venues for returning to in-person and hybrid events after more than a year of virtual conferences. And while most contracts for upcoming events were drafted years in advance, parties are returning to the table to modify terms for force majeure, financial commitments, and food and beverage, he said.

“There’s been a fair degree of flexibility and accommodation that recognizes the generally long-term nature of the relationships between parties in the event context,” Steinberg said. “A lot of organizations will return to the same venues year after year, or every few years, so there’s certainly a willingness to maintain good working relationships.”

As for events years out, many associations are holding off long-term planning given the uncertainty the pandemic has created, he said.

“Those associations may be waiting to see how things go,” Steinberg said.

## AVOIDING COSTLY EVENT CANCELLATIONS

The Institute of Internal Auditors has had to cancel more than 30 seminars, conferences and other events since the start of the pandemic. It has avoided being hit by cancellation fees because of strong force majeure language in its contracts. The group’s secret? For starters, don’t be a jerk.

“In many instances, you need to be a good partner,” IIA General Counsel Stanley Rubins told CEO Update. “When you are able to think ahead and have favorable language in your contracts and allocate the risk ahead of time, it definitely makes that conversation much, much easier.”

Rubins, who will give an Aug. 16 presentation on IIA’s experience with force majeure at the ASAE Annual Meeting, provided the following

advice to other groups about negotiating contracts with meetings venues:

- Many agreements fail to properly describe the event, which leads to problems down the road.

“For example, the Institute of Internal Auditors is an international association, and some of our big events have an international audience and international draw,” Rubins said. “If your contracts aren’t mentioning that this is an international conference, has a certain type of audience to it, it’s going to be difficult for you to enforce even good language within your contract.”

- Avoid generic force majeure language.

“It is very important for you to tailor (the language) to your event,” Rubins said. Be clear,

for instance, that parties agree to the conditions that would prevent attendees from coming to the event. “It’s really important to clarify ahead of time: Does that mean it’s impossible for them to attend? Impractical? What is the standard and make sure you agree to that.”

- Tie your events together when planning.

“If a convention center becomes unavailable due to the government taking it over (for a field hospital or other purpose), yet your hotel remains open, that’s going to put your association in a fairly bad position,” he said. “Although you’ve been able to cancel one contract, there are still a number of auxiliary contracts reliant on that one. ... So it’s important to think about how your events are tied together, not negotiating independently.”

What can associations expect when they head to the negotiating table? For starters, associations seeking to renegotiate existing contracts shouldn't expect event venues to add COVID to force majeure terms, according to Nisha Thakker, counsel at Tenenbaum Law Group. If they do, it will likely be under terms unfavorable to the association.

"COVID is no longer an unforeseen circumstance," she explained.

That same cautious attitude is carrying over into drafting new contracts for events years down the road.

"What we're doing with our clients is actually circumventing that COVID language, making sure that force majeure includes favorable terms like commercial impracticability instead of just a force majeure event making it illegal or impossible to hold the event," Thakker said.

There are provisions outside force majeure that associations could consider in talks with venues, such as room block review. Many show organizers can't guarantee that events three or four years from now will draw the same crowds as before the pandemic, so language that allows associations to reduce their commitments at certain intervals leading up to an event can be helpful, she said.

"The group may reduce its commitment, including room block and food and beverage, by up to an aggregate amount of between 15% and 20%," Thakker said. "(That) is what we've seen most hotels agree to, and that is in addition to the already negotiated attrition reduction. So theoretically a group could potentially get up to a 40% reduction in its commitment without liability."

**Breaking commitments**

Uncertainty about the long-term effects of the pandemic on business meeting travel is the largest unknown in contract negotiations at the moment, according to Jeffrey Tenenbaum, managing partner of Tenenbaum Law Group. Last year his firm focused on helping clients with cancellation penalties. This year much of its work has been related to attrition penalties for not meeting guaranteed minimums for hotel rooms or food and beverage sales.

"And frankly that might continue to be the case for years to come," he said. "So that's why, even for a 2024-25 contract, we want to have an ability to reduce the potential attrition exposure as much as possible."

Meetings venues want to reduce their exposure, sometimes in ways that can be costly

for associations. One recent trend: Hotels are demanding huge deposits years in advance, with some asking for 25% of guaranteed spending on the event upon signing of the contract, Thakker said. That money can be hard for associations to recoup.

"We're strongly advising our clients not to agree to terms that require a large deposit initially, but maybe smaller deposit amounts throughout the course of the agreement terms until you get to the event date," she said.

Associations should also push for hotel contracts to have a resell or mitigation clause. In the case of a cancellation, this clause would require the hotel to undertake all reasonable measures to resell any of the rooms dedicated to the group's use.

"If they do resell those rooms, then the group will be credited X percentage of that revenue against their cancellation fees and be refunded some portion of their fees within 30 days of their event date," Thakker said. "That helps drive a little bit more comfort from the group to commit to contracts that include hefty cancellation penalties. It obligates the hotel to really put forth that good faith not to collect a windfall in terms of cancellation penalties plus profit from a rebooked room." ■

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