

HOSPITALITY LAW

Expert Analysis

The Proliferation of Human Trafficking Lawsuits in the Hotel Industry

Over the past several years, a raft of lawsuits have been filed accusing hotel franchisors, franchisees, owners and operators of financially benefiting from human trafficking in violation of federal and state laws. According to the 2020 Federal Human Trafficking Report published by the Human Trafficking Institute, 170 federal human trafficking lawsuits were initiated against hotels in 2019 and 2020, including a series of high-profile lawsuits against some of the largest and most well-known international hotel management and franchise companies.

While these lawsuits are pending in courts across the country, in 2020 the highest number of new federal civil suits were filed in the Southern District of New York, closely followed by the Eastern District of New York.

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In this article, we explore the reasons for this exponential rise in human trafficking lawsuits targeting the hotel industry, the current legal developments in these actions, and consider steps hotel owners, operators and franchisors can take to protect themselves and their guests from liability.

TVPRA's Expansive Private Right of Action

The proliferation of human trafficking lawsuits against hotel entities is largely traceable to a single change in the law. On Oct. 28, 2000, Congress passed the federal Trafficking Victims Protection Reauthorization Act (TVPRA), the first federal law to criminalize human trafficking and penalizing both physical and non-physical coercion.

In October 2003, Congress reauthorized the TVPRA, expanding its scope and adding a civil cause of action allowing trafficking victims to sue their traffickers for money damages in federal court through the enactment of 18 U.S.C. §1595. Under §1595, victims (or someone on their behalf) can file civil suits against their traffickers for claims involving forced labor, peonage, involuntary servitude, and/or sex trafficking, and if successful, recover actual damages, punitive damages, and reasonable attorney' fees.

On Dec. 23, 2008, Congress again reauthorized the TVPRA with a number of amendments. Of particular importance to the hotel industry, among the 2008 amendments included expanding the private right of action by creating a penalty for those who knowingly benefit from participation in ventures that engage in human trafficking.

As amended, the TVPRA provides an avenue for victims to file civil suits not just against their actual traffickers, but also against anyone who "knowingly benefits, financially or by receiving

anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter.” 18. U.S.C. § 1595(a).

Relying upon this civil remedy mechanism, in recent years a flurry of human trafficking lawsuits against hotel entities were filed in courts around the country. As one prominent example, on Dec. 9, 2019, plaintiffs in human trafficking lawsuits pending in a number of different federal courts petitioned the U.S. Judicial Panel on Multidistrict Litigation to consolidate a number of human-trafficking lawsuits into a Multidistrict Litigation to be venued in the Federal District Court for the Southern District of Ohio. In support of the request, the plaintiffs argued the cases involved similar alleged failures to prevent trafficking that occurred at the hotels, and that the hotel defendants “knew or should have known that plaintiffs were being tracked, and that defendants participated and knowingly financially benefited by renting rooms to the alleged trackers in violation of the TVPRA.”

Ultimately, the panel denied the request for consolidation, finding significant differences among the pending and potential future actions, including different hotels, different hotel brands, different geographic locales, different witnesses, different indicia of human trafficking, different time periods, and a lack of party commonality across the pending actions.

Current Litigation Landscape

Many in the hotel industry were caught off guard when civil lawsuits alleging financial benefit from human trafficking by hotel franchisors, franchisees, owners and operators in violation of the TVPRA took off in the last few years. Even those hotel companies that were proactively developing policies and training procedures to address human trafficking have been named in these lawsuits. Because most of these lawsuits are still pending, and most fed-

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eral courts have declined requests for early dismissal of hotel defendants, it is difficult to predict how courts will eventually determine whether and how to apply the TVPRA to the hotel industry.

However, there are some decisions that provide early guidance on how courts are thinking through these complex issues. In most of the pending cases, plaintiffs do not allege that hotel defendants had direct knowledge of or directly associated with traffickers, but rather that these defendants “knew or should have known” the traffickers were participating in a human

trafficking venture while on the hotel premises.

In *M.A. v. Wyndham Hotels & Resorts*, 425 F.Supp.3d 959 (S.D. Ohio 2019), the court held that to establish participation in a venture for purposes of the TVPRA requires “showing of a continuous business relationship between the trafficker and the hotels, such that it would appear the trafficker and the hotels have established a pattern of conduct or could be said to have a tacit agreement.” *Id.* at 970. In most cases, the allegation of multiple stays has thus far satisfied the continuous business relationship requirement to survive a motion to dismiss, but it remains to be seen how this issue will play out on the merits.

More recently, in *S.J. v. Choice Hotels, Inc.*, 473 F. Supp. 3d 147 (E.D.N.Y. 2020), the Eastern District of New York granted a motion to dismiss a TVPRA claim against hotel franchisors for failure to state a claim. In analyzing the TVPRA claim, the court reasoned:

But plaintiff’s proposed application of § 1595’s “should have known” standard directly to the hotel franchisors goes one step too far. Specifically, plaintiff argues that she “is only required to show that Defendant[s] ‘should have known’ that sex trafficking was occurring on [their] property under a negligence standard.” However, to conclude that franchisors like Wyndham, Howard Johnson, Inc., and Choice Hotels are liable under the TVPRA simply because they were generally aware that sex trafficking

sometimes occurred on their franchisees' properties unjustifiably bridges the scienter gap between "should have known" and "might have been able to guess." Indeed, under plaintiff's theory, the liability of franchisors — which are further removed from the sex trafficking than the actual hotels are — would be much easier proven than the liability of the hotels themselves. This would make no sense. If a plaintiff must show, at least, that a franchisee hotel was or should have been aware of specific sex trafficking conduct in order to violate the TVPRA, there is no interpretive logic by which a franchisor can be held liable under that same statute for having only an abstract awareness of sex trafficking in general.

Id. at 154. This reasoning, if adopted more broadly, provides franchisors an avenue to obtain early dismissal of human trafficking suits, and may dissuade parties from asserting such claims under the TVPRA in the future. It is worth noting, however, that the Eastern District sustained a negligence claim in the same case, so the impact of the Eastern District's holding may be mixed.

Proactive Steps To Take

With the rise in civil lawsuits targeting the hotel industry for alleged human trafficking offenses, it is critical for hotel owners, operators and franchisors to take all possible steps to protect themselves and their hotel guests. With a

business model that offers space in which the hotel guest retains a legitimate expectation of privacy, and in a time where guest touch points continue to decline through technological advances (automated hotel check-ins/check-outs, online reservation systems) and pandemic-accelerated social distancing measures (opt-in only room cleaning), it is increasingly difficult for hotels to identify human trafficking. Even so, a review of the pending litigation against hotel entities makes clear that there are

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prudent measures that should be considered by hotels to reduce their potential exposure to human trafficking claims.

First and foremost, properly training hotel staff to recognize the indicia of human trafficking is paramount. Hotel operators and franchisors should develop policies that include detailed training requirements for hotel employees, including training on how to identify and respond to any potential human trafficking activity. In addition, documenting efforts to identify and stop human trafficking is critical to minimize risk of allegations of a "continuous business relationship," as is robust record-keeping, as the statute

of limitations under the TVPRA is 10 years.

Additionally, because the TVPRA does not require defendants to have actual knowledge of the trafficking to be held liable, but rather, defendants that "should have known" of trafficking activity may also be liable, hotels need to actively monitor their premises to protect against allegations that they were unreasonably ignorant of the activities occurring at their properties. One way that some hotels are responding to this risk is by eliminating the use of "do not disturb" signs and replacing them with "room occupied" signs, which provide hotel staff the right to enter rooms each day to perform routine maintenance or cleaning, but also provide an opportunity to observe potential signs of trafficking.

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