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Human trafficking statute presents growing risk for the hospitality industry and its insurers

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Twenty years ago, Congress passed the Trafficking Victims Protection Reauthorization Act (TVPRA), which allows victims to seek civil remedies against human traffickers. The civil private right of action under the TVPRA has become a powerful tool to hold traffickers, and entities profiting from trafficking operations, accountable in federal court. As of 2023, plaintiffs had brought a total of 678 cases in federal court under the TVPRA, recovering approximately \$300 million in civil damages awards and public settlements.

Nearly half of all sex trafficking civil cases brought under the TVPRA since 2009 have targeted hotels and the hospitality industry for “financially benefiting” from sex trafficking. In most of these cases, plaintiffs allege that the hotel defendants violated the TVPRA by renting rooms to individuals they knew, or should have known, were engaging in sex trafficking. These lawsuits typically allege that the hotels ignored obvious signs of sex workers at the property (*i.e.*, cash payments, open drug use, multiple guests arriving/leaving guest rooms for short duration of time, red flags recognized by housekeeping) to profit from the victims’ exploitation.

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While the TVPRA's civil remedy provision aims to provide victims with avenues for justice and compensation, it also raises important questions regarding insurance coverage. In many cases, businesses involved may seek coverage under liability insurance policies that are designed to shield them from accidents and unforeseen events. The rationale behind accident-based insurance is to provide protection against life's uncertainties, while ensuring that insurance remains a tool for managing risk rather than facilitating wrongdoing.

Insuring sex trafficking raises serious public policy concerns because covering these risks may inadvertently incentivize inadequate prevention measures. Further, insuring business involved in sex trafficking enterprises could undermine state and federal efforts to hold these entities accountable and combat future exploitation. Courts are currently grappling with these questions, and the answers may have broad implications on the insurance industry.

History of TVPRA and Related Litigation

The TVPRA is the fundamental federal law aimed at combating human trafficking and supporting victims. Initially passed in 2003, the TVPRA addresses criminal and civil actions and seeks to increase the financial risks to those who benefit from forced labor, including sex trafficking. In 2008, Congress amended the TVPRA to allow victims to recover from those who "knowingly benefit, financially or by receiving anything of value from participating in a venture that the person knew or should have now" engaged in trafficking. The civil remedy allowed by the TVPRA has a 10-year statute of limitations and authorizes victims to recover compensatory damages, punitive damages, and reasonable attorneys' fees.

Congress's efforts to broaden human trafficking protections over the last two decades have opened the floodgates for civil lawsuits based on these quasi-criminal activities. Although sex trafficking cases have garnered the most attention so far, the TVPRA exposes a broad swath of industries to potential liability: agriculture and farming, construction, manufacturing, transportation, restaurants and food services, massage parlors and spas, adult entertaining, and social-media platforms. These lawsuits often accumulate significant legal fees and expose insureds to substantial judgments or settlements.

Attempts to Consolidate the Hotel Sex-Trafficking Litigation

There have been two notable attempts to create multidistrict litigation (MDL) for TVPRA lawsuits brought



against hotel chains, both of which failed. In December 2019, the plaintiffs in six actions moved the Judicial Panel on Multidistrict Litigation (“JPML”) to centralize litigation in the U.S. District Court for the Southern District of Ohio. The JPML denied plaintiffs’ motion on Feb. 5, 2020, in a published decision, concluding that “centralization will not serve the convenience of the parties and witnesses or further the just and efficient conduct of the litigation.” *In re Hotel Industry Sex Trafficking Litig.*, 433 F. Supp. 3d 1353, 1357 (J.P.M.L. 2020).

On Jan. 9, 2024, the plaintiffs in 53 actions involving hotel sex-trafficking under the TVPRA tried again to consolidate the actions into one MDL action in the Southern District of Ohio, *In re Hotel Industry Sex Trafficking Litig. II*, MDL No. 3104 (J.P.M.L. Jan. 9, 2014). The plaintiffs asked the Panel to consolidate these matters, contending that factual issues common to all cases predominate over individualized issues, such that consolidation would promote judicial efficiency. On April 12, 2024, the JPML denied the plaintiffs’ motion for centralization finding that, although all plaintiffs claimed to be victims of commercial sex trafficking at one or more hotels, consolidation would be inefficient because the claims implicated “different hotels, different alleged sex trafficking ventures, different hotel brands, different owners and employees, different geographic locales, different witnesses, different indicia of sex trafficking, and different time periods.” The JPML was “unconvinced that placing all of these cases and all of these parties before a single judge adds meaningful efficiencies to this already complicated and sensitive litigation.” As a result of this ruling, the TVPRA cases brought against the hospitality industry will continue to proceed in different courts, on different schedules, and will be subject to different (and perhaps conflicting) liability rulings. So, while the industry overwhelmingly sought to avoid a unified MDL because it may have provided facial legitimacy to the plaintiff’s claims, hotels and their insurers now must navigate the administratively complex problem of litigating hundreds of copycat TVPRA lawsuits across the country.

Insurance Coverage Implications

General liability policies were not designed to insure human trafficking operations. Not surprisingly, civil TVPRA lawsuits have raised serious questions regarding the insurability of these risks.

First, many insurers will question whether the lawsuits implicate Coverage Part A of general liability policies, which typically insures against “bodily injury” and “property damages” caused by an “occurrence.” The term “occurrence” is generally defined as an accident, which arguably is not satisfied by the intentional acts

alleged in TVPRA lawsuits. Coverage Part A also generally excludes coverage for “bodily injury” that was expected or intended from the standpoint of the insured. Further, some policies may include exclusions for assault and battery or other sexual abuse that could bar coverage.

Additionally, Coverage Part B of general liability policies insures against “personal and advertising injury” and protects against claims related to certain non-physical injuries. Some policies define “personal and advertising injury” to include false imprisonment, which could conceivably include human trafficking under certain circumstances. Depending on the definition of “personal and advertising injury,” this may trigger insurance under Coverage Part B. However, Coverage Part B also generally contains an exclusion for criminal acts, which may be satisfied by the quasi-criminal conduct alleged in TVPRA lawsuits.

Additionally, at least one court has held that public policy relieves the insurance industry from providing coverage to entities accused of knowingly facilitating sex trafficking at their hotels. *Samsung Fire and Marine Ins., Co. Ltd. v. UFVS Mgmt. Co., LLC*, 2023 WL 2574971, at *7 (E.D.Pa. Mar. 20, 2023) (“public policy bars insurance coverage for those allegedly involved in enabling human trafficking” because “shielding [p]olicyholders from the consequence of their criminal conduct would be against the safety, morals, and welfare” of Pennsylvania). This district court’s decision was recently submitted to the Third Circuit (No. 23-1988) on April 29, 2024, and is pending decision. Although this decision is based upon Pennsylvania law, other courts may be persuaded by this ruling if the Third Circuit affirms.

Conclusion and Takeaways

Congress continues to use its power to fight against the grave threat to human rights and public safety caused by human trafficking. Meanwhile, lawsuits under the TVPRA represent a dynamic and evolving risk landscape for insurers and policyholders. Navigating the insurance implications of human trafficking claims under the TVPRA requires a nuanced understanding of statutory requirements, insurance policy provisions, and effective risk management strategies.

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