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How To Hold Hotels Civilly and Criminally Liable for Sex Trafficking Offenses¹

Human trafficking is a \$150 billion global industry impacting 25 million people worldwide.² Dismantling such a lucrative business requires a collective strategic undertaking.³ Key to deconstructing the business of human trafficking and sex trafficking is severing the not-so-silent partnership between traffickers, sex buyers, and those that facilitate, and financially benefit from, sex trafficking: hotels.

According to a 2018 study by the Polaris Project, 79% of sex trafficking survivors surveyed said they interacted with hotels or motels during their exploitation.⁴ That staggering number demonstrates that hotels have functioned as a safe haven for sex buyers and traffickers. In 2020 for the first time, a hotel manager and a corporate hotel entity were criminally convicted of sex trafficking offenses.⁵ Hotels can no longer turn a blind eye to abuse and exploitation taking place on their premises without fear of legal repercussions.

¹ This brief paper, published June 2022, serves an update to [Sex Trafficking and the Hotel Industry: Criminal and Civil Liability for Hotels and their Employees](#), a policy paper published on the CSE Institute website in 2015. The update reflects changes in the law as well as successful prosecutions.

² *On-Ramps, Intersections, and Exit Routes*, Polaris, 5 (July 2018), <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Hotels-and-Motels.pdf>.

³ *Id.* at 5.

⁴ *Id.* at 12.

⁵ *United States v. Bhimani et al*, Docket No. 3:17-cr-00324 (M.D. Pa. Oct 24, 2017), Court Docket, https://www.bloomberglaw.com/product/blaw/document/X1Q6NTQIFH82?criteria_id=3eb37bae647c44ce75a3e6d7513e0db1&navCriteriaId=8ff0bf83e67156d0bd23329d90641f85&searchGuid=c3014e24-01b6-4978-bb92-

This paper discusses (1) how the government can hold hotels criminally liable for sex trafficking, (2) how survivors can hold hotels civilly liable for sex trafficking, and (3) how hotels can better protect victims of sex trafficking and protect themselves from future liability. To date, holding hotels criminally and civilly liable for sex trafficking has been limited in application: the abovementioned *Bhimani* case marks the one and only time, both federally and in Pennsylvania, that the corporate entity of a hotel has been indicted and convicted of sex trafficking. Nonetheless, it is a watershed case that affirmatively paves a path to hold additional hotels criminally liable for sex trafficking offenses.

Criminally Charging Hotels for Sex Trafficking

This section examines the criminal laws prosecutors can use to hold hotel employees, hotel owners, and corporate hotel entities criminally liable for involvement in sex trafficking.

I. Understanding the Law

The crime of sex trafficking can be simply explained as having three elements: an *act* perpetrated by particular *means*, for the *purpose* of a commercial sex act. Though there are differences, this basic structure exists in both Pennsylvania⁶ and Federal law.⁷ A commercial sex act occurs when anything of value is traded for a sex act or performance involving a sex act.⁸ There are a several acts that qualify as trafficking: recruiting, enticing, soliciting, advertising,

c08bd874ded9&search32=FzDkg9-w0Npu2cmyQ7FKfA==30Hq-PLiZIce2cEmraGVTvCTvftpLdfB-Bc_j_VSpvD2vjkR8sPS98xyy9o2uutcuF5Mp_FuD-fl5tyRVEALdPIB4v_oyhpIq_4ginAyyGX3maEfVIws85GjCh6k2Zq4 (Nov. 8, 2021), last visited June 29, 2022. [hereinafter *Bhimani*]; see also *Owner and General Manager of Pocono Area Hotels Convicted of Sex and Drug Trafficking in Precedent Setting Case*, Department of Justice (Oct. 28, 2020), <https://www.justice.gov/usao-mdpa/pr/owner-and-general-manager-pocono-area-hotels-convicted-sex-and-drug-trafficking> [hereinafter *Precedent Setting Case*].

⁶ 18 Pa.C.S.A. §§ 3001, 3011, 3012.

⁷ 18 U.S.C. § 1591.

⁸ 18 Pa.C.S.A. §§ 3001; 18 U.S.C. § 1591.

harboring, transporting, providing, obtaining, maintaining, and patronizing^{9, 10} Additionally, an individual can be convicted of trafficking if they *knowingly financially benefit* from any act that facilitates any of these activities.¹¹ Where the victim is a minor, any of the acts committed for the purpose of commercial sex are sufficient to meet the elements of trafficking. However, where the victim is an adult, the acts must be committed through one of several means. Federally, the means are defined broadly as force, fraud, or coercion.¹² The Pennsylvania General Assembly defined the means more specifically, outlining thirteen means including “controlling the individual’s access to a controlled substance.”¹³ Several of these provisions of law can apply to both the corporate entity of a hotel and hotel employees in their individual capacity.

II. Criminal Liability of Hotels and Hotel Employees

Hotel employees, in their individual capacity, can be charged for “harboring” a sex trafficking victim by *knowingly* or *recklessly disregarding* the fact that the victim was sex trafficked. This means an individual hotel employee can be charged for sex trafficking by renting a room to a trafficker, victim, or sex buyer even if the hotel employee did not engage in any sex acts with the victim but knew or should have known the victim was being sex trafficked. Similarly, hotel employees can be charged for conspiring with traffickers to facilitate sex trafficking on hotel premises before the sex trafficking occurs.¹⁴

⁹ Patronizing is not an act under Pennsylvania law, rather it is a distinct crime, “Patronizing a Victim of Sexual Servitude”. A discussion of the reasoning for this difference and the application of “patronizes” are beyond the scope of this paper. 18 Pa.C.S.A. § 3013.

¹⁰ See 18 Pa.C.S.A. § 3011; 18 U.S.C § 1591 (emphasis added).

¹¹ *Id.* (emphasis added).

¹² 18 U.S.C § 1591.

¹³ 18 Pa.C.S.A. § 3012.

¹⁴ 18 Pa. C.S.A. § 903.

The corporate hotel entity can also be criminally charged for this conduct. A hotel can be held criminally liable if the hotel “*knowingly* benefits financially or receives anything of value” from a sex trafficking endeavor, such as renting rooms where the commercial sex acts are taking place.¹⁵ While hotels can be held criminally liable for sex trafficking, historically they have not been: “In 2019, there were a total of 606 criminal human trafficking cases in U.S. federal courts . . . with a total of 1,058 total active criminal defendants.”¹⁶ Of those defendants, less than 1% were hotel entities.¹⁷

As mentioned above, in October 2020, for the first time, a hotel manager and corporate hotel entity were each convicted of criminal sex trafficking.¹⁸ In *Bhimani*, a hotel owner employed his nephew as his general manager and for eight years their hotel was a safe haven for drug and sex trafficking activity.¹⁹ They both engaged in sex with victims and they evaded police, allowing known criminals to book rooms under street names.²⁰ The conduct of Bhimani, the manager, and Hassam, the hotel owner, paired with the testimony of hotel employees allowed the United States Attorney’s Office for the Middle District of Pennsylvania to indict and convict Om Sri Sai, Inc., the corporate entity of the hotel.²¹ On May 13, 2022, the corporate entity was sentenced to five years’ probation and was ordered to forfeit two million dollars to the

¹⁵ 18 Pa.C.S.A. § 3011(a)(2) (emphasis added).

¹⁶ Kelli L. Ross, *Report Reveals Increase in Criminal & Civil Human Trafficking Suits Brought Against Hotel Chains in 2019*, Human Trafficking Institute (May 28, 2020), <https://www.traffickinginstitute.org/report-reveals-increase-in-criminal-civil-human-trafficking-suits-brought-against-hotel-chains-in-2019/> [hereinafter *Increased Trafficking Suits Brought Against Hotel Chains*].

¹⁷ *Id.*

¹⁸ *Precedent Setting Case*, *supra* note 5.

¹⁹ *Precedent Setting Case*, *supra* note 5; *see also Bhimani*, 492 F.Supp.3d at 381.

²⁰ *Precedent Setting Case*, *supra* note 5.

²¹ *Hotel Owner, Two Hotel Companies Sentenced for Sex and Drug Trafficking in Monroe County*, Department of Justice (May 16, 2022), <https://www.justice.gov/usao-mdpa/pr/hotel-owner-two-hotel-companies-sentenced-sex-and-drug-trafficking-monroe-county> [hereinafter *Hotel Sentencing*].

government and pay over \$200,000 of restitution to victim witnesses.²² United States Attorney David J. Freed said that the *Bhimani* prosecution “was a novel prosecution, and the first time a hotel or its manager or owner have been charged with and convicted of sex trafficking in Pennsylvania. We hope this will serve as a warning to any other person or company in a position to facilitate or profit from forced prostitution: don’t.”²³

Holding Hotels Civilly Liable for Sex Trafficking

Under the Trafficking Victims Protection Reauthorization Act (TVPRA) and Pennsylvania law,²⁴ a victim of sex trafficking can bring a civil action against any person or entity that financially benefitted from their victimization and knew or should have known the acts were in violation of human trafficking laws.²⁵ If a hotel employee, acting in the scope of their employment with the intent to benefit the company, knowingly rents a room to a trafficker, victim, or sex buyer for the purpose of a commercial sex act, or should have known that it was renting a room for that purpose, the hotel and its owners can be held liable for civil damages to the victim. The first time a hotel was sued under the TVPRA was in 2015 when a woman, Lisa Ricchio, sued the Shangri-La Motel and its owners because the employees failed to intervene and help her even when they observed that she was in distress.²⁶ She was lured to the motel under false pretenses and once there, she was “held against her will” and told she would be forced to

²² *Id.*

²³ *Id.*; Becky Metrick, *Owner, Manager of Poconos hotel convicted of sex trafficking*, Penn Live (last updated Oct. 28, 2020, 8:51 PM), <https://www.pennlive.com/news/2020/10/owner-manager-of-poconos-hotel-convicted-of-sex-trafficking.html>.

²⁴ Individuals have also used civil forfeiture or Racketeer Influenced and Corrupt Organizations Act (“RICO”) to civilly sue hotels for trafficking conduct. The discussion of these types of suits is beyond the scope of this paper. *See generally Burgese v. Starwood Hotels & Resorts Worldwide*, 101 F. Supp. 3d 414 (3d Cir. 2015); *U.S. v. Red Roof Inns*, No. 3:15cv429, (W.D.N.C. Nov. 29, 2016).

²⁵ 18 U.S.C.A. § 1595(a); 18 Pa. C.S.A. § 3051.

²⁶ Todd Bookman, *Human Trafficking Survivor Settles Lawsuit Against Motel Where She Was Held Captive*, NPR, Feb. 20, 2020, <https://www.npr.org/2020/02/20/807506786/human-trafficking-survivor-settles-lawsuit-against-motel-where-she-was-held-capt>.

prostitute.²⁷ According to the pleading, employees saw that she was at risk at least twice and did nothing to help her. On one occasion, Ms. Ricchio attempted to escape by running to the motel lobby and telling an employee that she was being held against her will. The employee brushed Ms. Ricchio off and watched as her captor took her by the neck and dragged her back to the room. The motel eventually settled the matter out of court for an undisclosed amount of money.

How A Hotel Can Protect Victims from Abuse and Avoid Criminal and Civil Liability

I. Create Intentional Hotel Policies

In 2019, there were 88 civil suits filed alleging claims of sex trafficking, in 26 of these suits a hotel entity was named as a defendant²⁸ In many of those cases, victims did not claim that hotel management had direct knowledge or directly associated with traffickers; instead, victims claimed that hotel management knew or should have known traffickers were engaging in sex trafficking while on hotel property, often by showing “a continuous business relationship between the trafficker and the hotels.”²⁹

Hotels and hotel employees should be aware of the following to prevent claims that they knew or should have known about sex trafficking on hotel property: “(1) guests with minimal luggage; (2) multiple men being escorted one at a time to a guest room; (3) the presence of guests who cannot speak freely or seem disoriented; (4) an abundance of used condoms in trashcans; (5) cash payments; and (6) guests who routinely decline housekeeping.”³⁰

²⁷ Todd Bookman, *Human Trafficking Survivor Settles Lawsuit Against Motel Where She Was Held Captive*, NPR, Feb. 20, 2020, <https://www.npr.org/2020/02/20/807506786/human-trafficking-survivor-settles-lawsuit-against-motel-where-she-was-held-capt>.

²⁸ *Increased Trafficking Suits Brought Against Hotel Chains*, *supra* note 14.

²⁹ Sabrina Atkins, Pamela Lee, *Wave of Sex Trafficking Lawsuits Implicate Hospitality Industry*, Today’s General Counsel (Mar. 25, 2021), <https://www.todaysgeneralcounsel.com/wave-of-sex-trafficking-lawsuits-implicates-hospitality-industry/>.

³⁰ *Civil human trafficking lawsuits: a growing risk for many insureds*, Markel (Sept. 3, 2021), <https://www.markel.com/insurance/insights-and-resources/civil-human-trafficking-lawsuits>.

Additionally, hotels can implement the following to prevent sex trafficking from taking place on hotel property: adopt a company-wide anti-trafficking policy, train staff on how to respond and what to look for, establish a safe reporting mechanism, use data from hotel and travel booking sites for identification efforts, post the national human trafficking hotline in a place victims can see, and advocate for hotel-related sex trafficking legislation.³¹

II. Hotel Insurance Complexities

Determining whether insurance companies will defend civil sex trafficking cases against hotels is murky at best. In 2018, a federal court in the Eastern District of Pennsylvania held that public policy precludes insurance coverage for human trafficking claims, but “it remains to be seen whether other courts agree with this principle.”³² Sex trafficking lawsuits are complex and nuanced. The best insurance protection is preventative: hotels should prevent sex trafficking from happening in the first place by implementing policies to protect victims and thereby prevent lawsuits.

Conclusion

Holding hotels criminally and civilly liable for sex trafficking destabilizes the pervasive hotel-trafficker-sex buyer relationships that so easily facilitate sex trafficking. When 79% of sex trafficking survivors report interacting with a hotel during their exploitation, targeting hotels and hotel employees who facilitate that abuse should be a top priority for law enforcement.³³ No longer can a hotel or its employees turn a blind eye to the bodies being illegally bought, sold, and violently abused on hotel property. There is a minimum standard of care that a billion-dollar

³¹ *On-Ramps, Intersections, and Exit Routes*, *supra* note 1, at 27-29.

³² *Civil human trafficking lawsuits: a growing risk for many insureds*, *supra* note 24.

<https://www.markel.com/insurance/insights-and-resources/civil-human-trafficking-lawsuits>

³³ *On-Ramps, Intersections, and Exit Routes*, *supra* note 2, at 12.

industry, which touts itself as an industry of “hospitality,” should be responsible for meeting. The cost of doing business now, with the full force of the law behind it, involves caring for all people staying in hotel rooms, including victims of abuse who are readily identified as such by hotel employees. The responsibility to avoid criminal and civil penalties rests on hotels and their employees to report criminal activity when they knew or should have known that sex trafficking occurred on hotel property.