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## Increase In Trafficking Reveals Hospitality Coverage Concerns

By **Jennifer Mandato**

Law360 (January 29, 2024, 6:42 PM EST) -- As human trafficking continues to increase and travel returns to prepandemic levels, hospitality industry policyholders may see more direct trafficking exclusions and increased education requirements as the insurance industry works to address this growing risk, experts said.



The U.S. Department of Justice says 2,027 people were referred to U.S. attorneys for human trafficking offenses in fiscal year 2021, a 49% increase from the 1,360 people referred in 2011. (AP Photo/Matt Rourke, File)

January is National Human Trafficking Prevention Month, and as the month comes to a close, trafficking statistics remain alarming. According to the U.S. Department of Justice, a total of 2,027 persons were referred to U.S. attorneys for human trafficking offenses in fiscal year 2021, a 49% increase from the 1,360 persons referred in 2011. The U.S. Department of State reports over 27 million victims globally at any given time.

"The human body can be sold over and over, which is why we see" trafficking "exploding," Marisa Trasatti, a managing partner at Cipriani & Werner PC, said in a webinar hosted by The Risk Management Society.

Here, Law360 looks at how insurers may respond to policyholders accused of failing to prevent trafficking and the role public policy could play in the insurability of trafficking-related claims.

### Carriers and Courts Could Restrict Coverage

Trasatti, whose practice focuses on premises liability arising from alleged human trafficking, said that while state court actions continue to be brought against franchisees accused of negligence contributing to trafficking on the premises, litigation then tends to enter a "phase two" where franchisees go after franchisors in federal court under the Trafficking Victims Protection Reauthorization Act, or TVPRA.

It's then that franchisors or property managers may involve their insurers in an attempt to seek coverage for these underlying actions.

Consistently described as a "thorny" issue for the courts, insurer representatives Seslee Smith and Ryan Burke of Morris Manning & Martin LLP, said that it remains to be seen how policy language will evolve in clarifying an insurer's role when hotel corporations seek coverage for underlying trafficking allegations.

"I don't know whether we'll see changes to existing abuse and molestation exclusions or assault and battery exclusions that have been litigated with some success and some failure," Burke told Law360.

He does, however, suspect that there will be a rise in more "on point" trafficking exclusions and noted that he's seen some clients already move in that direction.

"If insurers make clear through exclusion that trafficking won't be covered, there's quite an incentive to prevent trafficking at the premises," Burke said.


Smith agreed, telling Law360 that if hotel owners, operators and managers want to be insured, they'll be willing to comply with insurers driving better practices and requiring more education so that, if there is a potential claim, it's covered.

Smith also added that insurers sometimes face an uphill battle in court because of the nature of the underlying litigation.

"One of the reasons this has become so thorny is, I think, courts are very resistant to rule in favor of insurers in many cases because the facts alleged are so sympathetic to the claimants or the plaintiffs, because the facts can be quite horrific," she said.

For risk managers, Trasatti said it's important to talk to the insured about what the legal ramifications are of these allegations at both the state and federal level.

"The insurers themselves have to be aware of what's happening in the legal landscape and what's required as a matter of law right now because it's much more robust now," she noted.

One case in particular that experts are watching is [Samsung Fire & Marine Insurance Co. Ltd. et al. v. UFVS Management Co. LLC](#) . The case is currently **awaiting oral arguments** in the Third Circuit over whether a Pennsylvania federal judge correctly found **public policy prohibits** three insurers from defending a Philadelphia hotel named the Roosevelt Inn and its owner accused of participating in sex trafficking.

Four women say in a separate lawsuit that they were victims of sex trafficking while at the Roosevelt Inn and accuse the hotel and its owner of failing to prevent the scheme despite clear signs of such activity.

Steven Babin, whose firm Babin Law LLC has filed roughly 40% of all hotel human trafficking cases on behalf of victims in the U.S., said that the Samsung decision will come down to the facts of the case. The

issue to be heard in Samsung, according to court records, is whether state law can spoil paid-for insurance coverage for negligence claims if criminal or intentional conduct plays an additional role in the underlying occurrence.

In an amicus brief filed in the appeal, the women **asserted** that their respective complaints alleged negligence claims against the hotel rather than crimes.

"The difference between" the criminal act "and the negligence on the part of a hotel is difficult to quantify," Burke said.

He added that he wouldn't be surprised to see courts say that trafficking can't be insured as it would go against public policy.

However, as an attorney licensed in Georgia, which has a policy similar to that of Pennsylvania for these acts, Burke said the question of whether the hotel's actions can or can't be insured is one that the higher appellate courts should consider and clarify.

### **Training Key to Reducing Risk**

When it comes to what the hospitality industry can be doing to better protect themselves from becoming implicated in trafficking actions, experts highlighted the importance of training.

"We need to convince the industry and convince policymakers that having mandatory training is important," William "Chip" Rogers, CEO of the American Hotel and Lodging Association, said as part of the RIMS panel. "Traffickers are disgusting people, but they're not dumb people and will go where they can avoid people seeing what they're perpetrating," he said.

Trasatti stressed that it's also important to ensure that employees then follow through on that training.

Beyond posting signage or submitting to annual standardized training, Janet Wright, director of risk management for Suitelife Underwriting Managers, said that hotels and resorts can partner with local law enforcement to bolster their efforts. It is also important to engage guests and have materials in rooms on signs of trafficking and steps for reporting activity.

Should a hotel be named as an alleged participant in trafficking, Wright advised that it should be able to document any steps that it's taken to mitigate such actions.

### **Short-Term Rentals: an Emerging Risk?**

As the hospitality industry grapples with trafficking, experts also warned of trafficking through short-term rentals as an emerging risk.

By May 2023, short-term rentals in small city or rural locations saw a demand growth of 24%, compared to 0% for hotels. Rental demand growth also out-performed hotel demand growth in mid-sized cities, suburbs, mountain or lake resorts and coastal resorts, according to collaborative research from Airbnb and VRBO data collector AirDNA and hospitality analytics firm STR.

Babin said that trafficking through short-term rentals is absolutely something insureds should be aware of, but that just as in the hotel industry, he believes it's going to be a top-down resolution from property managers.

As it stands right now, however, there's a chance to get in front of the issue, he said.

"It begs the question of whether homeowner's policies or renter's policies would need to likewise consider what endorsements to the policy may need to be made as far as on point exclusions for human trafficking," Morris Manning & Martin's Smith stated.

Burke added that policies for a short-term rental like an Airbnb may have lower limits than the commercial policies in place at hotels, leading him to believe that insurers may just pay that limit in order to avoid dealing with the question of coverage.

### **How Victims Could Be Affected by Coverage Battles**

As insurers and policyholders battle it out, it can be easy to lose sight of the survivors of these horrific acts.

In Samsung, the women said in the amicus brief that in the absence of coverage their access to adequate compensation for injuries caused will be "significantly impaired."

Babin highlighted the role multidistrict litigation, or MDLs, can play in these instances as they provide "safety in numbers."

Under an MDL, there's still the opportunity to bring individual cases, but also to have a clear understanding of what protections and safeguards will be in place for survivor-clients, he said.

Babin said that oftentimes the hotel corporations believe that talking to the trafficker is crucial to obtaining key evidence and want to name the trafficker as a key witness. For survivors, however, this puts them in an intimidating and dangerous position.

When traffickers are involved in litigation, Babin shared that there have been times when survivor-clients need to be put into safe houses because the way in which witnesses are spoken to puts the focus back on the trafficker, who then may retaliate.

Babin recently filed a motion with the U.S. Judicial Panel on Multidistrict Litigation at the request of a federal judge for the Southern District of Ohio, seeking to bring an MDL on human trafficking in the hotel industry.

"It's really about shining a light on the extent of the problem," Babin said, "the extent for how long it's been a problem and the extent to which the hotels have not adequately reacted to it."

--Additional reporting by Shane Dilworth and Hope Patti. Editing by Nick Petruncio.