

*One Sin Is Too Many! Stop Human Trafficking!*¹

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I. Human Trafficking Evolves Into a Defense and an Offense in Court

With the Office of the Texas Attorney General estimating that 234,000 labor trafficking victims and 79,000 minor sex trafficking victims are suffering in the state at any given moment,² the Texas Legislature, like many legislative bodies across the country, is going on the offensive and attempting to tackle traffickers where they are most vulnerable—at hotels and lodging facilities, entertainment venues, restaurants, massage parlors, salons, and other commercial enterprises where businesses willingly or unwittingly become a part of traffickers’ crimes against humanity.

One case out of Wisconsin – *The State of Wisconsin v. Chrystul Kizer*³ – illustrates how broadly courts and law enforcement agencies have shifted their perspectives on human trafficking victims. Litigators and law enforcement authorities no longer view trafficked individuals as prostitutes, but rather as individuals who are trapped and in need of aid from society at large. In the *Kizer* case, the Wisconsin Supreme Court will decide whether *Kizer*, a victim of sex trafficking as a teen, can use her trafficker’s illicit activities against her as a claim for self-defense after she was charged with the murder of her trafficker.⁴

And in civil court, trafficking victims have secured several substantial legal victories against international hotel franchisors by surviving 91a Motions to Dismiss and Summary Judgment motions, and pushing cases closer to trial on the grounds that

¹ Centennial Hotel Franchisors “Knew”, Partner, and Kerri Panchuk, Senior Attorney, Dallas Office of Thompson Coe, LLP, (214) 880-2832, for presentation at the Hospitality Law Conference in Houston, Texas on April 5, 2022.

² *Human Trafficking – Attorney General of Texas*, Texas Attorney General Website (Last accessed March 21, 2022), <https://www.texasattorneygeneral.gov/initiatives/human-trafficking>.

³ Jessica Contrera, *Chrystul Kizer; Wisconsin Supreme Court and a Watershed Sex Trafficking Case*, The Washington Post (March 4, 2022), <https://www.washingtonpost.com/dc-md-va/2022/03/04/chrystul-kizer-sex-trafficking-wisconsin-supreme-court/>

⁴ *Id.*; see also *State of Wisconsin v. Chrystal Kizer*, 963 N.W. 2d 136 (Wis. Ct. App. 2021)(Wisconsin Statute Section 939.46 (1m) provides that a victim of human trafficking or trafficking of a child has an affirmative defense for any offense committed as a direct result of human trafficking or trafficking of a child. The Court further stated the affirmative defense available to a victim of human trafficking, if successful, would operate as a complete defense to first-degree intentional homicide charges).

“should have known” of trafficking activities occurring inside franchisee locations operating under the franchisor’s nationally renowned hotel brand.

This article delves into the federal and state laws civil litigators rely upon when suing hotel franchisors and franchisees for trafficking that occurs inside lodging facilities. In addition, it provides a brief update on a recently enacted human trafficking law impacting Texas lodging facilities and offers tips on how hotels and motels can spot trafficking activity early on, and deploy preventative measures to mitigate the human and legal risks of trafficking.

II. Federal Trafficking Laws – Civil Litigators Put Hotel Franchisors On the Defense

Hotel franchisors in the past have attempted to shield themselves from the impact of litigation involving hotel franchisees by claiming their franchisees operate as separately controlled entities and that the franchisors have no control over the daily operations of franchisee’s facilities and, therefore, are not liable for claims that arise out of a franchisee’s specific operation of a hotel or motel site.

However, two federal district courts have turned this defense on its head in the human trafficking context. Sex trafficking victims in both Pennsylvania and Florida managed to persuade two different U.S. District Courts to keep a hotel franchisor in as a Defendant in a human trafficking lawsuit involving a hotel franchisee. The victims brought both cases under state statutes related to sex trafficking and under The Federal Trafficking Victims Protection Reauthorization Act (“TVPRA”).⁵

Section 1595 of the TVPRA offers victims of sex trafficking with a civil remedy to seek damages from their traffickers and whoever “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.”⁶

In an April 2020 decision from the United States District Court for the Eastern District of Pennsylvania, the Court held a victim trafficked at three Marriott locations operated by a franchisee had **sufficiently alleged** that the [hotel] franchisor “benefited financially from [a] sex trafficking

⁵18 U.S.C.A § 1595(a) (“An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever 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) in an appropriate district court of the United States and may recover damages and reasonable attorneys’ fees”).

⁶ *Id.*

venture.”⁷ The facts that the court used to support its finding that the franchisor should have had knowledge of trafficking occurring inside its franchisee’s locations included the following:

- The trafficker rented rooms for weeks at a time;
- The trafficker paid with prepaid credit cards;
- The trafficker checked the victim in with little personal belongings;
- The room had a steady stream of male visitors who entered the hotel through the front doors and main lobby; and
- The trafficker’s room bore signs of illicit sexual activity.⁸

The United States District Court for the Middle District of Florida in Fort Myers reached a similar conclusion when two trafficking victims sued hotel operators and the franchisors under the TVPRA for abuse that occurred inside Florida hotel properties.⁹

The court held that the **victims plausibly alleged** that the franchisor had control over hotels where trafficking occurred, the franchisor knowingly benefited from sex trafficking; the franchisor knew or should have known of the alleged victims’ sex trafficking, and the franchisor was the joint employer and in an agency relationship with hotels where trafficking occurred.¹⁰

While many of the cases brought in the last few years either settled out of court or are still pending in litigation, Plaintiffs’ counsel are now well aware that with the right set of facts plead regarding the franchisor or franchisee’s failure to stop obvious signs of trafficking activity onsite, trafficking victims have a higher chance of keeping a case against lodging facilities in litigation, and getting it passed the summary judgment stage to trial.

III. Texas Trafficking Laws – The Test Begins.

In or around 2018, a plaintiff’s lawyer in Houston, Texas, filed a myriad of human trafficking cases across the country, and in Harris County, Texas (Houston) against major hotel brands and their franchisees for the injuries trafficking victims allegedly suffered at the hands of traffickers within different motel and hotel facilities.

In most of the cases, Plaintiffs sued under the Federal Trafficking Victims Protection Reauthorization Act (“*TVPRA*”) and under Section 98.002 of the Texas Civil Practices & Remedies Code¹¹ which states that “A Defendant who engages in the trafficking of persons or who

⁷ *A.B. v. Marriott International, Inc.*, 455 F.Supp. 3d 171 (E.D. Penn. 2020).

⁸ *Id.* at 190.

⁹ *S.Y. v. Naples Hotel Co.*, 476 F. Supp. 3d 1251, 1251-1257 (M.D. Fla. 2020).

¹⁰ *Id.* at 1257-1258.

¹¹ See TEX. CIV. PRAC. & REM. CODE § Section 98.002(a) (Liability for Trafficking of Persons).

intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked, as provided by this chapter, for damages arising from the trafficking of that person by the defendant or venture.”¹² In addition, Plaintiffs also sued under Section 98A of the Texas Civil Practice & Remedies Act, which provides liability for a defendant that “(1) engages in compelling prostitution with respect to the victim; [and] (2) knowingly or intentionally engages in promotion of prostitution”¹³ and under Section 98A.003 which provides for damages, including exemplary damages.

While precedential findings at the Texas Supreme Court level or even the state appellate court level have yet to solidify any standard for what establishes knowledge on the part of a franchisor or franchisee facing a trafficking civil liability suit, there are enough cases filed in various district courts in Texas and throughout the country to surmise that lodging facilities without anti-trafficking prevention measures in place – and who fail to address obvious signs of trafficking onsite – face a much greater legal risk in today’s environment.

IV. The Warning Signs of Labor and Sex Trafficking

In 2019, the American Hotel & Lodging Association (AHLA) launched the “No Room for Trafficking” campaign which offers free online training to hotel employees. The content is produced by Marriott International/ECPAT-USA and Polaris with the support of AHLA. The online training is available in 17 different languages and provides up-to-date details on how to identify, spot, and report human trafficking.¹⁴

There are two types of human trafficking – sex trafficking and labor trafficking – and both involve similar red flags that lodging properties are encouraged to train their employees to identify and report accordingly.

The Texas AG issued the following list of warning signs in relation to labor trafficking at commercial premises:

1. A worker is not free to leave the premises;
2. A worker arrives to work with the help of a manager or in a group that arrives at once and leaves at once;

¹²TEX. CIV. PRAC. & REM. CODE § Section 98.002(a).

¹³TEX. CIV. PRAC. & REM. CODE § Section 98 A. (Liability for Compelled Prostitution and Certain Promotion of Prostitution).

¹⁴*No Room for Trafficking*, AHLA Website (American Hotel & Lodging Association), (Last accessed March 21, 2022), <https://www.ahla.com/issues/human-trafficking>.

3. A worker(s) defers to another before answering questions and avoids eye contact with others;
4. Someone else controls the worker's compensation, paperwork, and/or identifying information; and
5. Services are provided well below market rate and workers work excessively long hours and/or owe a large debt that cannot be paid off.¹⁵

The U.S. Department of Homeland Security produced a similar list of sex trafficking warning signs and advises lodging facilities to train employees to spot the following:

1. Frequent use of "Do Not Disturb" signs, or when a guest asks for towels and bed coverings but will not allow employees in a room;
2. The same person reserves multiple rooms, and hotel staff notices individuals leaving the room infrequently, not at all, or at odd hours;
3. The smell of bodily fluids or musk;
4. Refuses cleaning services for multiple days;
5. Excessive amounts of cash in the room; and
6. Children's items in the room when no children were registered with the room.¹⁶

V. Trafficking Training for Lodging Employees Is Now "Mandatory"

With lodging and hospitality facilities now considered a type of ground zero for detecting and stopping human trafficking, the Texas Legislature passed House Bill 390 in 2021 (or Tex. Bus. Comm Code § 114.0051) to force lodging operators among others to train their employees on how to spot and report human trafficking. House Bill 390 went into effect in January of 2022 and requires all lodging employees (*defined as those working at establishments with 10 or more rooms*) to complete an annual human trafficking prevention awareness program that is either pre-approved by the Texas Attorney General as part of its list of pre-approved providers, or that is individually approved by the AG's office.

Lodging operators must ensure employees complete the training within 90 days of being hired, and operators must provide certificates of completion to their staff and keep physical or electronic certificates for every employee for potential audits. Lodging operators also must display a sign (provided by the AG's office) describing the required employee training alongside information about human trafficking and how to spot and report trafficking.

¹⁵*Red Flags for Labor Trafficking*, The Attorney General of Texas website, <https://www.texasattorneygeneral.gov/human-trafficking-section/signs-trafficking/red-flags-labor-trafficking>

¹⁶*Blue Campaign – Indicators of Human Trafficking*, The Department of Homeland Security website, <https://www.dhs.gov/blue-campaign/indicators-human-trafficking>.

Any training program offered to employees can be no less than 20 minutes in duration and must provide an overview of human trafficking, describe the victims' experiences of it, describe how human trafficking is defined, and offer an explanation as to why it occurs in the hospitality and lodging industry.

Employees also should receive information on who is most at risk for human trafficking, the differences between labor and sex trafficking, guidance on the role of employees in reporting trafficking, and detailed information on how to contact the appropriate law enforcement agencies, the attorney general, or the National Human Trafficking Hotline.

Peace officers are allowed to enforce compliance with the new trafficking law by conducting onsite visits to lodging facilities between the hours of 9 a.m. to 5 p.m. during the weekdays to ensure lodging locations are complying with the state's training and signage requirements.