

"Breaking the Invisible Chains with Policy: How Insurance Companies Can Help End Human Trafficking in the Hotel Industry"

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Abstract

Human trafficking in the hotel industry represents a hidden threat that demands decisive action. Despite public commitments, the sector's initiatives remain inconsistent, and a wave of lawsuits imposes both financial and reputational risks. Through analysis of relevant legislation and case law, the article demonstrates hotels' potential liability as venues enabling trafficking. However, inconsistent self-regulation and lawsuits reveal limited progress. The authors advocate for insurance companies to play a pivotal role in combatting human trafficking in the hotel industry by strategically adjusting coverage provisions. They trace the historical influence of insurers on the trajectory of slavery when 18th century British insurers' actions contributed to the rise of abolitionism and argues that similar private regulation today can incentivize hotels' proactive measures against trafficking. The article proposes that insurers possess diverse tools, including exclusions, premium adjustments, auditing, and loss prevention, to compel action rather than complacency. Mandated self-insured retentions can also hold hotels financially accountable for their negligence. However, relying solely on pricing alterations faces challenges due to market competition and inconsistent judicial rulings on liability exclusions. Ultimately, addressing this complex issue requires a collaborative, multi-stakeholder approach. Government fines and prosecutions can further incentivize self-disclosure and cooperation, while publicized settlements can promote transparency and empower consumers to make informed choices for hotel venues. This combined framework can transition hotels from passive enablers to active contributors in the fight against human trafficking, fulfilling their duty of care and catalyzing meaningful progress against human exploitation.

1. Introduction

Human trafficking is the often 'hidden in plain sight' (Jacobson, 2018) criminal act of recruiting, transporting, and harboring individuals using force, coercion, or deception for the purpose of sexual, labor, or other types of exploitation. Many victims of human trafficking are subject to exploitation in the wider hospitality industry (hotels, restaurants, conference venues, coffee shops, and bars), both in terms of sex and labor. Hotels are more susceptible to involvement in human trafficking given the nature of their operations (Paraskevas and Brookes, 2018a). They provide discreet accommodation often used by guests to hire escorts, facilitating human traffickers to exploit their victims in hotel settings. Criminal gangs often

target high-end hotel guests, using trafficked individuals to steal valuable belongings or personal information for fraudulent activities, such as credit card fraud or identity theft, and even for blackmail (Paraskevas, 2020). Hotels may also directly or indirectly employ trafficked individuals, often as ‘agency staff’ for jobs such as window cleaning, gardening, or maintenance (Schwartz, 2017). Human trafficking can also be traced along the hotel's supply chain, from farms and food processing plants to distribution storage facilities, and even to manufacturers of linen, mattresses, and beds (BBC, 2016; 2019).

Sex trafficking is the most prevalent form of human trafficking in general and hotels in particular. In 2021, 10,360 human trafficking cases were reported to the U.S. National Human Trafficking Hotline involving 16,710 individual victims. An 11% of these involved hotels as venues of exploitation (7.7% for sex trafficking and 3.3% for labor trafficking) (Polaris, 2023). The 2021 Human Trafficking Institute report indicates that 92% of the human trafficking cases that authorities filed in the Federal Courts were for sex trafficking, and of the total reported cases, 41% were sex trafficking (HTI, 2022).

While hotel operators may assert their commitment to ethical business practices and denounce human trafficking (Polaris, 2019), they still find themselves inadvertently involved in such activities. The consequences can be severe, including negative publicity, reputational damage, and potential legal or criminal repercussions (Cohen, 2020). In effect, by not stopping human trafficking in their operations, hoteliers may be accused that, although tasked with providing a duty of care to their guests, they purposely abdicate their responsibilities. In the U.S. Supreme Court, the late Justice Scalia illuminated this issue by arguing that hoteliers that ignore the prostitution occurring within their establishments cause tremendous damage merely by “offering privacy and anonymity on the cheap” and serving as a “particularly attractive site for criminal activity” (Los Angeles v. Patel, 576 U.S. 409, 2015). By abdicating their legal responsibilities towards their guests, hotels cannot be considered fully innocent - or passive - actors.

Although the legislative environment is continuously evolving with the passage of new laws that aim to hold offenders accountable and strengthen penalties (Weiss, 2022), there are still gaps in the industry's understanding of the problem to its full extent and its efforts to combat human trafficking remain inconsistent and, at the best, ‘a mixed bag’ (Pasquali, 2022).

We argue that an effective way to accelerate hotels' more decisive action against human trafficking is through private regulation. Insurance companies can play a significant role in this aspect by manipulating or withholding commercial insurance coverage from hotels, thus leaving them financially vulnerable. The insurance industry has had a significant impact on the organization of slavery within the global economy over many centuries. Insurers have played a role in the trans-Atlantic slave trade and have recently issued apologies for their involvement. During the 17th to 19th centuries, insurers provided coverage for the transportation of slaves from West Africa to the Americas and deployed various mechanisms, including excess and exclusions, to incentivize slave traders to operate their businesses in specific ways (Pearson and Richardson, 2019). Today, by tying financial responsibility directly to human trafficking activities through, for example, the loss of insurance or increased policy premiums, hotels will be incentivized to confront the issue and take concrete steps towards eradicating it rather than turning a blind eye. History shows that this can be an effective approach to combat slavery, as seen in the early 1780s when British insurers refused to pay an insurance claim for 132 slaves who lost their lives while aboard the *Zong* in the Caribbean. The resulting legal action and court case had a significant impact on the rise of abolitionism (Oldham, 2007).

The United States and the United Kingdom have taken significant steps in legislation against human trafficking and modern slavery (broader term used in the UK). While both countries are at the forefront of combating these issues, it is important to recognize that there are differences in their legal and litigation environments. To date, there have not been any major hotel-related human trafficking court cases in the UK, which means that the available information and references in this article primarily come from the US. Regardless, the US cases provide valuable insights into legal approaches, precedents, and strategies to address human trafficking in hotels, which can inform discussions and considerations also in the UK and more global context.

2. Legal Framework of Human Trafficking Liability

2.1. Duty of Innkeepers and Regulatory Obligations

The concept of innkeeping and the responsibilities of innkeepers trace their origins to English common law and even further back in ancient Roman law (Story, 1870). Throughout history, innkeepers have been held accountable for their guests' well-being and behavior. In the Middle Ages, strict liability was imposed on innkeepers, making them liable for their guests' actions (Bogen, 1996). These obligations were incorporated into the jurisprudence of various European nations, including Spain, France, and Scotland.

Innkeepers were considered “public servants” and were required to provide exceptional care (“uncommon care”) to their guests (Story, 1870, p. 401). Their inns were subject to comprehensive regulation and frequent searches due to the risk of fraud and theft. Travelers relied heavily on the good faith of innkeepers, but their association with criminals posed a challenge.

Today, hotels and motels face similar temptations to their commercial forebears and are subject to unique public duties derived from common law and regulatory schemes. Innkeepers and hotel owners are responsible for the safety, comfort, and convenience of their guests, with some jurisdictions imposing a heightened duty of care. They are expected to take reasonable actions to protect guests from harm, provide assistance when guests are ill or injured, and ensure their well-being until further care is available (American Law Institute, 1965).

While modern laws and regulations supplement common-law duties, they do not replace them. The combination of common-law obligations and legal frameworks allows for a range of legal actions, maximizing pressure on hotels to address the issue. For example, the Los Angeles City Attorney's Office has incorporated the old common law public nuisance theory into its regulatory regime, holding motel owners accountable for criminal activities on their premises (Rothberg, 2019). As a result, in 2017, the owner of a Motel 6 in Sylmar, California settled with the L.A. City Attorney's Office over rampant sex trafficking and criminal activity in their establishment. The agreement mandated improvements for public safety and a \$250,000 contribution to a program combating human trafficking in the region (Teigen, 2018).

Although hotels have transitioned from quasi-public servants to corporate entities, their public-facing roots still define the industry. Discrimination concerns and Fourth Amendment issues on searches and privacy frequently arise in the context of hotels as public accommodations (e.g., Domonoske, 2018). The 2015 Supreme Court ruling in the *City of Los Angeles v. Patel* expanded constitutional privacy protections for innkeepers and their guests. The court found a Los Angeles Municipal Code provision requiring information about guests without a warrant to be facially unconstitutional, acknowledging the privacy concerns

associated with hotel accommodation. To avoid the ‘Patel’ problem, hotel operators should thus be incentivized to consent to random spot checks through private regulation.

2.2. Criminal and Civil Sanctions under the Trafficking Victims Protection Act of 2000 (TVPA) and the UK Modern Slavery Act (MSA) 2015

The Palermo “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” adopted by the United Nations, establishes an international definition of ‘trafficking in persons’ to promote global cooperation in combatting this issue (United Nations, 2000). Signed by 117 countries, it has brought significant changes in addressing human trafficking. To support the implementation of the Palermo Protocol and address gaps in domestic law, the US passed the Trafficking Victims Protection Act of 2000 (TVPA, 2000). This bipartisan law which has been reauthorized multiple times approaches trafficking in three ways—prevention of sex trafficking, protection of victims, and prosecution of offenders, providing a legal framework for prosecuting traffickers and their conspirators criminally and civilly. In 2015 the UK enacted the Modern Slavery Act (MSA, 2015) to combat modern slavery and human trafficking in the same three ways. In addition to these, the Act requires businesses operating in the UK with an annual turnover above a £36 million (US\$ 46 million) to disclose in a modern slavery statement the steps they have taken to ensure their supply chains are free from slavery and human trafficking. The Act provides for stronger powers to law enforcement agencies to investigate and prosecute cases of modern slavery and includes provisions for victim support, prevention orders, and the establishment of an Independent Anti-Slavery Commissioner.

2.2.1. Criminal Liability

The U.S. Code Section 1591 of the TVPA (2000) criminalizes ‘sex trafficking’ and targets individuals who recruit, harbor, transport, provide, advertise, maintain, patronize, or solicit a person for commercial sex acts using force, threats, fraud, coercion, or if the victim is under 18 years old. Section 3 of the UK MSA addresses the offense of human trafficking, which involves the movement, recruitment, or harboring of individuals for the purpose of exploitation, including sexual exploitation. Hotels and their employees can be criminally punished for harboring victims, even without involvement in transport. However, proving the required mental state (‘mens rea’) for criminal liability can be difficult (Rothberg, 2019), as some hotel operators may be naively unaware of sex trafficking on their premises or confuse it with prostitution by choice (Paraskevas and Brookes, 2018b). To address the issue of ‘mens rea’, the doctrine of ‘willful blindness’ is considered by federal courts, where intentional ignorance can be seen as equivalent to knowledge. With this doctrine in court, hotel managers and employees could be deemed willfully ignorant, even if they had the opportunity to inquire about potential trafficking. The government normally chooses to use this approach to investigate and prosecute cases where proving the defendants’ guilty mind is easier (The Guardian, 2015).

Hotels as entities can be held criminally liable through vicarious liability if their employees, acting as agents, violate Section 1591(a)(1). The hotel can also face prosecution under Section 1591(a)(2) if it knowingly benefits financially from a venture that involves sex trafficking (Rothberg, 2019). However, determining corporate liability becomes challenging, especially for large hotel chains due to the industry’s structure which involves not only outright hotel ownership but also management contracts and franchise agreements. The brands, like Marriott, Hilton, and IHG for example, protect themselves by claiming they have no operational control at a particular hotel and that even though the employees are wearing their uniforms, they are not actually employees of the brand. Under New York state law, it is generally established that a franchisee is not considered the agent of the franchisor. This was

affirmed in the case of *S.J. v. Choice Hotels Int'l, Inc.* (2020), where the court dismissed a trafficking survivor's claim as no agency relationship between the franchisee hotel and the hotel group could be established. In New York, courts have recognized agency relationships between franchisees and franchisors only when the level of control exerted by the franchisor is so extensive that the independence of the franchisee becomes obsolete or if the franchisor controls the specific instrumentality that caused harm to the plaintiff. But, in general, demonstrating the existence of an agency relationship in the franchise context is a big challenge for plaintiffs. In Oregon, an even more stringent standard is applied, requiring the franchisor to have control over the franchisee's day-to-day operations and the specific instrumentality that caused the plaintiff's harm, as stated in the case of *A.B. v. Hilton Worldwide Holdings Inc.* (2020). In most cases, the prosecution will primarily aim for financial penalties and restitution from big brands, similar to white-collar cases after the 2008 recession, where negotiated agreements can be reached to mitigate negative publicity. It would, however, be worth considering publicized indictments for hotel chains that permit human rights violations to stamp out misconduct more aggressively and bridge the gap between criminal and civil consequences.

Nevertheless, the current enforcement of the TVPA falls short, with limited prosecutions targeting hotels for their role in sex trafficking. There were 140 new federal human trafficking prosecutions in 2021, marking a 22% decrease from the previous year. These cases contributed to a total of over 600 active criminal cases by the end of the year. Out of these cases, 43 involved hotels or motels as venues for commercial sex acts. Seven cases were linked with independent hotels, while Motel 6 was associated with six cases, and Quality Inn with four cases. In a combined 32 cases, 20 other hotel chains were mentioned (HTI, 2022).

2.2.2. Civil Liability

Civil remedies offer an alternative to criminal prosecutions in holding traffickers accountable for their actions, especially considering limited governmental resources and higher burdens of proof. Under 18 U.S.C. § 1595, trafficking victims can bring civil actions against their traffickers or individuals/entities that knowingly benefit from participation in a human trafficking venture. Hotels can be held liable for civil damages (compensatory and punitive) if they should have known they were facilitating human trafficking (Rothberg, 2019). In the UK, the MSA does not provide any significant range of civil remedies specifically designed to compensate victims of trafficking. Section 8 of the Act outlines the court's power to make slavery and trafficking reparation orders, but it is limited in scope. Reparation orders can only be made, and victims of trafficking may be eligible for compensation only in cases where the trafficker has been found guilty and a confiscation order has been issued against them. In the case of Shamsul Arefin, for example, who in 2015 was found guilty of human trafficking of four Bangladeshi hotel employees in the Stewart hotel, Argyll, Scotland and jailed for three years, the Fort William Sheriff Court confiscated £100,000 to compensate his victims (Wyatt, 2018).

In the period 2002-2021, the majority of federal civil trafficking cases (72%) have included at least one corporate defendant. Approximately one in five cases (19.7%) were brought against individual defendants (HTLC, 2022). The first civil suit against the hotel industry was filed in 2019 as '*M.A. v. Wyndham Hotels & Resorts*' by a human trafficking victim named M.A. (Spinks, 2020). She alleged that major hotel chains including Wyndham, IHG, and Choice knowingly benefited from participating in a venture which they knew was engaged in sex trafficking, in violation of §1591(a)(2). M.A.'s complaint detailed how the defendants supported and facilitated the exploitation of the plaintiff for commercial sexual purposes through their actions and omissions. Her attorneys recognized the ground-breaking nature of the case and emphasized the complicity of hotels in sex trafficking, highlighting the

industry's role in enabling traffickers to operate covertly and profit from their crimes. Given that this was the first civil suit against hotels, nearly two decades after the TVPA (2000) was enacted, and considering the challenges posed by the complex ownership/ management/ franchise structure of the hotel industry, federal litigation alone cannot guarantee progress (Rothberg, 2019). Additional avenues and pressure points are needed to bring meaningful change in combating human trafficking.

2.2.3. State Counterparts to the TVPA and Lawsuits against Hotels

As it is impractical for the federal criminal justice system to prosecute every human trafficking incident in the United States, the federal government has collaborated with local and state governments, providing training and support to enhance their capacity to prosecute this crime. Many states have enacted their own human trafficking statutes, modeled after the federal provisions of the TVPA (Polaris, 2014) and often expanding the scope of accountability and liability of individuals and entities including those in the hospitality industry. As a result, hotel chains can theoretically be held liable under both federal and local criminal and civil laws.

The 'M.A. v. Wyndham Hotels & Resorts' civil TVPA was preceded by several other groundbreaking civil lawsuits that, by testing the limits of state statutes, shed light on the hotel industry's alleged complicity in sex trafficking. Taking advantage of the Texas Civil Practice & Remedies Code § 98.002, a Jane Doe victim filed a lawsuit in Harris County, Texas against hotels, truck stops, and Backpage.com (Hogan et al., 2018) accusing the 'hotel defendants' (Choice Hotels, Quality Inn, Palace Inn; Hyatt Hotels, and Balaji Hotels) ignoring specific red flags, failing to alert authorities, intervene, or implement reasonable security measures to prevent the exploitation of minors on their properties. In the same Texas county, Janiece Charlez filed a lawsuit on behalf of her deceased daughter (Palmer, 2017) who had been trafficked and brutally murdered, with her body dumped near the hotel Plainfield Inn. Charlez alleged that the hotel owners and operators, and two directors knowingly benefited from Natalie's trafficking and sought damages under Texas's Survival Statutes for violations of relevant sections. Pennsylvania state's General Assembly enacted Act 105 against human trafficking which included a far-reaching civil cause of action against providers of public goods or services that knowingly profited from the victim's sex trade. M.B., a seventeen-year-old girl, filed a civil suit under this Act against Roosevelt Inn, a motel in Northeast Philadelphia (Slobodzian, 2017). The lawsuit implicated the motel's owner, the property's management company, and the resident manager, for selling her into sexual slavery at the motel since she was only fourteen years old. The complaint cited negligence under Act 105, as well as common-law negligence and intentional infliction of emotional distress.

In California, from January 1, 2023, the Assembly Bill ("AB") 1788, codified as section 52.65 of the Civil Code, establishes a new framework of civil liability for hotels for the failure of reporting of sex trafficking activity by their supervisory employees. Under AB 1788, hotels can be held accountable if sex trafficking activity occurs within their premises and a supervisory employee, either with knowledge or in reckless disregard of such activity, fails to promptly inform law enforcement or a victim service organization within a 24-hour timeframe. Moreover, hotels can also face liability if any employee, regardless of their level, is found to have knowingly benefited financially or received any form of compensation by participating in a venture involving sex trafficking within the hotel while acting within the scope of their employment.

Civil remedies have gained traction over time and expanded hotels' liability for human trafficking under federal and local laws, however, the question remains as to whether these lawsuits alone can effectively shift the incentives within the hotel industry.

3. Collateral Litigation between Hotels and Insurance Providers

Human trafficking lawsuits impose significant costs on hotels and often lead to disputes with their commercial insurers. Due to the expenses and potential liability associated with defending against human trafficking claims, insurers have increasingly sought declaratory judgments under 28 U.S.C. § 2201 stating that they have no obligation to defend or indemnify their insured hotels based on policy exclusions or public policy considerations. The threat and unpredictability of human trafficking litigation should be leveraged to encourage insurers to make comprehensive changes to their hotel policy coverage (Rothberg, 2019).

A. Primer on Hotel Insurance Coverage

Liability insurance has been a subject of debate regarding its impact on public policy (Ostrager and Newman, 2020). While it transfers risk to the insurer and potentially reduces the incentives for the insured to prevent harm, it also provides the insurer with an incentive to minimize risk through loss prevention (Rappaport, 2017). Hotels typically have commercial general liability (CGL) policies that cover various liabilities and property risks. These policies often include coverage for bodily injury caused by an occurrence or accident. However, intentional acts are usually not considered occurrences. Insurance coverage disputes arising from human trafficking cases primarily focus on bodily injury provisions and assault or battery exclusions in CGL policies.

A 'primary' CGL policy typically provides defense coverage to the insured, even if the defense costs exceed the policy's indemnity limits. This creates an incentive for insurers to settle cases. Hotels often have multiple layers of insurance coverage, including umbrella or excess liability policies, which remove the burden of deciding which risks are covered. These policies can, however, be costly for insurers that are unaware of the scope of their obligations, including defense coverage in human trafficking cases. Insurance contracts that have terms that promote or facilitate illegal activities, such as human trafficking, are considered void and unenforceable based on public policy (Plitt *et al.*, 2023). Still, in practice, determining the enforceability of such policies can be complex, depending on specific exclusions, policy language, and underlying claims.

Hotel groups will also typically have Directors' and Officers' (D&O) insurance policies that provide protection to very senior management against claims related to various issues, including stakeholder actions linked to the financial impact of the company's involvement in human trafficking incidents. The UN-backed Principles for Sustainable Insurance (PSI) have been established by insurers representing a significant portion of the global premium volume and assets under management. These principles serve as a framework for promoting sustainability and environmental, social, and governance (ESG) alignment within the insurance industry. PSI supporters adhere to these principles, integrating ESG risks like human trafficking and modern slavery into their analytics, product offerings, and claims management practices. Additionally, PSI has developed specific guidance for managing ESG risks in non-life insurance business, recognizing human trafficking as a prominent and pervasive ESG risk faced by insurers (UNEP FI PSI, 2020). As expectations from directors and officers increase, both in terms of statutory requirements and market demands, such as the EU's Corporate Sustainability Reporting Directive (CSRD) from 2024 with detailed mandatory ESG disclosure requirements, the clauses within D&O policies will have to be revised and adapted accordingly.

B. Claims by Insurance Companies and Court Rulings

The case of *E.B. v. Motel 6 Operating L.P.* (2017) in Pennsylvania exemplifies insurance-driven collateral litigation related to Act 105. E.B., a victim of sex trafficking, sued Motel 6, Neshaminy Inn, and management services companies for negligent violation of Act 105, negligence, and intentional infliction of emotional distress. The insurance provider, Nautilus Insurance Company, filed a declaratory action claiming no duty to defend or indemnify the insured based on policy exclusions and public policy reasons. Nautilus argued that the claim involved assault, which was excluded from coverage under their policy, and that public policy precluded coverage for human trafficking allegations. Nautilus prevailed in court, establishing the applicability of policy exclusions and public policy considerations (Whitman and Young, 2022).

However, in the case of *Mesa Underwriters Specialty Insurance Co. LLC v. Khamlai Lodging LLC*, Khamlai, the insured, sought coverage from CGL insurer, Mesa, for damages related to human trafficking lawsuits. The plaintiffs, who were minors, brought negligence claims against Khamlai for failing to prevent the sex trafficking on the premises and a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) for Khamlai's alleged involvement in racketeering. Mesa agreed to defend Khamlai in the underlying action but filed a declaratory judgment action asserting that the assault and battery exclusion in the CGL policy barred coverage. The court examined the CGL policy language, specifically the definitions of 'assault' and 'battery' and ruled that the underlying complaint did not contain allegations that met these definitions and did not assert intentional acts to cause harm or the intentional or reckless use of force. As a result, the assault and battery exclusion did not apply in this case (Whitman and Young, 2022).

The courts issued differing rulings for Nautilus and Mesa on whether the assault and battery exclusion precluded coverage for human trafficking claims highlighting the idiosyncratic nature of these rulings which is highly dependent on the particular policy and jurisdiction.

This is also illustrated in the cases of *Millers Capital Ins. Co. v. Vasant* (2018) and *Holiday Hospitality Franchising, Inc. v. AMCO Ins. Co.* (2013) which focus on the 'care, custody, or control' requirements in the context of the insurance policy exclusion arising out of abuse or molestation by anyone of any person while in the care, custody, or control of any insured.

In the *Millers Capital* case, victims of a human trafficking and prostitution ring filed lawsuits against a hotel alleging negligence. The insurer denied defense and indemnity based on this policy exclusion. The court considered the common use definitions of the terms care, custody, and control and applied them to the facts of the case. It concluded that the victims were not in the care, custody, or control of the hotel. The court likely reasoned that although the hotel had a duty to provide a safe environment for its guests, the victims were not under the direct control or supervision of the hotel. Rather, the testimony showed that the perpetrators actively prevented the hotel management and staff from knowing about them by deliberately keeping them hidden. Because there was no evidence that the hotel was ever aware of the victims being on its premises, the abuse and molestation exclusion did not apply, and the insurer was obligated to provide defense and indemnity to the insured hotel (Walker, 2022).

On the other hand, in the *Holiday Hospitality Franchising* case, a minor guest in a motel was molested by a hotel employee who entered the minor's locked room at night. The insurer's exclusion also required the victim to be in the 'care, custody, or control' of the insured but didn't define it. Since the word 'or' was in the phrase instead of 'and' the terms are linked in a disjunctive manner and didn't require all three terms to be met. The court determined that the minor was in the 'care' of the hotel because the molestation occurred while the minor was

staying in a rented guest room, behind a locked door provided by the hotel, and the hotel had a duty of care toward the minor. As a result, the exclusion was upheld (Walker, 2022).

Insurance companies have strong incentives to thoroughly revise their policies in line with current state laws to avoid uncertainties and potential obligations to defend or indemnify human trafficking cases. The unpredictability of these litigations makes it challenging for insurers to properly assess risks and price their hotel policies. It also makes settling cases a preferable option over prolonged litigation. Insurers also prefer non-retroactive laws to prevent unforeseen payouts that were not factored into previous premiums (Rappaport, 2017). Regardless, many human trafficking claims arise from past incidents when both the insureds and insurers were unaware of the potential liability. These lawsuits should prompt insurance companies to reassess their current policies, exclusions, and risk mitigation strategies to protect themselves from retroactive liabilities. As human trafficking lawsuits reach a critical mass, insurers are responding to the threat, seeking new ways to avoid covering these costly claims while ensuring that their insured hotels do not face bankruptcy. These may involve requiring hotels to self-insure or accept high self-insured retention amounts. This lack of primary insurance coverage may force the hospitality industry to become more proactive in addressing human trafficking and taking more preventive action (Rothberg, 2019).

4. Hotel Industry's Reaction and Inadequate Self-Regulation

A. Overview of the Industry's Response to Human Trafficking

In the early 2000s, Marilyn Carlson-Nelson, CEO of Carlson Companies, led the hotel sector's fight against sex trafficking, particularly child sex trafficking. She spearheaded the initiative by signing the Tourism Child-Protection Code of Conduct, developed by ECPAT (End Childhood Prostitution and Trafficking), a non-profit organization dedicated to ending the sexual exploitation of children. The Code (1996) is a voluntary set of business principles that aims to prevent child sex tourism and trafficking but extends beyond child victims, and it has been recognized as an example of best practice by U.N. organizations and incorporated into the tourism policies of various governments and organizations. Over 360 companies worldwide, including Hilton, Marriott, and Wyndham, have signed The Code, committing to take essential steps to protect children from sex trafficking. In 2010 the Department of Homeland Security launched the 'Blue Campaign' to guide hotels in identifying signs of trafficking (DHS, 2010). Today, more than two decades later, the industry is still in the stage of raising awareness. Despite the public commitments to combat and eradicate human trafficking from its operations and supply chains, and the 'partnerships and position statements with non-profits against human trafficking (Guelbart and Wejchert, 2017), accountability to trafficking victims is still sorely lacking, and hotels are only attempting to address the issue by focusing on awareness and education of their staff (Tolentino, 2019). The only notable step beyond awareness was taken by Marriott who, recognizing the importance of providing job training to trafficking survivors as a means to prevent re-trafficking, partnered with the Global Fund to End Modern Slavery (GFEMS) to develop a job-readiness training curriculum specifically tailored for the hospitality industry (AHLA, 2019).

But the reality is that in the race to win the praise of public concern and create a positive public image, human trafficking victims are deprioritized. This is exemplified by a high-profile case involving K.R., who filed a lawsuit in 2017 against the Quality Inn in Dothan, Alabama, and its parent company, Choice Hotels. K.R. alleged that the defendants were involved in a sex trafficking venture in which she was victimized at the age of 17, violating both common law and Alabama's anti-human trafficking statute (K.R. v. Backpage.com,

2017). K.R. specifically targeted Choice Hotels due to its overall role in sex trafficking and its perceived inaction in other sex trafficking cases. She claimed that after a child was raped and killed at a Comfort Inn, a Choice Hotels brand, in 2009, the company had the opportunity to take action but failed to make reasonable efforts to prevent such crimes. Although Choice Hotels partnered with ECPAT-USA to develop a training module on sex trafficking prevention, employees were not required to complete the training, and the company did not sign The Code until April 2015. According to K.R., the Dothan Quality Inn, like its parent company, failed to respond to numerous red flags that should have alerted hotel employees to the illegal activities of her trafficker. Two years later, M.A., cited K.R.'s case as evidence of the hotel defendants' willful blindness to sex trafficking, both before and after the adoption of The Code (M.A. v. Wyndham Hotels & Resorts, 2019). Choice Hotels, in particular, was accused by M.A. of using The Code as a shield against liability rather than actively combating sex trafficking. In 2022 Choice and Wyndham faced another in a lawsuit filed in Ohio federal court for turning a blind eye to traffickers using their hotels. The plaintiff, K.C., also accused the hospitality industry of showing a near-total lack of concrete action although "increasingly vocal about its supposed 'unified commitment' to combat human trafficking". She argued that "the industry in fact has a 'unified commitment' to the very opposite: continuing with business as usual, so that defendants and all industry participants continue to profit from human trafficking" (O'Brien, 2022). Evidently, a more comprehensive approach is required to effectively address human trafficking in hotels.

B. Eradicating Human Trafficking through Self-Regulation?

For the combat against human trafficking to move into action that goes beyond training and awareness, the civil and the business societies should be pushing in the direction of negative liability for hotels. One promising way to compel hotels to take more effective action is through insurance coverage which will cause a significant financial disincentive for hotels that are not engaging and, at the same time, hold them accountable for what they do (Rothberg, 2019). Apart from financial sanctions through declaratory judgment actions of no duty to defend the insured hotel involved in a human trafficking suit, insurers can push the hotel industry to 'self-regulate' itself by implementing industry-wide measures and practices with "guardians" at every "node" in the trafficked victims' "journeys" in hotels and their supply chains (Paraskevas and Brookes, 2018b). From rigorous identity checks during the reservation and check-in process to the elimination of cash transactions and from regular housekeeping checks into guest rooms (regardless of 'do not disturb' signs) to signs' reporting mechanisms and hotlines there is a lot that the industry can do.

At a corporate level, human trafficking should not just be addressed with position statements and civil society partnerships but become part of the organization's risk register with company-wide risk assessments similar to the actuarial tables for other risks and persons responsible for risk mitigation strategies reporting to the board on a regular basis. This would enable insurers to price coverage based on a hotel's geographic location, extended-stay policies, payment methods, prior criminal incidents, and risk controls in place (Rothberg, 2019). With the risk properly measured, effectively monitored and managed, and transparently reported, insurers can even offer lower premiums to incentivize hotels with adequate preventative measures that deter them from engaging in or facilitating human trafficking (Faure, 2014).

Insurance companies have the power to influence the industry through price setting, but using this power may be challenging due to the fierce competition among insurers for premium dollars and market share. The most problematic hotels are normally lower-end establishments, often known to law enforcement as hotbeds of trafficking. As individualizing loss prevention or linking premiums to care is not cost-effective for insurers it will be

difficult to effectively regulate them. Therefore, a regulatory mandate may be necessary to ensure that self-insured retentions (SIRs - financial thresholds that hotels must meet before insurance coverage kicks in) are written into insurance policies, to keep hotels accountable (Rothberg, 2019).

As with any regulation, insurance-driven self-regulation in the hotel sector will have to be reinforced by government actors. In the UK, for example, major insurers collaborated with the Gangmasters and Labour Abuse Authority (GLAA) to develop a standardized exclusion clause called "Forced, Child and Slave Labour" for the marine market. This clause mandates that the insured must provide evidence of their adherence to existing legal obligations regarding forced labor, child labor, and slave labor (IUA, 2019). Drawing a parallel between TVPA and the Foreign Corrupt Practices Act (FCPA) or between the UK Modern Slavery Act and UK Bribery Act (2010) one can see how the United States Department of Justice (DOJ) and the UK Ministry of Justice have become global enforcers of anti-bribery norms and compelled companies worldwide to comply with their national laws by penalizing non-compliance with substantial fines. The incentive offered for companies to cooperate and disclose any wrongdoing is very important as insurance policies typically do not cover FCPA or Bribery Act claims (Chu and Paraskevas, 2012), like how they would not cover claims related to human trafficking. If prosecutors and private plaintiffs increasingly utilize the provisions for restitution and fines outlined in the Trafficking Victims Protection Act (TVPA) and the UK Modern Slavery Act, independent hotels and international hotel groups would have a stronger financial motivation to proactively seek assistance and self-report any potential violations, thus positioning themselves to receive more favorable treatment and leniency.

A final additional pressure point is public accountability. Settlement agreements reached between government regulators and corporate actors should be publicized (see, for example, Hanson, 2020; Heisig, 2023). By doing so, hotels will be held accountable in the public eye and will have a stronger incentive to take trafficking issues seriously and comply with the agreed-upon terms. Consumers will also be allowed to make informed decisions about which hotels and brands are socially responsible.

5. Conclusion

In order to see more tangible progress in the fight against human trafficking, it is essential to establish a framework that imposes a greater oversight on hotels and compels a more decisive action. The responsibility lies with both hotels and insurance companies. Hotels, as potential hubs for human trafficking, should be held to a higher standard and bear increased responsibility for preventing and addressing human trafficking. However, it is the insurance companies that have the potential to drive real change that can lead to tangible progress in this combat, yet this power remains largely unrecognized. With their already existing tools and practices such as underwriting analysis, rating systems, differentiated premiums, self-insured retentions (SIRs), loss-prevention techniques, and audits they can play a pivotal role alongside public sentiment and government enforcement.

A crucial step towards this end is for insurance companies themselves to become aware of their influence and vulnerabilities in the context of human trafficking. They cannot ignore the growing wave of lawsuits with their potential financial and reputational risks and must recognize the imperative for policy change, even if a complete overhaul of hospitality liability insurance appears challenging. A policy change that not only protects their financial interests but also contributes to combat and, one day, eradicating human trafficking in hotels.

Addressing human trafficking in the hotel industry requires a synergistic regulatory approach that combines the efforts of private interests and public actors. With the

incentivization of a more proactive engagement of hotels through the combined pressure of insurance companies, regulatory measures, government enforcement, and public accountability, an environment will be created where hotels will not only fulfill their responsibility to prevent human trafficking but actively contribute to its eradication.

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