

2019 Review of Hospitality Lawsuits
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As hospitality providers well know, Florida is home to a thriving tourism industry. Families frequent our resorts; snowbirds flock to sunnier climes; vacationers seek out beaches; the artistically inclined descend on Ultra and Art Basel. Business is good. But in the United States, for better or worse, where there are people, there is litigation. Florida's hospitality providers must keep up with the latest trends in order to be prepared for attempts to recover against them.

In 2019, over 850 lawsuits involving the hotel and leisure industry were filed in Florida. These suits, in which the hospitality industry party served as the defendant in nearly 75 percent of cases, were fairly evenly divided between state and federal court, with a slight majority—about 54 percent—taking place in the former. A third of cases involved tort claims, 15 percent involved property claims, and 13 percent involved maritime law claims; up significantly from 2018, 13 percent involved commercial law and contracts claims. The rest comprised a hodgepodge of civil rights, labor and employment, intellectual property, and other miscellaneous claims.

Some entities bore much of the brunt of Florida's hospitality suits. Royal Caribbean Cruises, Ltd. was a party in over 20 percent of cases, and Wyndham Destinations, Inc. similarly was a party in almost 19 percent—double from its percentage in 2018.

In late 2019, Wyndham, along with over 20 other hoteliers including giants such as Hilton and Marriott, was named as a defendant in a massive suit alleging that hotels and motels in Naples willfully turned a blind eye to victims of sex trafficking forced to use those establishments for the profit of their abusers and, indirectly, the defendants.¹ The suit, brought in state court by two victims under the federal William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the "TVPRA"), claims that the hoteliers knew, on a corporate level, of the dangers and prevalence of sex trafficking in the hospitality industry, and that they failed to take adequate actions to prevent and respond to sex trafficking in their establishments.

Under the TVPRA, victims may bring a civil action against traffickers or, as relevant here, persons or entities that knowingly benefited from facilitating a venture they knew or should have known to be engaging in sex trafficking.

The plaintiffs, S.Y. and C.S., quoting a publication from the Cornell University School of Hospitality, state that "the hospitality industry is undoubtedly involved in the sex trafficking industry . . . and therefore has an inherent responsibility to deter the crime and can be liable for failing to do so." The defendants, according to the plaintiffs, shirked this responsibility. More specifically, the plaintiffs allege that the defendants failed to: (a) adequately distribute

¹ See *S.Y. and C.S. v. Naples Hotel Co. et al.*, Civ. Nos. 11-2019-CA-004318-0001-XX and 11-2019-CA-004322-0001-XX (Fla. 20th Cir. Ct.) (first case filed on Oct. 30, 2019). The cases were later removed to federal court in Ft. Myers. See Civ. No. 2:20-cv-00118-TPB-MRM (M.D. Fla.).

information to assist employees in identifying human trafficking; (b) provide a process for escalating human trafficking concerns within the organization; (c) mandate that managers, employees, or owners attend training related to human trafficking; (d) provide new hires orientation on human rights and corporate responsibility; (e) provide training and education on human trafficking through webinars, seminars, conferences, or online portals; (f) develop and hold or require ongoing training sessions on human trafficking; or (g) provide checklists, escalation protocols, and information to property management staff.

While this suit is premised upon federal law, it is notable that, effective July 2019, the Florida legislature enacted a new law requiring hotel and motel owners to train employees to report and detect human trafficking.

The case in Naples is not unique. Throughout the country, similar suits have been filed under the TVPRA and equivalent state laws, including in New York, Texas, Massachusetts, and Ohio. In late 2019, the federal judge in the Ohio case denied the defendants' motion to dismiss, ruling that, in the early stages of litigation, it was sufficient for the plaintiff to allege that the defendant hotels benefitted financially by renting rooms to the plaintiff's trafficker and that the hotels should have seen various signs indicating the presence of sex trafficking on the premises.² The Florida plaintiffs make strikingly similar allegations relating to signs of sex trafficking, including that they displayed indicia of physical abuse; that men frequently entered the plaintiffs' rooms; that they consistently refused housekeeping services and displayed "Do Not Disturb" signs on their room doors; that they had few personal possessions and would remain in their rooms for extended periods; and that they would frequently request clean towels.

The Judicial Panel on Multidistrict Litigation recently declined to combine 21 hotel sex trafficking suits from around the country, reasoning that consolidation would not be efficient given the differing alleged sex trafficking venues, hotel brands, owners and employees, geographic locales, witnesses, indicia of trafficking, and time periods.³ It remains to be seen whether the Panel's decision is good or bad for Florida hoteliers; the answer likely depends on the particulars of the case. While defendants will not run the risk of the facts in their case getting lost when considered next to other, perhaps more negative facts, they will also lose any efficiencies of size that would have resulted from consolidation. They may need to devote resources across several cases in several locations across both state and federal courts. In any case, Florida hoteliers should be aware of this boom of sex trafficking cases, taking steps to avoid liability and preparing to defend themselves.

² *M.A. v. Wyndham Hotels & Resorts, Inc. et al.*, Nos. 2:19-cv-00755, 2:19-cv-04965, 2:19-cv-02970, 2:19-cv-01194, and 2:19-cv-05384. The cases were eventually consolidated as 2:19-cv-00849-ALM-EPD (S.D. Ohio filed Mar. 8, 2019). The defendants' motion to dismiss was denied by an order of the magistrate judge on Oct. 7, 2019 (dkt. no. 136 in 2:19-cv-00849-ALM-EPD).

³ See *In re Hotel Industry Sex Trafficking Litigation*, MDL No. 2928 (J.P.M.L.) (docket no. 235, order dated Feb. 5, 2020).

With the wide variety of claims being litigated in Florida and beyond, it is vital that those in the hospitality industry work with law firms that can help to develop risk-avoidance strategies and that have the experience to handle the broad range of legal issues that may arise.

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