

Insurer Must Defend Sex Trafficking Claims Against Motel, Says Massachusetts Court

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A Massachusetts court refused to dismiss coverage claims brought by a motel that was sued for sex trafficking, finding that the claims were potentially covered acts of negligence, even though the complaint alleged only intentional conduct. *Ricchio v. Bigal, Inc.*, 2019 WL 6253275 (D. Mass. Nov. 22, 2019).

A motel and two of its employees were sued for alleged violations of federal sex trafficking statutes. The complaint alleged that the motel and employees were aware of and profited from the kidnapping, abuse and forced prostitution of a woman being held captive at the motel. Peerless, the motel's insurer, intervened in the matter, seeking a declaration that it had no duty to defend or indemnify the claims.

The court ruled that Peerless had a duty to defend because the underlying claims were potentially within the scope of "Personal Injury" coverage, defined to include damages caused by "false imprisonment." The court ruled that the insurer's defense obligation was not negated by an exclusion for injury "arising out of a criminal act committed by or at the direction of the insured." The court explained that the underlying claims alleged that the motel and employees violated the civil (rather than criminal) provision of the sex trafficking statutes. The civil provision requires that one "knowingly benefit . . . from participation in a venture which that person knew or should have known has engaged in an act in violation [of the statute]." Interpreting the phrase "knew or should have known" to include negligence, the court concluded that the motel and employees could be held civilly liable without having engaged in criminal conduct.

The court acknowledged that all of the underlying allegations against the motel and employees were "cast in terms of intentional, not negligent conduct." Nonetheless, the court deemed coverage possible. The court stated: "Each [underlying] claim[] includes allegations of criminal conduct by the [employees], but the complaint is 'reasonably susceptible' to an interpretation finding only negligence."

As discussed in our [July/August 2019 Alert](#), in a similar matter, the Third Circuit found no coverage for a sex trafficking suit against a hotel. The court reasoned that all underlying allegations were encompassed by an assault and battery exclusion, even those alleging negligence, because all alleged injuries arose out of assault. *See Nautilus Ins. Co. v. Motel Mgmt. Servs., Inc.*, 2019 WL 3283221 (3d Cir. July 22, 2019). Sex trafficking suits against hotels have increased in recent months, and a number of courts have denied motions to dismiss such suits, setting the stage for emerging coverage litigation in this context.

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