

## HELP STOP HUMAN TRAFFICKING THROUGH CIVIL LITIGATION

Authors: Kimberly Adams, Levin Papantonio  
Kim Dougherty, Andrus Wagstaff, PC

The business of human trafficking generates hundreds of billions of dollars in profits by trapping men, women, and children both from the US and foreign nationals into forced labor and commercial sexual exploitation. Human traffickers use violence, threats, deception, and other manipulative tactics to force people to engage in commercial sex or to provide labor or services against their will. In 2017, the U.S. Department of Labor estimated 21 million people to be victims of human trafficking around the world. The annual illegal profits derived from forced labor--an estimated \$150 billion dollars! By some estimates, up to 300,000 Americans under the age of 18 are lured into commercial sex trade each year and this number continues to rise. With these estimates, it is no wonder why we continuously hear of violent human trafficking crimes occurring in our local communities and against our children.

Raising awareness is just the first step in ridding the world of such horrific crimes against humanity. There are many organizations and governmental agencies working to combat human trafficking. Some of these organizations work from a grassroots level to promote awareness and advocate for change in the communities that need it most. Other organizations work nationally to raise awareness and make efforts to locate and support victims of human trafficking. As a result of these efforts, you can go into any restroom in an international airport and view trafficking hotline signs on every single door inside the stalls. Since 2010, January has been proclaimed human trafficking awareness month. There is no shortage of human trafficking documentaries to put real faces behind the stories of both current victims and survivors. We will warn you, the stories are horrific and the impact on those trafficked is heartbreaking.

Local authorities and the FBI focus their efforts on tracing trafficking activity, rescue operations and putting traffickers behind bars. They focus mainly on trafficking activities of gangs, labor violations (as often seen in Asian massage shops or in the fields), or tracing teen runaways in an effort to locate them before they vanish into a business as a commodity in an underworld from which they may never escape. To help acknowledge their efforts, the U.S. Department of Justice reports almost daily on prosecuted human trafficking cases. Unfortunately, these cases represent only a very a small fraction of the incidents that are occurring in the U.S. today. And, if you talk to law enforcement tasked to work human

trafficking cases, the statistics accounting for this real-life devastation are only getting worse. Law enforcement is overwhelmed, desensitized and discouraged likening the victims to sand slipping through their fingers.

It is in this area where trial lawyers can and must join the fight against human trafficking. All too often hotels, airlines, truck stops, websites and even restaurants have been complicit in the illegal trafficking of human beings and their silence, oblivions, and even direct assistance has destroyed countless lives. This is because human trafficking has proven to be a substantial income opportunity for organizations and companies who facilitate, support, cover up, and market victims of human trafficking.

As will be discussed below, most states provide a path for trial attorneys to make to make a difference if you (1) know what to look for and what to do when you suspect trafficking, (2) learn how and where to locate victims who have been trafficked and educate them on the civil remedies available; and (3) understand the civil avenues available to punish those who have supported, facilitated and profited from human trafficking.

### **Victims and Traffickers**

Victims of human trafficking are often targeted because of their vulnerabilities, including recent geographic relocation, substance abuse issues, homelessness of youth or runaways, or children who have entered into the child welfare system. Many have already suffered tremendous emotional distress and physical harm. In 2016, an estimated 1 out of 6 endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims. Of those, 86% were in the care of governmental social services or foster care when they ran away and became trafficked. Many of these children fled abusive homes taking to the streets in a desperate attempt to bring their abuse to an end. And while there are certain groups that are more at risk than others, the sad reality is that it can happen to anyone, at any time.

Victims of human trafficking are stripped of their identity, including licenses, passports, social security cards, birth certificates and any other identification document to lessen the likelihood of escape or capture. Victims of a trafficking situation may be living with their employer or with multiple people in a cramped space. They may be kept from speaking to an individual alone or forced to give scripted or rehearsed answers. They may appear submissive or fearful and are often young. By asking questions such as “can you leave your job if you want

to?”, “do you live with your employer?”, or “are you in debt to your employer?” you may be able to help identify victims of human trafficking.

### **Organizations Promoting and Profiting from Human Trafficking**

With the growth of technology, traffickers have moved their business off the streets and onto the internet over the past decade. Online advertising has transformed human trafficking and now many websites used to sell household goods also have pages selling victims. It’s been reported that as much as 86% of child trafficking occurs through a variety of social media websites. By example, currently there are cases pending against the owners and investors of Backpage.com. Backpage is thought to have led the marketplace with its involvement in over 73% of all child trafficking reports over the last few years. Specifically, Backpage, while making billions of dollars in advertising, was proactively stripping from advertisements words signaling that minors were being trafficked so that it could hold onto its advertising dollars. Instead of pulling the ads completely and reporting the original drafter of the ad to the authorities, Backpage is alleged to have simply censored and sanitized word such as “teen”, “young”, “amber alert”, “innocent”, “daddy’s little girl” and many others signals that the ad involved a minor. Thus, after stripping the ads of these buzz words, the ads were given the appearance of legalized prostitution while concealing the true intent to market children. With the sophistication of social media sites and users, it is extremely likely that such actions are occurring on more sites than we can imagine. For example, Cyber Tipline provides public and electronic service providers with the ability to report instances of online enticement of children for sexual actions, molestation, child pornography, and child sex trafficking. The National Center for Missing and Exploited Children reportedly received more than 12.7 million reports of suspected child sexual exploitation to its Cyber Tipline between 1999 and June 2016.

Up until April, 2018, Backpage, Craigslist, FaceBook and others were using loopholes in internet law to escape liability. With the passage of Fight Online Sex Trafficking Act (“FOSTA”), webpages like Backpage can no longer participate in sex trafficking with immunity. The law assigns liability for online services that are knowingly assisting, supporting or facilitating sex trafficking. It amends the loophole in Section 230 of the Communications Decency Act of 1996 to state that “[n]o provider or user of an interactive computer service shall be treated as a publisher or speaker of information provided by another information content provider-” meaning if the advertisement is proven to knowingly assist,

support or facilitate sex trafficking, you can no longer hide behind the loopholes in prior laws.

In addition to the civil allegations against internet sites, incidences of sexual exploitations occur in alarming numbers at truck stops and hotel / motel chains. Commercially operated truck stops are unique as they are often isolated, out of the law enforcement and public view, and are extremely organized where victims are moved in and out without interference or undue attention. Many truck stops operate on their own channels selling a variety of sexual exploitation, including sex with minors. Despite being educated and aware of trafficking issues occurring on their commercial sites and through the awareness raised by groups like Truckers Against Trafficking, truck stop operators often fail to take preventative measures to discourage human trafficking and ignore clear signs of trafficking and exploitation of minors. Instead, the facilities place the loyalty of the truck stop customer over the lives of those being sexually exploited.

Similarly, many hotels and motels are equally to blame for promoting and profiting from human trafficking. The Polaris Project estimated that between 2007 and 2015 there were 1867 victims and survivors identified as trafficked through the hotel and motel industry, with 92% being sex trafficking, 5% labor, and 2% labor and sex. Despite efforts by organizations like BEST: Business Ending Slavery and Trafficking, which has worked to educate the lodging industry on trafficking awareness, many hotels, both luxury and low end motels, continue to turn a blind eye to clear signs of human trafficking situations and refuse to implement anti-trafficking policies. Unfortunately, there are only a few hotel companies who have agreed to proactively address sex trafficking concerns in their hotel, which often may be led by hotel employees.

### **Civil Remedies Available to Victims of Human Trafficking**

Today, trial lawyers are litigating to change the landscape and hold the businesses that are aiding human traffickers accountable for their actions. The legislature first acted to provide civil remedies to survivors of trafficking in 2003, with the passage of the Trafficking Victims Protection Reauthorization Act of 2003 (“TVPRA”). *See also* 18 U.S.C § 77. The TVPRA allows survivors of trafficking to bring a civil lawsuit for sex trafficking, among others things, such as forced labor, which is also an epidemic in this country. The TVPRA specifically provides at 18 U.S.C § 1591: *Sex trafficking*

“whoever knowingly ... recruits, entices, harbors, transports, provides, or obtains by any means a person; or benefits,

financially or by receiving anything of value, from participation in a venture ... knowing that force, fraud, or coercion ... will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act... .”

The TVPRA also specifically provides avenues to pursue internet agencies, banks, hotels, car services, strip clubs, and other responsible parties, as it provides that 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, [actual and punitive] and reasonable attorney fees.” *See* 18 U.S.C § 1595. Indeed, Courts have upheld that the entities above fall within the definition.

The TVPRA also provides a statute of limitations of 10 years to bring a claim from the date of the cause of action or after a minor attains 18 years of age. *See* 18 U.S.C § 1595.

At least 40 states in the U.S. have enacted laws that allow victims and survivors to pursue legal civil remedies for being trafficked. Each state’s law varies regarding who can be sued, the burden of proof for succeeding on a trafficking claim, the damages allowed to be pursued and the statute of limitations for bringing such a claim. Any litigator of these cases needs to review the state law statute and decide whether or not a federal or state law claim is in their client’s best interest.

### **Tips for the Trial Lawyer Proceeding with Trafficking Cases**

Survivors of trafficking are not like other tort victims. Lawyers representing trafficking survivors should be prepared in the following ways:

- Provide the survivor with the resources needed to access law enforcement, housing, therapy, job training and address potential immigration issues-- recognizing that these resources are readily available in major metropolitan areas and even smaller communities;
- Assist immigrant clients in attaining T or U Visas or finding counsel who can assist with same;
- Involve therapists in the process to ensure the survivor is prepared before and after filing a lawsuit to avoid re-victimizing them at all costs;

- Educate survivors on the options to proceed in pseudonym as Jane or John Doe, with confidentiality, and to attain a restraining order; and/or
- Empower them to take back control through the legal process.

In order to make the most impact, all trial lawyers need to engage in educating the public on human trafficking and litigating against the people and organizations committing horrendous crimes of labor and sex trafficking, especially against children. Representing survivors of trafficking provides a unique opportunity to make a difference in this world and to make a safer future for our children. Please join Levin Papantonio and Andrus Wagstaff, PC, among many others, in our efforts to eviscerate illegal human trafficking.