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Pa. Supreme Court Removes Insurance Hurdle for Sex Trafficking Survivors Seeking Coverage Stemming From Abuse

A federal district court had initially determined that carriers had no duty to defend against the claims.

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The Pennsylvania Supreme Court has rejected efforts by insurance carriers to block hotels from receiving coverage if they are sued over allegations that they turned a blind eye to sex trafficking.

In a unanimous ruling Tuesday in *Samsung Fire and Marine v. RI Settlement Trust*, the justices said the fact that the state criminalizes sex trafficking does not mean that hotels that profited from the conduct should be barred from seeking coverage for ensuing lawsuits.

The case, which came before the justices on a request from the U.S. Court of Appeals for the Third Circuit, waded into questions about the interplay between two public policies—the policy of interpreting insurance contracts broadly to favor coverage, and the policy against providing

With Justice Christine Donohue writing for the majority, the court said the state's Human Trafficking Law does not address the issue, and that parties should look to their contract to resolve coverage disputes.

"While the General Assembly has expressed the Commonwealth's policy against sex trafficking by criminalizing it, the criminal statute does not provide a justification for the judicial crafting of an exception to insurance coverage in a policy otherwise silent on the subject," Donohue said.

"For the reasons provided, we hold that neither an insurer's duty to defend nor its duty to indemnify is abrogated on the basis of public policy when the insured is alleged to have enabled or profited from sex trafficking," she said later in the opinion.

Kline & Specter attorneys Nadeem Bezar and Emily Marks are representing the sex trafficking survivors who filed the underlying suits against Roosevelt Inn. They told Law.com they have encountered these public policy arguments in numerous other sex trafficking cases they have brought.

The Third Circuit will still need to officially rule on the issue in *Samsung Fire*, but, if the circuit court adopts the Supreme Court's ruling, it will mean there is a presumption of a duty to defend and will remove a hurdle for plaintiffs seeking to obtain recovery in these cases, Bezar said.

"It allows us to continue to move forward and represent survivors of this abuse," Bezar said. "It's a great thing for these women. They at least get to have their cases heard and not knocked out procedurally."

John Ellison and Luke Debevec of Reed Smith represented RI Settlement Trust, which handles the hotel's assets as a result of the bankruptcy proceedings.

“The court's decision is a significant victory for policyholders in Pennsylvania who face litigation that includes claims based on third parties' conduct on their business premises could be recharacterized as potentially involving unproven, uncharged criminal law violations,” Ellison said in an emailed statement.

Debevec added, “In the event the trust is ultimately successful in establishing its rights to coverage, the beneficiaries would include any tort plaintiffs and claimants that successfully establish their claims under the Roosevelt Inn bankruptcy plan.”

The dispute stems from an underlying lawsuit four women, including a minor, brought alleging they had been sex trafficked at the Roosevelt Inn in Philadelphia. The women contend there were

After the hotel appealed and the Third Circuit certified the question to the state Supreme Court, insurance companies, including Nationwide, Samsung and ACE, argued they had no duty to defend because Pennsylvania public policy bars coverage, specifically citing the high court's 2004 decision in *Minnesota Fire & Casualty v. Greenfield*, which involved an insurance dispute stemming from a heroin-related death.

The hotel countered that its activities, which included renting hotel rooms, were not the same as criminal acts at issue in *Greenfield*.

Writing for the majority, Donohue noted that *Greenfield* was a plurality opinion, and therefore does not control the outcome "in any respect." In a concurrence, Justice David Wecht said that, in his view, the opinion announcing the court's judgment in *Greenfield* was "wrong as a matter of law."

The plaintiffs in the underlying suit were not parties to the dispute, but acted as amicus in the case, with Kline & Specter's Chip Becker and Andra Laidacker handling it on appeal.

The plaintiffs had filed their suit in 2017 and were on the eve of trial before the defendant-hotel declared bankruptcy, putting a pause on the proceedings and teeing up the coverage dispute that has unfolded over the past few years.

The bankruptcy and ensuing dispute "shut everything down," Marks said.

"That's a lot of time that's gone by that that person has just been living with this," Bezar said. "We hope this allows us to continue to move forward on their behalf."

According to Bezar and Marks, 14 other plaintiffs are also suing the same hotel.

Swartz Campbell's Candidus Dougherty, who is representing the insurance carriers, did not return a call seeking comment.