

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In Re: Hotel Industry Sex
Trafficking Litigation II

MDL NO. 3104

**DEFENDANT BEST WESTERN INTERNATIONAL, INC.’S RESPONSE IN PARTIAL
OPPOSITION TO PLAINTIFF’S MOTION FOR CONSOLIDATED PRETRIAL
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

In accordance with Rule 6.1(c) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation (the “Panel”), Best Western International, Inc. (“BWI”) opposes the Motion for Transfer of Actions to Southern District of Ohio (East Division) Pursuant to 28 U.S.C. § 1407 for Consolidated Pretrial Proceedings.

INTRODUCTION

The cases subject to the instant motion involve allegations that a variety of different defendants (members of the hotel industry, including hotel owners, operators, franchisors, and other corporate entities) located in a variety of different locations throughout the United States are liable under the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) (18 U.S.C. § 1595). Following a failed attempt to transfer and consolidate similar cases to the Southern District of Ohio in 2020 (*see In re Hotel Indus. Sex Trafficking Litig.*, 433 F. Supp. 3d 1353 (J.P.M.L. 2020), Plaintiffs’ counsel now seeks another opportunity to request identical relief. Aside from increasing the number of “related actions” from 21 (in 2020) to 57” (in 2024) (*see* Dkt 1), nothing has changed regarding the absence of common questions of fact among these cases. Each underlying case involves a distinct alleged scheme of trafficking at different hotel locations,

in different states, at hotels affiliated with different brands, brought by different plaintiffs of varying ages and circumstances, and perpetrated by different traffickers across the United States. Plaintiffs’ common theories of liability (questions of law) as to each defendant still do not support consolidation of these cases into a Multidistrict Litigation for the purposes of pretrial discovery.

LEGAL STANDARD

“When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings.” 28 U.S.C. § 1407(a). The Judicial Panel on Multidistrict Litigation may permit such a transfer if it determines the transfer will be “for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” *Id.*; *In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, 2024 U.S. Dist. LEXIS 1477 at *2 (J.P.M.L. Jan. 4, 2024). Centralization of litigation is not automatic but “will necessarily depend on the facts, parties, procedural history and other circumstances in a given litigation.” *In re Bear Creek Techs., Inc., (722) Patent Litig.*, 858 F. Supp. 2d 1375, 1379 (J.P.M.L. 2012).

ARGUMENT

In 2020, the Judicial Panel on Multidistrict Litigation (“Panel”) relied on several determinations in denying Plaintiffs’ application for Multidistrict Litigation (“MDL”) on similar TVPRA cases. First, the Panel held each action involved different alleged sex trafficking ventures, different hotel brands, different owners and employees, different geographic locales, different witnesses, different indicia of sex trafficking, and different time periods. *In re Hotel Indus. Sex Trafficking Litig.*, 433 F. Supp. 3d at 1356. Second, the Panel held that the assertion of a common claim for relief under the TVPRA was a common question of law, not fact, and was insufficient to satisfy Section 1407. *Id.* Third, the Panel held that the potential for counsel to file thousands of

similar TVPRA lawsuits is not a determinative factor for an MDL. *Id.* These factors have not changed over the past four years, and denial of the MDL is still appropriate.

I. These Cases Lack Common Questions of Fact.

As the Panel correctly held in 2020, the factual issues underlying a TVPRA claim are unique to each alleged sex trafficking venture. *In re Hotel Indus. Sex Trafficking Litig.*, 433 F. Supp. 3d at 1356. “[U]nique issues concerning each plaintiff’s sex trafficking allegations predominate in these actions. Indeed, there is no common or predominate defendant across all actions, further indicating a lack of common questions of fact.”). This has not changed. In order to establish liability against any defendant, each plaintiff will need to prove, at a minimum, the circumstances of his or her alleged trafficking. This will include the length of time each plaintiff was trafficked; where the plaintiff was trafficked; whether the plaintiff was trafficked at several hotels, and if so, whether the trafficking occurred consecutively or concurrently; the scheme plaintiff’s traffickers and accomplices used to facilitate the trafficking; the extent of interactions between each plaintiff or their traffickers and hotel staff (if any); identifying possible witnesses at each alleged trafficking location; and unique indicia of trafficking which would have placed hotel staff on notice that it was occurring.

As to BWI, there are no allegations of a conspiracy to violate the TVPRA with other members of the hotel industry. Thus, discovery between each plaintiff, the hotels where each plaintiff was allegedly trafficked, and each corporate franchisor/defendant will not overlap. *See In re Varsity Spirit Athlete Abuse Litig.*, 2023 U.S. Dist. LEXIS 97733 at *2-3 (J.P.M.L. June 5, 2023) (denying centralization of nine cases involving child sexual abuse allegations against eight common defendants and approximately thirty individual coaches, gyms, and choreographers). Plaintiff argues all cases contain common questions of fact, including “what the Parent-Hotel Defendants knew at a point in time in the aggregate across all branded properties” and “what

constitutes the exercise of reasonable diligence for that Parent-Hotel Corporation under the circumstances.” Dkt. 1-1 at p. 11. But these questions are inherently unique and uncommon; each case focuses on different hotels, locations, hotel staff, witnesses, and time frames. By Plaintiffs’ own admission, determining reasonable diligence “under the circumstances” suggests the inquiries require case-by-case analysis. *Id.*

As every Plaintiff has a unique set of facts regarding their TVPRA claims and every Defendant will have a unique set of facts regarding its relationship with the Plaintiff, the hotel(s) where Plaintiff was allegedly trafficked (including hotel ownership, dates of operation, staffing on site, and potential witnesses), centralization will not streamline litigation or benefit the parties.

II. The Facts are not Common or Centralized.

Plaintiff argues centralization will streamline adjudication “for all Parent-Hotel Corporate Defendants related to their nondelegable duty not to profit from what they knew or should have known was a sex trafficking.” Dkt. 1-1 at p. 11. This Panel previously rejected this argument, holding “the scope of the brand defendants’ duties under the TVPRA and the standard for liability” present common questions of law, not fact, and were insufficient to warrant centralization. *In re Hotel Indus. Sex Trafficking Litig.*, 433 F. Supp. 3d at 1356; *see also id.* at MDL No. 2928, Dkt. 236 at p. 14 (Feb. 14, 2020) (“Asking the same question to everybody doesn’t mean there’s a common question of fact.”); *see also In re Supplemental Nutrition Assistance Program Litig.*, 619 F. Supp. 3d 1348, 1348 (J.P.M.L. 2022) (“Common legal questions are insufficient to satisfy Section 1407’s requirement of common factual questions.”). Analysis of Defendants’ duties under the TVPRA will always remain questions of law, and thus there has been no change in Plaintiffs’ litigation since 2020 to warrant centralization.

III. The Potential for Counsel to File Thousands of TVPRA Lawsuits is not a Determinative Factor for Multidistrict Litigation.

In 2020, Plaintiffs’ counsel argued there were approximately “1,500 sex trafficking victims who have retained lawyers to investigate and evaluate their claims against the hotel industry.” *In re Hotel Indus. Sex Trafficking Litig.*, MDL No. 2928 at Dkt. 1-1, fn. 1 (J.P.M.L. Dec. 9, 2019). Counsel now avers they represent approximately 1,700 victims of sex trafficking. Dkt 1-1 at p. 8. However, there is no evidence counsel has filed 1,700 cases alleging TVPRA violations; in fact, this motion addresses no more than fifty-three cases. *Id.* at p. 1. While the number of *potential* cases may have increased in four years, the caselaw is clear that “the mere possibility of additional actions does not support centralization, even where thousands of actions are predicted.” *In re Hotel Indus. Sex Trafficking Litig.*, 433 F. Supp. 3d at 1356, citing *In re Route 91 Harvest Festival Shootings in Las Vegas, Nevada, on October 1, 2017*, 347 F. Supp 3d 1355, 1358 (J.P.M.L. 2018) (“The Panel generally does not take into account the mere possibility of future filings when considering centralization.”) (internal citations and quotations omitted).

IV. As to BWI, It Takes No Position on Plaintiffs’ Request to Transfer Actions to the Southern District of Ohio (Eastern Division).

Plaintiffs name BWI as a defendant in only three of the fifty-seven cases underlying this motion: *A.W. v. Red Roof Inns, Inc. et al.* (2:21-cv-4934), *T.P. v. Red Roof Inns, Inc. et al.* (2:21-cv-4933), and *Jane Doe (R.A.) v. Best Western International, Inc. et al.* (2:23-cv-3459). All of these cases against BWI relate to hotels in Ohio, are venued in the Southern District of Ohio, Eastern Division and assigned to Chief Judge Marbley. Thus, as to BWI and the three cases against BWI, it takes no position on Plaintiffs’ request to have all underlying cases transferred to the Southern District of Ohio, Eastern Division and assigned to Chief Judge Marbley. Dkt. 1-1 at pp. 15-20. As for the cases outside of the Southern District of Ohio, including cases venued in the Central District of California (Dkt. 1-5), Eastern District of California (Dkt. 1-6), Northern District

of Georgia (Dkt. 1-7 and 1-8), District of Minnesota (Dkt. 1-9), District of New Mexico (Dkt. 1-10), Northern District of Ohio (Dkt. 1-11 – 13), Eastern District of Pennsylvania (Dkt. 1-53), District of South Carolina (Dkt. 1-54), Eastern District of Texas (Dkt. 1-55), Southern District of Texas (Dkt. 1-56), and Western District of Washington (Dkt. 1-57), BWI objects to centralization of these matters along with those against BWI. There is no benefit to centralization of cases in California, Georgia, Minnesota, New Mexico, Pennsylvania, South Carolina, Texas, or Washington (none of which name or involve BWI or its member hotels) where there is no overlap between the parties, discovery, or relevant facts. Centralization would impede efficiency, especially when all discovery will be defendant-specific. *In re Proton-Pump Inhibitor Prods. Liab. Litig.*, 273 F. Supp. 3d 1360, 1361-62 (J.P.M.L. 2017).

CONCLUSION

The underlying cases do not share common questions of fact, and consolidation will not promote just or efficient resolution. For the foregoing reasons, BWI respectfully requests the Panel deny the Motion for Transfer of Actions Pursuant to 28 U.S.C. 1407.

Dated: February 7, 2024

Respectfully submitted,

/s/ Karen Campbell

Karen L. Campbell
**LEWIS BRISBOIS BISGAARD &
 SMITH LLP**
 77 Water Street, Suite 2100
 New York, New York 10005
 Telephone: 212.232.1300
 Facsimile: 212.232.1399
 Karen.Campbell@lewisbrisbois.com
Attorneys for Defendant
Best Western International, Inc.

CERTIFICATE OF SERVICE

In compliance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify on the 7th day of February, 2024, the foregoing was served on counsel of record through the Court's electronic filing system, and paper copies will be sent to all parties without an appearance by conventional mail.

/s/ Karen Campbell
Karen L. Campbell