

## Insurer Asks Again To Intervene In Hotel Sex-Trafficking Suit

By **Joyce Hanson**

Law360 (May 16, 2022, 5:57 PM EDT) -- Erie Insurance Exchange has again asked an Ohio judge to let it intervene in a sex trafficking suit by an anonymous accuser against multiple hotel companies, saying it has a contract with another one of the accused parties and wants to know whether it must defend the hotel.

Erie told U.S. District Judge Algenon L. Marbley in its Friday motion to intervene that it seeks a declaratory judgment regarding its obligations, "if any," to defend or indemnify Dream Land Hotels LLC, doing business as Super 8, in relation to the claims brought by the alleged victim, who is identified by her initials, M.A.

The insurer noted that it is presently defending the Super 8 in the suit, subject to a reservation of rights letter saying it may deny coverage at a later date. And Erie also acknowledged that Judge Marbley has previously denied motions to intervene in the M.A. suit by insurers, including Erie itself.

"Judge Marbley has, in this lawsuit, denied insurers' motions to intervene, including Erie's earlier motion filed in relation to different insureds," the motion said. "Erie acknowledges that those motions to intervene, and the issues they presented, are like Erie's motion herein. But, under Ohio law, a failure of the insurance company to move to intervene binds it under collateral estoppel."

The doctrine of collateral estoppel, or "issue preclusion," states that a particular issue cannot be raised again once a court has made a final judgment on it.

Judge Marbley **in April 2020 denied** Erie Insurance Exchange's bid to intervene in two suits, one of which was the M.A. case. The judge said he had already recently decided two similar motions by insurers American Family and Nationwide in the M.A. suit and held then that the insurers' concerns about coverage under their policies were irrelevant to the plaintiff's claims under the Trafficking Victims Protection Reauthorization Act.

Another insurer, Cincinnati Insurance Co., on March 3 **lost its bid to intervene** in M.A.'s suit when Judge Marbley said it failed to demonstrate a "substantial legal interest" in the actions brought by the accuser under the TVPRA.

Cincinnati **had told the judge** in its May 2021 motion to intervene that it has a contract with Ash Management Corp., doing business as Days Inn by Wyndham-Columbus North, which M.A. also has named as a co-defendant.

Similar to Super 8, Ash asked Cincinnati to defend and indemnify the hotel for M.A.'s claims, and the insurance company said it was now defending Ash in the suit subject to a reservation of rights.

Cincinnati said it was aware that the judge had previously denied motions to intervene in the M.A. suit by insurers American Family, Nationwide Property & Casualty and Nationwide Mutual Fire Company, as well as Erie Insurance Exchange. But under Ohio law, an insurance company's failure to lodge a motion to intervene may bind it under collateral estoppel and prevent the insurer from relitigating an issue that had been resolved in a previous lawsuit, Cincinnati said.

In the case initiated by M.A. in March 2019, **Judge Marbley ruled in October 2019** that the operators of six hotel companies must face her claims that they should have known she was being

victimized, saying she had shown enough to allege the hotels benefited financially from the trafficking.

Judge Marbley denied motions to dismiss from Buckeye Hospitality Inc., Choice Hotels International Inc., First Hotel Management LLC, Columbus Hospitality LLC, Krrish Lodging LLC and Wyndham Hotels & Resorts Inc. The judge rejected their arguments that M.A. had not shown that the hoteliers knowingly benefited financially from the sex trafficking happening on their premises or that they should have known what was going on.

On Dec. 14, M.A. moved to amend the complaint, naming 14 hospitality entities as co-defendants, including the Super 8 hotel, Ash Management's Days Inn by Wyndham-Columbus North hotel, five other Days Inn by Wyndham hotels, a Comfort Inn hotel and an InterContinental Hotels Group-branded Crowne Plaza hotel. Judge Marbley granted the motion on Feb. 23, and the amended complaint was filed that day.

On June 21, M.A. **voluntarily dismissed without prejudice** all claims against United Kingdom-based InterContinental Hotels Group PLC from her sex-trafficking suit against the slew of hotels in Ohio federal court as the parties continued to hash out discovery and a trial schedule in the long-running case. InterContinental is the parent company of Georgia-based subsidiaries Six Continents Hotels Inc. and Holiday Hospitality Franchising LLC, which are still named in the suit.

More recently, on May 11, the judge ordered the parties to file a joint memo summarizing their positions on whether they object to the appointment of a special master to assist the court in the M.A. action, related sex-trafficking actions and any future related actions, saying the plaintiffs have indicated that up to an additional 20 similar cases may be filed.

A lawyer for M.A., Steven C. Babin Jr. of Babin Law LLC, told Law360 on Monday that the plaintiffs have asked for a special master dedicated to the cases to move them forward because "we've had significant issues getting documents" from the hotels.

"In Ohio, we have five federal suits filed by five separate plaintiffs," Babin said. "We anticipate there will be quite a few more than 20 cases because Ohio is a high-trafficking state. It's very sad how ubiquitous hotel trafficking is in the major brands across the country. The victims' stories are tragic."

M.A. claims she was trafficked for sex through force, fraud and coercion from spring 2014, when she was a minor, until she escaped in August 2015. She said the hotels knew or should have known the trafficking was happening on their properties because her trafficker asked for rooms near exits and refused housekeeping, and the trash cans in her rooms contained an "extraordinary number of used condoms," according to the amended complaint.

"As a direct and proximate result of the Wyndham, IHG and Choice brand managers and their hotel brands' consistent refusals to prevent human trafficking on their hotel properties, M.A. was sex trafficked, sexually exploited, and victimized repeatedly at Wyndham, IHG and Choice brand hotels," the amended complaint said.

Counsel for the other parties did not immediately respond to requests for comment Monday.

Erie Insurance Exchange is represented by Gordon D. Arnold and Bartholomew T. Freeze of Freund Freeze & Arnold.

Dream Land Hotels LLC d/b/a Super 8 is represented by William B. Benson and Mark C. Melko of Benson & Sesser LLC.

M.A. is represented by Steven C. Babin Jr. and Jennifer Jana El-Kadi of Babin Law LLC; Kimberly L. Adams, Kathryn L. Avila, Chris V. Tisi, Hilary Wood and Emmie Paulos of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA; Gregory M. Zarzaur of the Zarzaur Law Firm; and Anil A. Mujumdar of Dagney Johnson Law Group.

The suit is M.A. v. Wyndham Hotels & Resorts Inc. et al., case number 2:19-cv-00849, in the U.S. District Court for the Southern District of Ohio.

--Editing by Gemma Horowitz.

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