

SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

NEW YORK CITY BAR ASSOCIATION | OCTOBER 7, 2025

EMERGING FRONTS IN SEX TRAFFICKING LITIGATION



Brenda Harkavy, Esq.
Laffey Bucci D'Andrea
Reich & Ryan



Katie W. Myers, Esq.
Phelps Dunbar LLP



Danielle Pascale, Esq.
Tyson & Mendes



Deborah Rosenthal
Senior Claims Consultant
Nationwide



Meghan Wynkoop, Esq.
Margolis Edelstein

Scope of Sex Trafficking in the U.S.

- ▷ **Definition (18 U.S.C. § 1591):** Sex trafficking is the **recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act** through force, fraud, or coercion, or where the person induced is under 18 years of age.
- ▷ Common indicators: control of movement, coerced sex acts for money or survival, third-party profits from exploitation, threats or psychological manipulation.
- ▷ Focuses on coercion and third-party profit, not consent or state prostitution laws
- ▷ ~81 % of reported trafficking incidents (2022 BJS) involve sex trafficking.
- ▷ ~280 federal civil TVPRA cases filed in 2024 (209 for sex trafficking).
- ▷ 1,200 civil § 1595 claims since 2003; ~ \$940 million in settlements and judgments.
- ▷ Polaris Hotline (2024): ~ 12 000 cases / 22 000 victims / 6 600 sex-trafficking-related.
- ▷ Civil TVPRA litigation expands victim recovery beyond criminal prosecution.

TVPRA Legislative History & Framework

- ▷ **2000:** Trafficking Victims Protection Act (TVPA), Pub. L. 106-386 — first comprehensive federal trafficking law.
- ▷ **2003:** Reauthorization created **18 U.S.C. § 1595** (civil cause of action).
- ▷ **2008–2017:** Expanded corporate/beneficiary liability; added “**should have known**” constructive-knowledge standard;
- ▷ **2022:** *Eliminating Limits to Justice Act* (Pub. L. 117-176) — abolished statute of limitations for child-sex-abuse claims under § 2255.
- ▷ TVPRA = umbrella term encompassing **criminal provisions (§§ 1589–1594)** and **civil remedies (§ 1595)**.



Overview: Structure of 18 U.S.C. § 1591

Subsection	Focus	Purpose in Civil Context (§ 1595)
(a)(1)	Defines <i>primary trafficking conduct</i> — “recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits...”	Establishes the predicate <i>offense</i> forming the basis of civil claims.
(a)(2)	Creates <i>beneficiary liability</i> : those who “ benefit, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section.”	Source of corporate, franchisor, and institutional liability ; imported directly into § 1595.
(b)	Sets penalties and age rules : minors < 18 = no proof of coercion required; establishes enhanced punishment.	Provides the <i>strict-liability rule</i> for age in civil suits.
(e)	Provides definitions — e.g., “coercion,” “commercial sex act,” “venture.”	Supplies interpretive definitions for civil liability (later slides).

18 U.S.C. § 1591(a)(1)-(2)

Definition of Sex Trafficking



§ 1591(a):

a) Whoever knowingly—

- (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, **recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or**
- (2) **benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means 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, shall be punished as provided in subsection (b).**

§ 1591(e):

- *Commercial sex*: any sex act, on account of which anything of value is given or received by any person;
- *Venture*: any group of two or more individuals associated in fact, whether or not a legal entity; and
- *Participation in a venture*: knowingly assisting, supporting, or facilitating a violation of 18 U.S.C. § 1591(a)(1).

Direct Perpetrator Liability 1591(a)(1)/Beneficiary Liability 1595(a)(2)

▷ **Direct (§ 1591(a)(1)):**

- Trafficking act.
- Knowledge / reckless disregard.
- Commercial sex act (thing of value).
- Interstate commerce.
- Minor = strict liability.

▷ **Beneficiary (§ 1591(a)(2)):**

- Financial benefit.
- Knew or recklessly disregarded venture's trafficking.
- Civil § 1595: knew or should have known;
preponderance standard.

Interpreting § 1591: Knowledge, Reckless Disregard & Civil Application



§ 1591(a): requires that the defendant acted

“**knowing, or in reckless disregard** that means of force, threats of force, fraud, or coercion ... will be used to cause a person to engage in a commercial sex act.”

- **Knowing = actual awareness** of trafficking or coercion.
- **Reckless disregard = willful blindness** to red-flag facts — a higher culpability than negligence.
- Captures facilitators who “turn a blind eye.” (*Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017)).
- **Civil standard (§ 1595):** Plaintiff must prove defendant “**knew or should have known**” of the venture by a **preponderance of the evidence**.
- “Should have known” imports **constructive knowledge** — what a reasonable entity would have recognized.
- Enables liability for corporations, hotels, web platforms, and employers that profit while ignoring exploitation



Levels of Knowledge

Knowledge Type	Definition	Typical Evidence	Legal Effect
Actual	Direct awareness	Admissions, reports, communications	“Knowingly” (§ 1591/1595)
Constructive	Should have known	Ignored red flags, complaints	Meets § 1595 standard
Reckless Disregard	Conscious avoidance	Continued profit despite indicators	§ 1591 culpability

Victim Status & Age Elements (§ 1591(b))

- ▷ Victims < 18 → no proof of coercion required.
- ▷ Strict-liability rule for age.
- ▷ *U.S. v. Mozie*, 752 F.3d 1271 (11th Cir. 2014).
- ▷ 2022 Eliminating Limits to Justice Act → no SOL for child-sex-abuse claims.



Defining Predicate Acts in § 1591(a)

- ▷ **18 U.S.C. § 1591(a)(1)–(2):**
“Whoever knowingly—
(1) recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
- ▷ Verbs capture the **entire trafficking process**, from recruitment to exploitation.
- ▷ Each verb = independent basis for liability
- ▷ Congress intended to reach both **traffickers** and **facilitators**.

Predicate Verb

Typical Civil Defendant or Context

Recruit / Entice

Talent agents, modeling scouts, or online recruiters using false promises

Harbor / Maintain

Hotels, landlords, or employers providing rooms or housing

Provide / Obtain

Agencies, intermediaries, or employers acquiring or supplying victims

Advertise

Websites, social-media platforms, or third-party hosting services

Patronize / Solicit

Buyers of commercial sex acts, corporate clients, or customers



Force, Fraud & Coercion (§ 1591(e)(2))

- ▶ Coercion means threats of serious harm to or physical restraint against any person, or the abuse or threatened abuse of law or the legal process.”
- ▶ Encompasses psychological, reputational, and economic pressure.
- ▶ “Serious harm” includes financial and career threats.
- ▶ Cases: *Grant v. WWE Holdings*, 2024 WL 672582 (D. Conn.); *Geiss v. Weinstein Co.*, 383 F. Supp. 3d 156 (S.D.N.Y. 2019); *Doe v. Fitzgerald*, 2023 WL 2935433 (C.D. Cal.).



Section 1595 provides a civil remedy for violating Section 1591

An individual who is a victim of a violation of this chapter may bring a civil action against **the perpetrator** (or whoever **knowingly benefits, or attempts or conspires to benefit, 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 and reasonable attorneys fees.

Beneficiary vs. Participant Liability

- ▷ § 1591(a)(2) and § 1595 impose liability on:
- ▷ “Whoever knowingly **benefits, financially or by receiving anything of value**, from participation in a venture” that the person “**knew or should have known**” engaged in trafficking.
- ▷ **Benefit:** Any financial or reputational gain — not limited to direct payment.
- ▷ **Participation:** Assistance, facilitation, or deliberate indifference to trafficking.
- ▷ **Venture:** Broadly defined as “any group of two or more persons associated in fact.” (§ 1591(e)(5))
- ▷ Civil plaintiffs need only prove **knew or should have known** by a preponderance.

Case Law Interpreting Beneficiary Liability

- ▶ **Key Cases Defining the Scope of § 1591(a)(2) / § 1595**
 - *Doe #1 v. Red Roof Inns*, 21 F.4th 714 (11th Cir. 2021)
 - *Doe v. Wyndham Hotels & Resorts*, 2021 WL 5179215 (S.D. Ohio)
 - *G.G. v. Salesforce.com, Inc.*, 603 F. Supp. 3d 626 (N.D. Ill. 2022), aff'd 76 F.4th 544 (7th Cir. 2023)

Online Platforms, CDA § 230 & FOSTA (2018): Overcoming Immunity

- ▶ **Communications Decency Act § 230(c)(1):**
 - “No provider or user of an interactive computer service shall be treated as the publisher or speaker of information provided by another.”
- ▶ Historically shielded websites from liability for user content.
- ▶ **FOSTA–SESTA (2018):** Added § 230(e)(5): removes immunity for conduct violating federal or state sex-trafficking laws.
- ▶ Platforms now liable if they “**knowingly assist, support, or facilitate**” sex trafficking.



Conspiracy & Joint Venture Liability Under the TVPRA

- ▶ **18 U.S.C. § 1594(b):**
“Whoever conspires with another to violate section 1591 shall be punished in the same manner as a completed violation of that section.”
- ▶ Allows prosecution (and civil pleading under § 1595) against any person who joins or furthers a trafficking venture.
- ▶ conspiracies under § 371.
- ▶ Plaintiffs may plead conspiracy under § 1595 in conjunction with § 1594(b).
- ▶ Applies where two or more persons or entities knowingly associate for a trafficking-related purpose.
- ▶ Civilly actionable if the defendant **agreed to participate or knowingly benefited** from the venture.
- ▶ Civil conspiracy extends to franchisors, affiliates, tech platforms, and financiers that **agreed**, tacitly or explicitly, to benefit from trafficking operations.
- ▶ Common evidence: shared profits, failure to enforce compliance, coordinated concealment.



Comparison Table: Liability Theories Under the TVPRA

Theory	Statutory Basis	Who It Reaches	Required Conduct	Proof Standard (Civil)	Representative Cases
Direct Liability	§ 1591(a)(1)	Traffickers, recruiters, transporters, or buyers	Committing predicate acts (recruit, harbor, advertise, etc.)	Preponderance of evidence (civil)	<i>Ricchio v. McLean</i> (1st Cir. 2017)
Beneficiary Liability	§ 1591(a)(2) + § 1595	Corporate entities, franchisors, tech platforms, landlords	Financially benefiting from participation in a trafficking venture	“Knew or should have known” standard	<i>Red Roof Inns</i> (11th Cir. 2021); <i>Salesforce</i> (7th Cir. 2023)
Conspiracy Liability	§ 1594(b) + § 1595	Associated persons, corporate networks, co-venturers	Agreement to participate, shared profits, or coordinated inaction	Preponderance; agreement inferred from circumstantial evidence	<i>J.C. v. Choice Hotels</i> (N.D. Cal. 2020); <i>Doe v. Twitter</i> (N.D. Cal. 2021)

Statute of Limitations Under the TVPRA

- ▷ **18 U.S.C. § 1595(c):** “An action may be brought not later than 10 years after the cause of action arose.”
- ▷ **18 U.S.C. § 2255(b):** (For child victims) “*No limitation period shall apply.*”
- ▷ Limitations period begins when:
 - Victim discovers, or reasonably should discover, the injury and its cause; or
 - The last act in a continuing course of trafficking occurs.
- ▷ 2022 Eliminating Limits to Justice Act → abolished SOL for minor sex-abuse claims.



Tolling Doctrines: Fraudulent Concealment & Continuing Violation

- ▶ **Fraudulent Concealment:** Equitable tolling where defendants actively conceal trafficking or abuse.
- ▶ **Continuing Violation:** Limitations run from the last act of trafficking in an ongoing venture.
- ▶ **Minor Tolling:** SOL suspended until majority or abolished entirely after 2022 Act.

Damages and Remedies Under § 1595

- ▷ **Statutory Text:** Plaintiffs may recover “damages and reasonable attorneys’ fees.”
- ▷ **Types of Damages:**
 - Actual (compensatory) — economic losses, emotional distress, medical costs.
 - Punitive — for malicious or reckless disregard.
 - Restitution — disgorgement of profits from beneficiaries.
- ▷ **Attorney Fees:** Mandatory for prevailing plaintiffs.



The Future of Trafficking Litigation: Circuit Trends & Emerging Fronts

- ▶ **Expanding Defendant Classes:** Tech platforms, financial institutions, landlords.
- ▶ **Circuit Splits:** Definition of “venture” and scope of “benefit.”
- ▶ **Emerging Claims:** Workplace and professional coercion (*Grant v. WWE*, *Geiss v. Weinstein*).
- ▶ **State Statutes:** Parallel civil TVPRA remedies (36 states + D.C.).
- ▶ **Outlook:** Aggressive litigation over corporate compliance and continuing-violation scope.

Coordinating the Defense

Unified defense across franchisor, franchisee, and property operators.

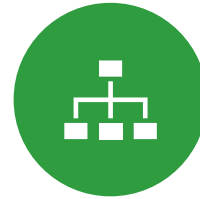
Avoid finger-pointing between brand and local ownership.

Consistent messaging:
franchisors = brand oversight,
franchisees = daily operations.

Litigation Team Structure



JDAAs protect privilege and strategy.



Role allocation:



- Franchisor counsel:
corporate governance,
training manuals,
brand policies.



- Franchisee counsel:
on-site practices,
staffing,
recordkeeping.

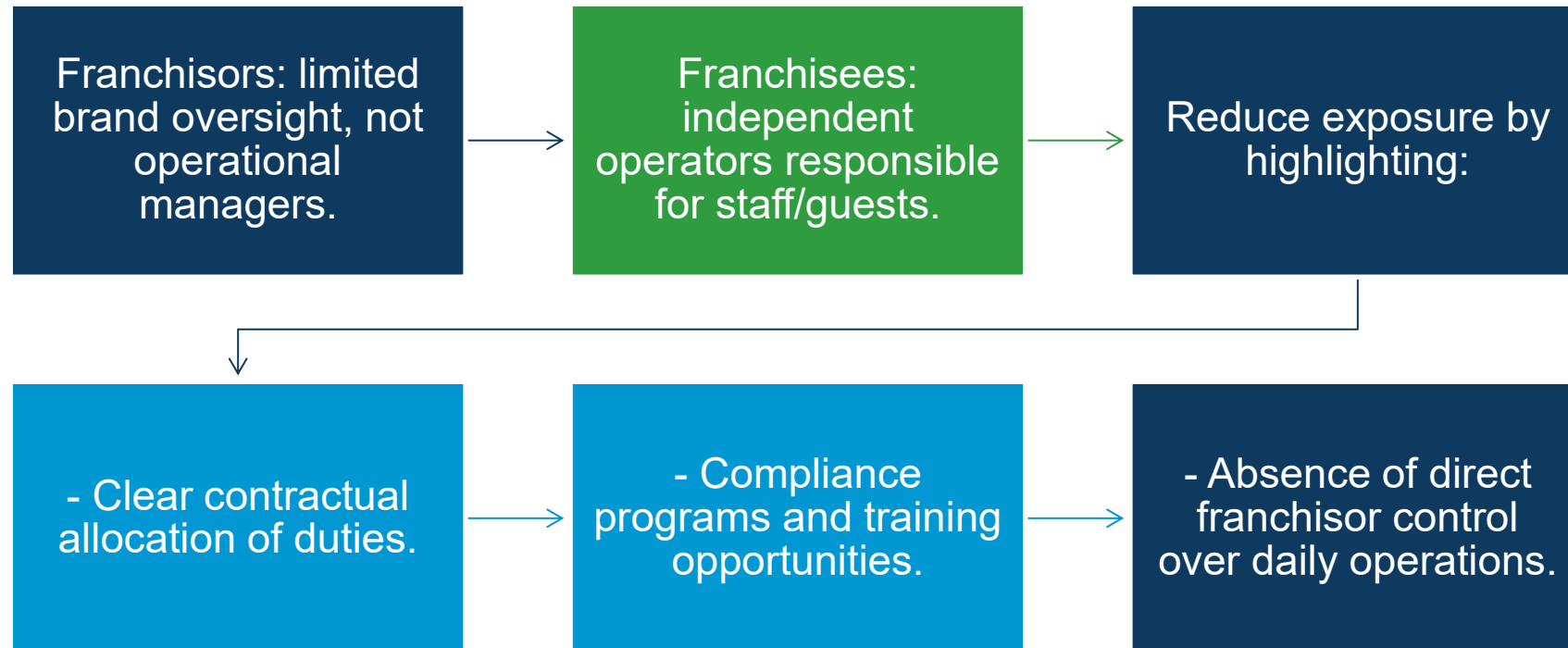


Coordinate expert
witnesses on
franchise law and
hospitality practices.

Discovery Coordination

Anticipate	Anticipate broad requests targeting franchisor and franchisee.
Coordinate	Coordinate production to avoid duplication and inconsistent responses.
Highlight	Highlight separation of roles while maintaining unified defense.
Maintain	Maintain unified objections to overbroad requests.

Navigating Liability Exposure




Helpful Information from Franchisor

Franchise agreements: liability, indemnity, independence clauses.




Training manuals and materials: demonstrate good-faith efforts.



Audit/inspection records: focus on brand standards, not trafficking.



Corporate policies: reasonable initiatives without control.



Organizational charts: reinforce HQ vs. property-level separation.

Practical Defense Tips



File early dismissal motions on weak franchisor claims.



Highlight independent contractor doctrine throughout litigation.



Use hospitality industry experts to explain franchise structure.



Stress policy concerns: liability expansion destabilizes franchise model.

Takeaway

Franchisors and franchisees are not traffickers.



Liability must be grounded in actual operational control, not brand association.



Coordinated defense ensures consistency, efficiency, and stronger resistance to plaintiff overreach.

Expert Witnesses and Consultants



Key Framing:

- Not every case requires the “kitchen sink” of experts.
- The defense strategy should weigh
 - Cost
 - Case Posture; and
 - Jury Perception



Initial Considerations

- Does the case turn on industry standards or can it be defended on facts alone?
 - Some cases may be resolved without an expert battle
 - Ex: Statute of limitations; Causations; or lack of notice
 - Other cases may make expert witnesses necessary
 - Ex: Cases that hinge on what a hotel/organization should have known



Human Trafficking Experts: Plaintiff v. Defense

Plaintiff:

- Use former Law Enforcement or Criminologists to testify
 - Testimony often includes:
 - Industry prevalence; and
 - Trafficking “red flags”

Defense Uses:

- Challenge reliability
- Overgeneralizations; and
- Whether testimony stays into impermissible legal conclusions



Hospitality Industry Experts

- Use for
 - Explaining reasonable operational practices
 - Staff training
 - Security measures regarding budget and property type
- Defense Framing:
 - “standards vary widely; there is no single industry-wide checklist”
 - Considerations:
 - Notice, Foreseeability, What is reasonable in that locale, scale of property, history of incidents, cost/feasibility, etc.



Forensic / Security Experts

- Useful for:
 - Assessing lighting
 - Surveillance
 - Key card access
 - Other physical security measures
- Defense Use:
 - Demonstrating reasonable measures were in place
consistence with property's location, size, and risk profile



Risk Management Experts

- Useful for
 - Explaining how corporate policies align with insurer expectations; and
 - How risk transfer/insurance interplay supports a reasonableness defense



Strategic Considerations

Sometimes v. Always

- Sometimes:
 - Where liability is weak or discovery is Plaintiff-light, conserve resources and avoid experts that make the case look more complex
- Always:
 - When plaintiff puts on experts to elevate “should have known” standards, or when case involves institutional defendants with deep pockets
 - Ex: Schools, Hotels, Transport

Utilizing Social Media for Mitigation Purposes



Key Framing:

- Social Media is both a sword and a shield
- Defense counsels must tread carefully
 - Why?
 - Jurors are sympathetic to Plaintiffs
 - Jurors are sensitive to authenticity and credibility



Types of use

- Plaintiff Activity
 - Post may contradict claimed damages
 - Ex: travel, socializing, lifestyle
- Background Context
 - Show Plaintiff's connections, timelines, or alternative sources of harm
- Public Narrative
 - Social media sentiment can share reputational fallout, even before trial



Balancing Risks

- Mitigation
 - Evidence can be powerful impeachment, but risk of appearing to “invade privacy” or victim blame.
- Tone
 - Any use of social media should be presented neutrally, with focus on credibility and damages, not on character attacks
- Jury Reception
 - Frame as “We must consider all sources of information,” rather than “plaintiff was exaggerating.”



Practical Tips

- Preserve early
 - Social media posts often disappear
- Work with e-discovery consultants to authenticate
- Consider proportionality
 - Overreliance risks jury alienation



Case Strategy

- Best use of social media is sometimes behind the scenes to undermine overstatements without inflaming jurors.
 - Ex: Negotiations, Meditations, and Depositions
- Tie to mitigation of damages
 - Ex: plaintiff claims total isolation, yet contemporaneous posts show daily group outings.

Navigating Claims in Franchise Settings



Complex Litigation Challenges

Claims in franchise settings involve multifaceted legal and procedural complexities, especially in sensitive cases like abuse and trafficking.

Roles and Responsibilities

Understanding franchisors' and franchisees' roles is critical in managing claims and determining liability in litigation.

Impact of Legal Representation

Choice of legal counsel significantly affects case outcomes and strategic decisions in franchise-related claims.

Strategic Steps for Outcomes

Employing strategic legal and procedural steps enhances resolution efficiency and claimant protections in franchise claims.



The Franchise Structure

Franchise Legal Relationships

Franchise agreements define legal and operational relationships between franchisors and franchisees.

Additional Insured Role

Franchisors are often Additional Insureds under franchisees' insurance policies, adding complexity to claims.

Claim Handling Complexity

Claims involving abuse or trafficking highlight the complex responsibilities between insured franchisees and franchisors.



Legal Representation Challenges



Counsel Selection Conflicts

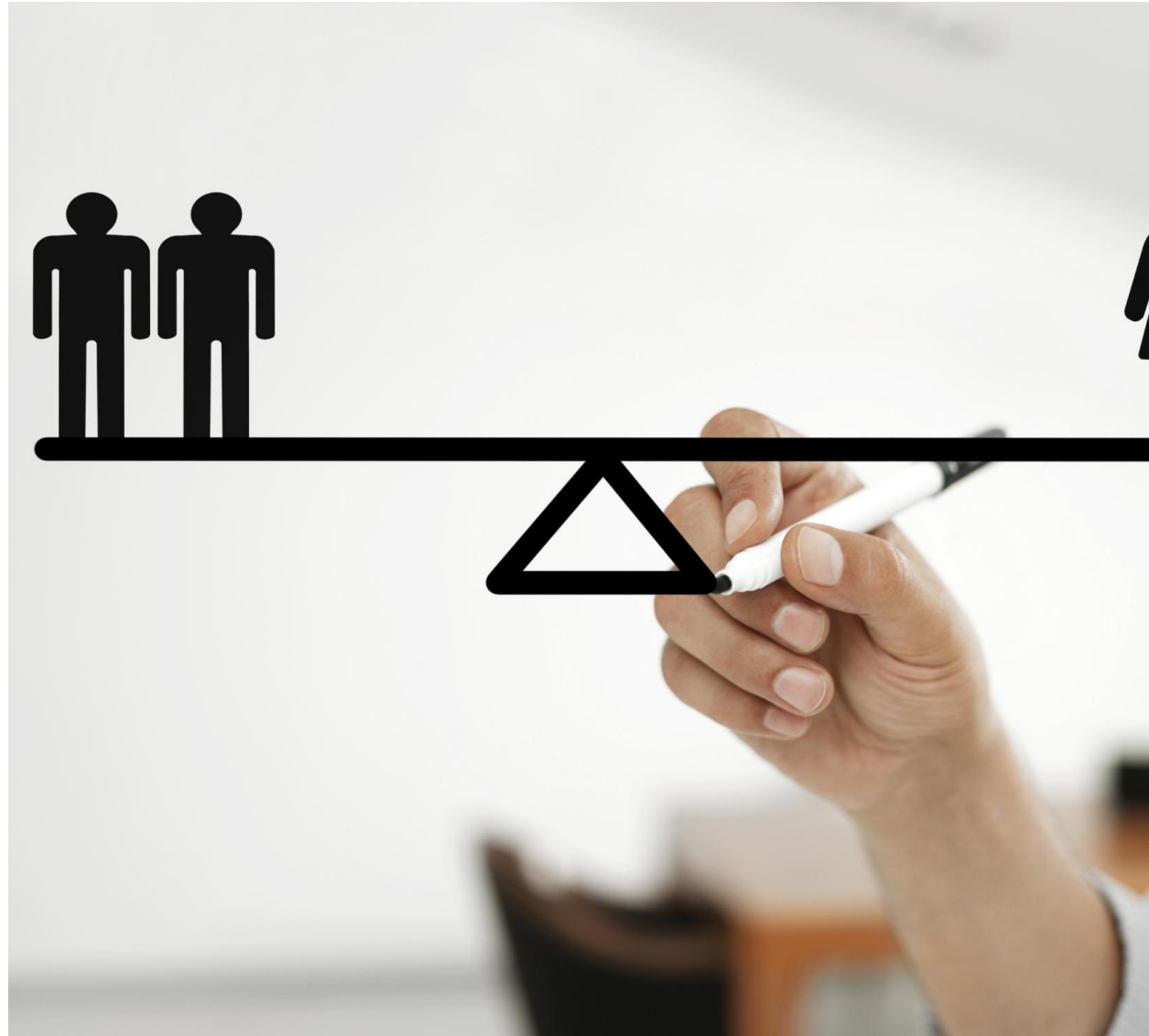
Franchisors often reject defense counsel chosen by insurers, causing prolonged negotiations and disputes.

Impact on Case Progress

Delays hinder timely data collection and damage analysis, reducing overall claim handling effectiveness.

Need for Streamlined Communication

Efficient communication and decision-making are essential to avoid delays and unfavorable litigation outcomes.



Information Sharing Barriers



Reluctance to Share Information

Franchisors often hesitate to share litigation-related data, limiting transparency and cooperation in claim handling.

Impact on Damage Analysis

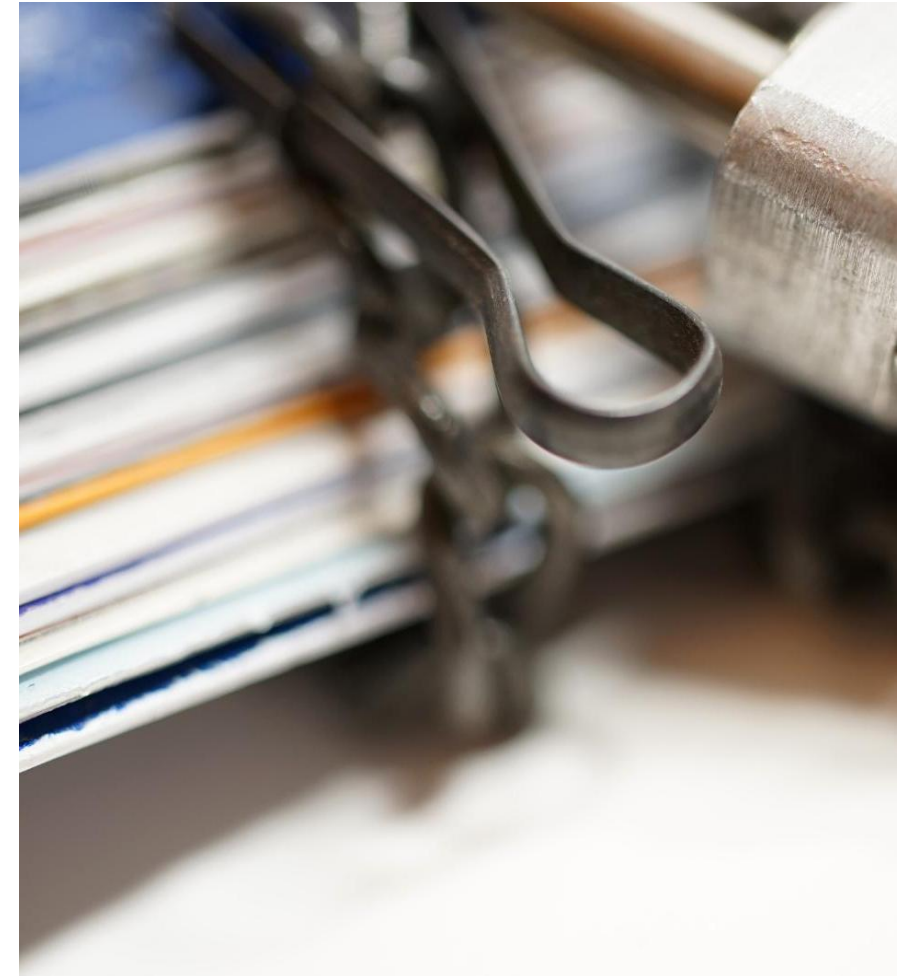
Limited data access creates barriers to analyzing damages and liability, hindering informed decision-making by carriers.

Challenges for Defense Counsel

Without discovery materials, defense counsel struggles to build a strong case and effectively represent clients.

Need for Open Communication

Open communication and transparency are crucial for effective legal proceedings and claim resolution.



Defense Counsel Dynamics



Collaboration Importance

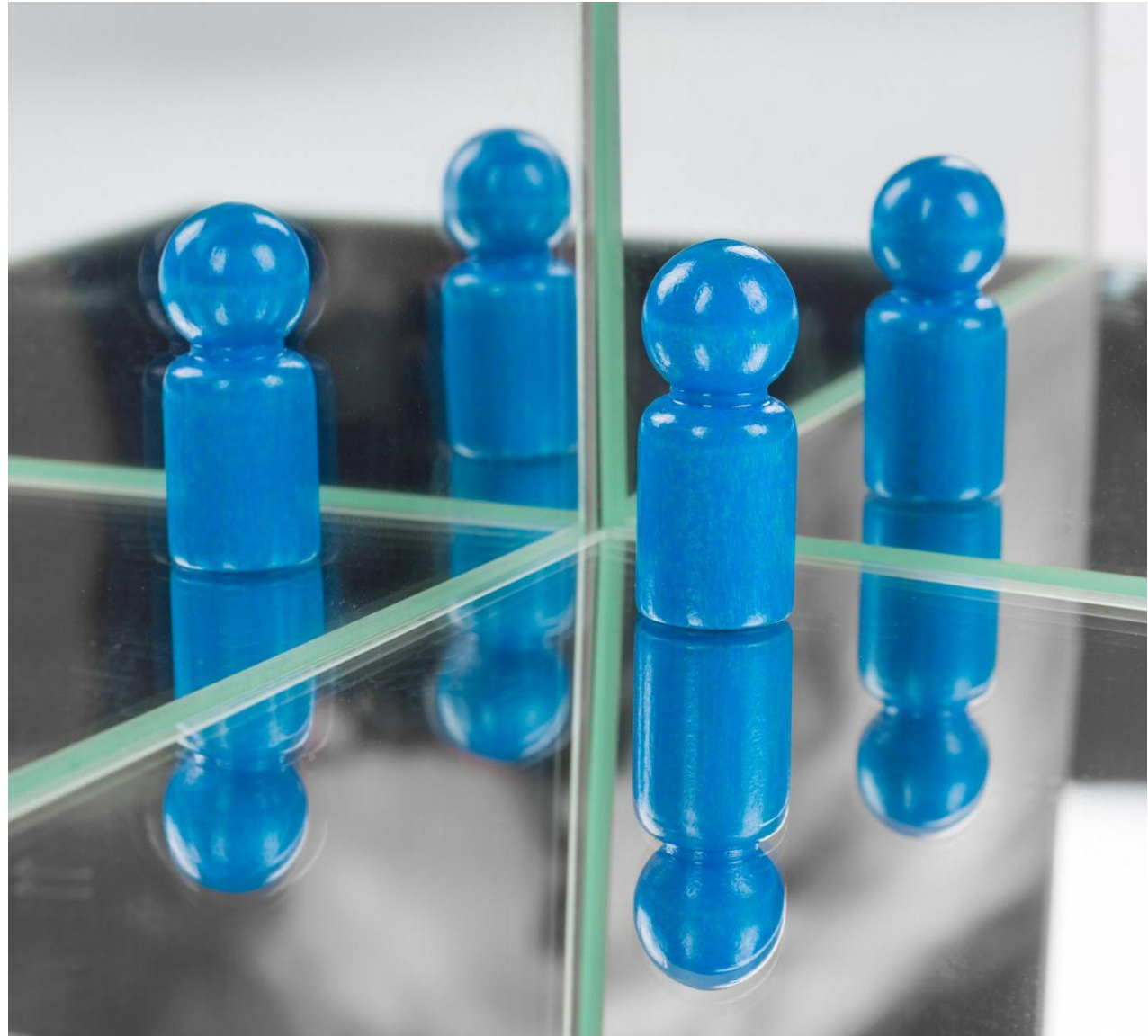
Effective collaboration between defense and personal counsel is essential for successful claim handling and defense.

Information Challenges

Franchisors often are reluctant to provide information, complicating defense strategies and requiring careful navigation by counsel.

Defense Counsel Actions

Defense counsel take strategic steps to acquire necessary data despite communication barriers and challenges.



Consequences & Strategic Steps



Impact of Poor Communication

Poor communication and stonewalling often result in increased verdicts/settlements and increased costs for carriers.

Need for Strategic Collaboration

Improving cooperation between franchisors, counsel, and carriers is essential to ensure fair settlements and reduce conflicts.

Actionable Strategic Steps

Enhancing information sharing, aligning legal representation, and streamlining claim handling improve outcomes.





Insurance Coverage Implications:

Additional Insured vs. Contractual Indemnity Rights

- **Additional Insured Rights**
 - Direct rights to policy benefits
 - Defense in excess of liability limits
 - Insurer duties owed directly to additional insured
- **Contractual Indemnity Rights**
 - Indirect rights to policy benefits
 - Defense within liability limits
 - No duties owed directly to contractual indemnitee
 - *Ricchio v. Bijal, Inc.*, 424 F.Supp.3d 182 (D. Mass. 2019).



Insurance Coverage Implications:

Pleading Impacts Exclusionary Reach

ASSAULT AND BATTERY EXCLUSION

Exclusion Applies

Nautilus Insurance Company v. Motel Management Services, Inc., 781 Fed.Appx. 57 (3d Cir. 2019).

Exclusion Doesn't Apply

Northfield Ins. Co. v. Northbrook Indus., Inc., 749 F.Supp.3d 1325 (N.D. Ga. 2024).



Insurance Coverage Implications:

Wording Impacts Exclusionary Reach

ABUSE OR MOLESTATION EXCLUSION

Care, Custody, or Control

Gordon v. Continental Casualty Company, 107 Cal.App.5th 89 (2024).

Legal Liability

Great Lakes Inc. Se. v. Doe, 497 F.Supp.3d 1003 (D. N.M. 2020).



Insurance Coverage Implications:

Verdicts and Conduct Found

Perpetrator vs. Beneficiary Liability

- “Occurrence”
- Expected or Intended Injury Exclusion

Public Policy Considerations

- *Liberty Mutual Fire Ins. Co. v. Red Roof Inns, Inc.*, 2025 WL 2685867 (N.D. Ga. 2025).
- *Samsung Fire and Marine Ins. Co. v. RI Settlement Trust*, 2024 WL 4921644 (3d Cir. 2024).

Punitive Damages

Insurance Coverage Implications:

Expanding Risks

Hospitality Industry

Security/Bail Bondsmen

Financial
Institutions

Big Tech/
Social Media

Athletics

Adult
Entertainment