

<http://www.americanlawyer.com/home/id=1202735046599/The-Global-Lawyer-The-Slave-Next-Door?mcode=1202615710764&curindex=0&slreturn=20150730182104>

The Global Lawyer: The Slave Next Door

A dozen law firms team up to stop human trafficking, and send Congress a signal.

Michael D. Goldhaber, *The American Lawyer*

August 24, 2015

To rehab oil rigs after Hurricane Katrina, Gulf Coast shipyards faced a labor crunch. Signal International Inc. lured nearly 500 welders and pipefitters from India with the promise of a green card.

Problem is, the workers never got a green card. Instead, they were stuck with an "H-2" visa, under a flawed program for unskilled guest workers that immigration reformers and pro bono lawyers call an invitation to wage servitude.

The Indian laborers hocked family jewels and mortgaged homes to pay a recruiter up to \$15,000 for the privilege of living 24 to a trailer amid pools of standing water. This will be good enough for them, the managers emailed among themselves. "It will be like the Taj Mahal," one email read.

When some of them contacted the Southern Poverty Law Center, Signal considered it uppity. We're going to teach them a lesson, one manager emailed. "Before the week is over the Indians will know we're not afraid to fight, and so should their liberal lawyers."

Signal fired the five "ringleaders," and tried to shut them in a trailer under guard until they could be driven to the airport. Sabulal Vijayan knew that under an H-2 visa, only the company that had brought him to the U.S. could employ him, and without a job he'd likely be deported that day. The thought of facing his family in disgrace, with no way to pay off the debt he had taken on, filled Vijayan with despair. He slipped away to the bathroom and slit his wrist with a razor blade. An ambulance came in time for Vijayan. Police and lawyers soon followed.

Sex trafficking gets so much attention that an image search for "human trafficking" brings up 54 results before you reach a man, notes the SPLC's Dan Werner. But labor trafficking outside the sex trade is arguably the bigger U.S. problem. Advocates say it's baked into the 100,000-worker-a-year H-2 program. "It doesn't take much to push inherent coercion over the line into forced labor," says Werner.

Even overstretched regulators see plenty. According to a BuzzFeed.com investigation, the U.S. Labor Department found violations for 23,000 H-2 workers over the last decade—with more than 800 complaints suggestive of human trafficking. The U.S. recovered \$2.6 million from employers for 4,500 H-2 workers in 2014. But that's not remotely enough to deter the sorts of schemes that saved Signal alone \$8 million. Worse, the Government Accountability Office has

found that the Labor Department fails to finish half its H-2 investigations, or to debar the worst offenders.

A country with poor public enforcement ought to prioritize private enforcement. Yet Congress disqualifies H-2 workers in most sectors from legal aid programs. "It really falls on pro bono attorneys and nonprofits," says Werner.

The SPLC brought a class action for the Indian workers in 2008. Signal won the decertification battle in the U.S. Court of Appeals for the Fifth Circuit in 2012—and ordinarily that would be that. "Usually when you defeat class cert, it's time to pop the champagne corks," notes anti-Signal litigator John Fleming of Sutherland Asbill & Brennan.

But SPLC chair Alan Howard of Crowell & Moring refused to accept defeat. This is a man so invested in pro bono that he literally adopted his client Jesse Ray Beard, of "Jena Six" fame, after reducing an attempted murder charge to a misdemeanor. Here, Howard helped SPLC to assemble a coalition of 12 major law firms to bring 12 separate trials on behalf of 232 workers in Texas and Louisiana federal court.

"I know of no other collaboration in the public interest that resembles this in scale and caliber," says Werner. "None of us has ever seen anything like it," adds Eben Colby of Skadden, Arps, Slate, Meagher & Flom.

In five days of deposition, Signal's CEO ran a gauntlet of lawyers from Crowell & Moring, Skadden, Latham & Watkins, Covington & Burling, and Manatt Phelps & Phillips. With a closely knit team of more than 100 attorneys from a dozen firms, handling a 2.7 million-page document review was no problem. And while proceeding outside a class action was a logistical challenge, it opened the possibility of damages for emotional distress, which ended up being the lion's share of the verdict.

At the first trial, a New Orleans jury on Feb. 18 found Signal liable for human trafficking, fraud and racketeering, with damages of \$12 million due the first five workers. It was the first labor trafficking verdict against a company and, according to the U.S. State Department, the largest labor trafficking verdict of any kind. Signal's Indian recruiter—as well as immigration lawyer Malvern Burnett of New Orleans—were found liable for nearly \$1 million each on the same grounds. And the jury found Signal liable to one plaintiff for false imprisonment and retaliation, based on the episode that ended with Sabulal Vijayan slitting his wrist with a razor blade.

If extrapolated to the larger group of workers, Howard estimates that the verdict would have equated to \$750 million. With lawsuits from Latham, Sutherland, and Kilpatrick Townsend & Stockton lined up on deck, Signal capitulated. On July 12 it declared bankruptcy and on July 13 it settled, pending court approval, for at least \$20 million.

The bankruptcy expertise of team members from Skadden, Kilpatrick Townsend, and McDermott, Will & Emery proved handy in crafting a novel settlement. Signal's main secured creditor—Alabama's pension fund—was persuaded to give up some priority rather than expose itself to a big and ugly liability. And with the fate of Signal's other assets unclear, the plaintiffs

obtained a sure recovery by demanding that Signal assign most of the proceeds from the 2013 sale of its Texas shipyards.

Can a signal-style coalition offer a way forward for pro bono cases halted by narrow class action case law? Pro bono counsel are optimistic. "This model proved so effective that we should all look to deploy it in the future," says Skadden's Colby. "I think it's replicable so long as the group first on the ground is assiduous in maintaining contact with potential plaintiffs." Howard agrees: "Lawyers who often find themselves on opposing sides can come together and form a formidable team. This should be a message to pro bono coordinators to look for opportunities to collaborate and handle bigger cases."

Nonprofit lawyers are more hesitant. "It would be awesome if we could mount that type of army of lawyers every time a class is decertified," says Meredith Stewart of the SPLC. "But I'm not sure every nonprofit has the resources to do it. I don't think that can be the solution."

The obvious solution for U.S. labor trafficking is to make H-2 jobs portable, so workers aren't at their employer's mercy. Business lobbies won't go quite that far. But the 2013 comprehensive immigration reform bill, which passed the Senate only to die in the House, lays out an achievable blueprint for systemic change.

Businesses would receive a vast new pool of unskilled workers, with portable jobs, and existing programs would be better regulated. H-2 employers would disclose recruiters chosen from a registered list, and be liable for recruiters' abuses. "Signal sends a loud message to Congress that these reforms are critical for the well-being of guest workers," says Werner. "There ultimately needs to be legislation."

Email: mgoldhaber@alm.com.

Copyright 2015. ALM Media Properties, LLC. All rights reserved.

Read more:

<http://www.americanlawyer.com/printerfriendly/id=1202735046599#ixzz3kL7cqgDs>