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This Issue//

Utilizing AI-Driven Predictive Loss Prevention in Retail: The Benefits and the Risks

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Artificial intelligence tools originally developed for predictive policing have found new life in retail and hospitality loss prevention. Predictive policing systems are traditionally used to forecast crimes across geographic areas. Now, retailers have begun to deploy computer-vision systems, facial recognition, and behavioral analytics to identify which shoppers or guests pose elevated theft risks. This technological evolution represents both a significant opportunity and a burgeoning legal challenge for the retail industry.

Traditional loss prevention strategies for brick-and-mortar retailers relied heavily on physical deterrents: security personnel, alarm systems, and surveillance cameras. However, these passive methods have proven increasingly inadequate in an era of expanded self-service options. According to 2024 a National Retail Federation survey of retail executives at 164 retail brands, shoplifting incidents rose 93% from 2019 to 2023, and dollar losses increased by 90% over the same period.

Retail predictive loss prevention systems mirror the architecture of predictive policing tools. Early predictive policing platforms analyzed historical incident data to generate "hot spots" (locations and times with elevated crime risk) and sometimes created person-based risk scores using various profiling criteria. The retail adaptation follows a similar model within the closed environment of a physical store.

These systems typically employ ceiling-mounted cameras and shelf sensors that feed video data into sophisticated algorithms capable of multiple functions: (1) identifying individuals through facial recognition or appearance tracking; (2) identifying products via barcode scanning or visual product detection; and (3) interpreting customer actions such as item pickup, concealment, scanning, or store exit without payment. The system then processes these inputs through artificial intelligence models to generate real-time risk scores and alerts. Common outputs may include notifications such as "this checkout lane likely missed a scan," "this customer matches an existing trespass notice," or "this shopping basket's contents don't reconcile with scanned items."

The practical significance of these systems lies in their influence on real-time decisions throughout the retail environment. AI-generated alerts can determine whether a store employee approaches a customer, whether a transaction requires re-scanning at self-checkout, or whether management detains someone for shoplifting.

However, the relative rarity of actual theft events caught by AI-generated systems compared to overall customer transactions creates a fundamental challenge. Even systems with strong reported accuracy rates will inevitably produce false positives. Without robust review protocols, this dynamic can lead to unnecessary and potentially discriminatory customer confrontations.

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More concerning is the potential for these systems to perpetuate and amplify historical prejudices embedded in their training data. AI models trained on past apprehension records, trespass notices, or staff incident reports will naturally learn and replicate the patterns present in that historical data, including any embedded biases. For example, if store employees historically scrutinized and disproportionately detained Black male customers, an AI system trained on those records may continue or even accelerate this discriminatory pattern. Unless retailers actively measure and correct for such disparities, disparate impact becomes not only a hypothetical risk, but also the system's default operational mode.

These operational realities create immediate and significant legal exposure across multiple areas of law. Federal and state civil rights statutes can be triggered when AI systems produce error rates or intervention rates that disproportionately affect protected classes, regardless of discriminatory intent. [1] The disparate impact doctrine makes clear that neutral policies producing discriminatory outcomes can violate civil rights laws. Identity-matching features raise complex compliance obligations under state privacy laws and biometric statutes. Jurisdictions like Illinois, Texas, Washington and New York City impose requirements for notice, consent, and limitations on biometric data retention and sharing. Perhaps most immediately dangerous are false arrest and false imprisonment claims that arise when AI alerts are treated as sufficient grounds for customer detention.

Given these substantial legal exposures, retailers implementing predictive loss prevention systems must develop comprehensive risk management strategies that extend beyond the technology itself. Retailers must work to ensure their insurance coverage adequately addresses AI-related risks. Traditional general liability policies may exclude discrimination claims, privacy violations, or technology errors and omissions. Insurance coverage must be paired with robust operational protocols with clear escalation procedures that require human review before any customer detention. Regular bias testing and algorithmic auditing should also be implemented to test how the model is functioning over time. Retailers who are not creating their artificial intelligence models and systems in-house must also carefully evaluate AI system vendors' compliance programs, data security practices, and willingness to provide indemnification for system failures, harm to third-parties, or regulatory violations.

Predictive loss prevention technology offers retailers powerful tools to address the growing challenge of inventory loss. However, the legal risks are substantial and evolving. Success in this area requires not only technological sophistication, but also comprehensive risk management that includes appropriate insurance

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coverage, operational oversight, and proactive review of relevant law. Retailers who treat these systems as purely technological solutions, rather than complex risk management challenges, do so at their own peril.

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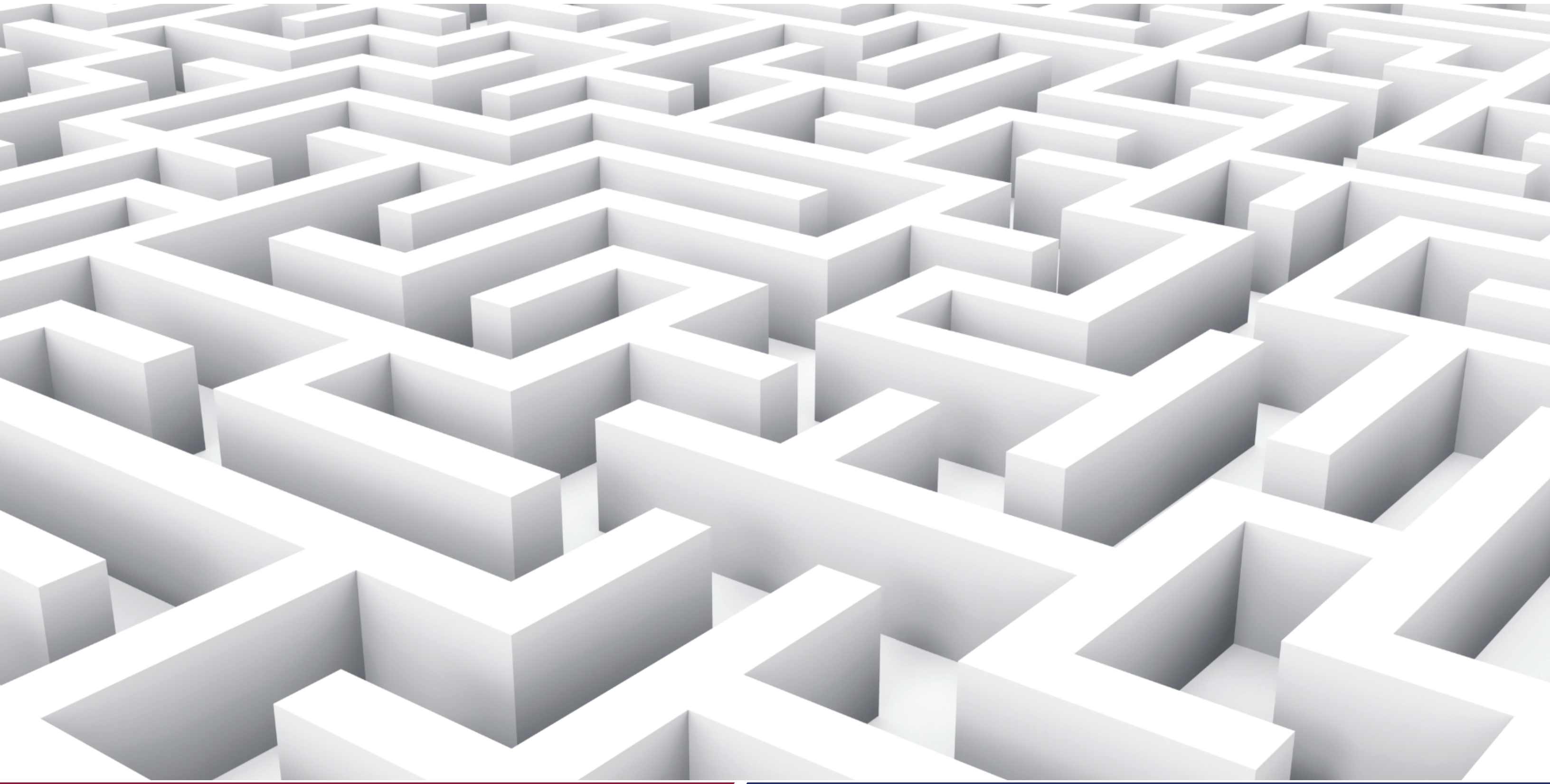
Endnotes:

[1] See Nathan Freed Wessler, Police Say a Simple Warning Will Prevent Face Recognition Wrongful Arrests. That's Just Not True, ACLU (Apr. 30, 2024), link; Jannice Cebreros, Facial Recognition Technology and Wrongful Arrests in the Digital Policing Era, 100 WASH. L. REV. ONLINE 33, 36-41 (2025).



PFAS in Cosmetics and Personal Care Products – CGL Considerations

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Commercial General Liability insurance policy forms were developed decades ago to address commonplace risks such as bodily injury and property damage. However, the broad language of CGL policies may be tested in the context of addressing novel claims and risks. One category of emerging claims is PFAS litigation. PFAS, a class of man-made per- and polyfluoroalkyl substances known as "forever chemicals" because they don't break down, have come under intense regulatory scrutiny in recent years and are subject to a rising tide of toxic tort litigation. Businesses across industries are accordingly preparing for a surge of costly legal battles.

Against this backdrop, policyholders in the cosmetics and personal care product industry (wherever they may fall in the supply chain) facing PFAS lawsuits should not overlook the protections of their traditional CGL policies to confront these potential liabilities.

PFAS in Cosmetics and Personal Care Products

Certain qualities of PFAS – such as their ability to make a product more durable, water resistant, or smoother spreading – make their inclusion in cosmetics and personal care products desirable; however, exposure to PFAS may lead to health complications.

Due to state and federal oversight, as well as increased press, consumers have become increasingly aware of the potential harms associated with the use of PFAS in their favorite products. At this time, at least ten states, including California, Colorado, Connecticut, Maine, Maryland, Minnesota, Oregon, Rhode Island, Vermont, Washington, and Illinois have adopted restrictions on PFAS in cosmetics. Additionally, the U.S. Food & Drug Administration's authority to regulate cosmetics was significantly expanded with the adoption of The Modernization of Cosmetics Regulation Act of 2022.

Given the increased visibility of PFAS, the cosmetic and personal care product industry should expect a variety of lawsuits concerning the indeterminate health-related consequences of PFAS.

PFAS Litigation

PFAS claims are typically long-tail in nature, meaning that they are characterized by a significant delay between exposure and manifestation of the resultant injury. As a result, defending delayed PFAS-related bodily injury claims can result in decades of costly litigation. We have seen such protracted liability and insurance conflict in the context of asbestos litigation, which is another type of long-tail claim. Companies in myriad industries, including cosmetics and personal care, have gone bankrupt defending against (and paying for) these types of claims. For example, in 2024, Avon Products, Inc., filed for Chapter 11 Bankruptcy amidst mounting costs of

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defending against hundreds of bodily injury related lawsuits for alleged asbestos exposure in personal care products.

While cosmetics and personal care specific PFAS litigation has been primarily limited to false advertising and consumer protection claims thus far, we anticipate that bodily injury claims will soon follow. It is thus vital for policyholders in the cosmetics and personal care industry to understand the protections potentially available to them under the CGL insurance policies that they have purchased (whether the policies were purchased fifty years ago, or today).

The Nature of CGL Coverages

CGL policies primarily provide occurrence-based coverage. This means that the policies cover occurrences that happen during the policy period – even if the resulting claims are not filed until years (or decades) later.

While courts in the United States are split as to what "triggers" coverage with respect to long-tail claims, many courts follow a "continuous trigger" principle, pursuant to which a toxic-exposure claim may trigger all policies in effect from the time of first exposure through death or diagnosis. However, given the infancy of PFAS toxic-tort litigation, only time will tell whether these courts will continue to apply continuous trigger principles in the context of PFAS claims.

While an insurance company's duty to indemnify its policyholder for liability is often not determined until the policyholder incurs some covered, legal obligation, the duty to defend is broader. If a complaint alleging PFAS injuries contains allegations that, if proven, would be covered under the subject CGL policy, then the liability insurance company will likely have a duty to defend its policyholder against such claims. Generally, an insurance company's duty to defend under a CGL policy will be unlimited – meaning that the payment of defense costs will not erode the policy's limits. This is a major benefit to policyholders.

Conclusion

With cosmetics and personal care related PFAS bodily injury claims on the horizon, it is important that policyholders in the cosmetics and personal care products industry be familiar with the protections provided by their Commercial General Liability insurance policies. Policyholders should provide prompt notice when facing a claim and pursue the benefits of the liability insurance coverage they purchased where appropriate.

Insurance Companies Cannot "Check Out": Courts Reject Insurance Companies' Efforts To Avoid TVPRA Defense Obligations

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The surge in litigation against hotels under the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1591 et seq. ("TVPRA") has been accompanied by insurance companies' efforts to sidestep coverage for these claims (according to the Human Trafficking Legal Center, over 80% of filed cases involved hotels and the hospitality industry). Recent decisions, however, make clear that insurance companies cannot simply "check out" when their policyholders face potential TVPRA liability. In two recent cases – Red Roof Inns, Inc. v. Liberty Mutual Fire Insurance Co. and Peerless Indemnity Insurance Co. v. Tilma Inc. – courts held that the insurance companies owed a duty to defend hotels alleged to have violated the TVPRA by knowingly benefiting from participation in ventures engaged in trafficking activities. These decisions reinforce the broad scope of the duty to defend, even where the underlying complaints alleged awareness of, or knowing participation in, the trafficking conduct.

I. Red Roofs Inns: Coverage Available for TVPRA Claims Under Bodily Injury and Property Damage Coverage

Recently, in Red Roof Inns, Inc., et al. v. Liberty Mutual Fire Insurance Co., No. 2:25-cv-00352, 2026 WL 775589 (S.D.Oh. 2026) ("Red Roof Inns"), the Southern District of Ohio considered whether Liberty Mutual owed a duty to defend Red Roof under its commercial general liability policy against multiple lawsuits alleging violations of the TVPRA.

The underlying plaintiffs alleged that they were victims of sex trafficking at Red Roof properties and sought to hold Red Roof liable under the TVPRA's beneficiary-liability provision, which authorizes claims against entities that knowingly benefit from participation in a venture that they knew or should have known was engaged in trafficking activity.

Liberty Mutual argued that the complaints failed to allege an "occurrence," – defined as an "accident" under the policy's bodily injury liability coverage section – because participation in a trafficking venture necessarily involves intentional conduct and therefore cannot constitute an accident. The court disagreed, emphasizing that the duty to defend is triggered whenever the allegations potentially or arguably fall within coverage.

The court distinguished between allegations of intentional conduct and allegations of intentional harm. According to the court, neither "participation in a venture" nor allegations that an entity "knew or should have known" of trafficking activity necessarily establish an intent to harm the underlying plaintiffs. The court explained that "participation" may be established through indirect association, such as a "continuous business relationship" with the trafficking venture. While such allegations may involve intentional conduct, they do not establish that the defendant intended to cause the plaintiffs' injuries. Likewise, allegations that an

entity "should have known" of trafficking activity do not necessarily allege actual knowledge or a deliberate intent to cause harm. Therefore, the court concluded that the claims potentially alleged an "occurrence," triggering Liberty Mutual's duty to defend. The decision in Red Roof Inns reiterates a recurring principle in coverage litigation: allegations of negligent or reckless conduct – even when connected to intentional wrongdoing by third parties –still triggers a defense obligation where the policyholder is not alleged to have intended the resulting harm.

II. Tilma: Coverage Available for TVPRA Claims Under Personal and Advertising Injury Coverage

Allegations of negligent or reckless conduct still triggers a defense obligation where the policy...

The Eastern District of Virginia reached a similar conclusion in Peerless Indemnity Insurance Co., et al., v. Tilma Inc., et al., No. 2:24-cv-492, 2025 WL 2052479 (E.D.Va. 2025) ("Tilma"), holding that the insurance companies owed both a duty to defend and a duty to indemnify a hotel facing claims under the TVPRA.

There, the underlying plaintiff sought relief under the TVPRA's beneficiary-liability provision, alleging that Tilma knowingly benefited from the trafficking venture at its hotel by turning a blind eye to the traffickers' activities.

Tilma sought coverage under its commercial general liability policy's "personal and advertising injury" provision, which covered injuries arising out of "[f]alse arrest, detention or imprisonment." The court concluded that allegations that Tilma knew or should have known that the plaintiff was being detained and trafficked at the hotel were sufficient to potentially trigger coverage under that provision.

The court further held that no policy exclusion barred coverage. For example, the court rejected the insurance companies' reliance on the intentional torts exclusion, explaining that although the complaint alleged that Tilma was aware of the traffickers' conduct and acted in ways to allow the trafficking, it did not allege that Tilma itself committed or directed an intentional tort. The court likewise rejected the insurance company's reliance on the crime exclusion, explaining that the underlying complaint did not allege that Tilma itself "committed" or "direct[ed]" the criminal conduct. Thus, the court found that the insurance companies owed both a duty to defend and a duty to indemnify Tilma against the TVPRA claims.

Notably, both Red Roof Inns and Tilma rejected the insurance companies' arguments that coverage for TVPRA claims should be barred as a matter of public policy. In each case, the courts emphasized that the underlying claims rested on negligence-based theories of liability – namely, that the policyholder knew or should have known of the trafficking activity – rather than allegations that the policyholders intended to cause the underlying plaintiffs' injuries.

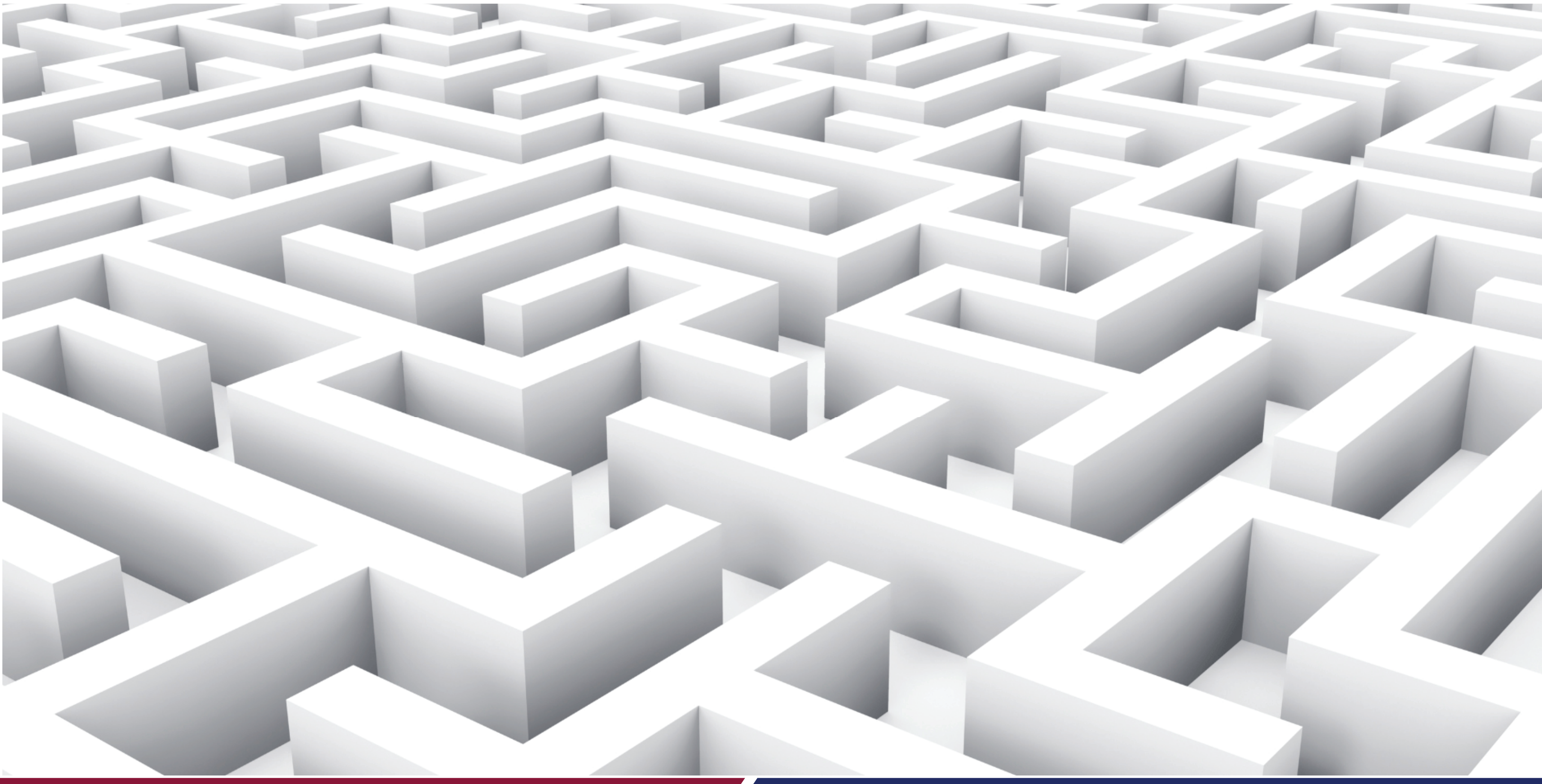
III. Key Takeaways

Taken together, Red Roof and Tilma reflect a growing judicial reluctance to permit insurance companies to avoid coverage obligations based solely on allegations that a policyholder knowingly benefited from, or failed to prevent, trafficking activity. The decisions reaffirm that the duty to defend remains broader than the duty to indemnify and that allegations falling short of intentional harm are sufficient to trigger coverage under general liability policies.

Where claims potentially fall within coverage, insurance companies cannot simply "check out"...

For hotel owners, operators, and franchisees, these cases highlight the importance of maintaining robust liability coverage and ensuring that appropriate additional-insured protections are in place. Those considerations may become even more significant as the hospitality industry prepares for the increased travel, lodging demand, and heightened anti-trafficking regulatory scrutiny associated with major events such as the 2026 FIFA World Cup.

As courts continue to address the intersection of insurance coverage and human-trafficking liability, Red Roof Inns and Tilma reinforce a fundamental principle of insurance law: where claims potentially fall within coverage, insurance companies cannot simply "check out" of their defense obligations.



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We invite you to contact the authors with any questions.