



## **THOSE LITTLE BUGGERS ARE BACK! A BED BUG WAR IS GOING ON AND HOTELIERS MAY BE LOSING**

*By Christine H. Long  
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Lodging owners today face a litigious environment. The courts are speaking. Lodging owners are losing. Courts are finding these properties liable for failing to protect guests from known bed bug infestations. It has been found that the conduct of some properties amounts to gross negligence and courts are finding in favor of the plaintiffs more often than not.

Bed bugs were once a common public health pest worldwide, declining in incidence through the mid-20th century. Why has this old problem crept back into our lives at an alarming rate? One reason: bed bugs once again have become world travelers and easily transported via luggage and clothing. Another reason: the use of less-toxic pest controls. With the decrease in the use of harsh chemicals and indoor spraying, bed bugs are becoming increasingly resistant to the pesticides that can be used. Bed bugs can easily migrate from one room to another and proper eradication techniques require that inspections are made of adjacent or contiguous rooms, or even rooms on several floors above and below the floor where the pests are spotted. In addition, mattresses are no longer being sprayed with pesticides before they are sold.

### **Getting Your Legal Counsel Involved**

From a legal viewpoint, two issues stand out when protecting lodging owners: how to best prevent the owner from any legal exposure; and if and when a claim is filed, what to anticipate in a potential litigation. Bed bug cases usually are known to fall under the claim of negligence and premises liability, but some cases have been filed under a "fraud cause of action" claiming the lodging owner knew that the room had a bed bug infestation and did not inform the hotel guest. Charges such as these can become significant when it comes to assessing punitive damages by the court.

Therefore, lodging owners need to work with their legal advisers to better understand the complex issues before a legal claim rears its ugly head. Not only can a bed bug claim result in a potential and costly lawsuit, the business can start to suffer almost immediately, and it can take years to restore the property's reputation. To prevent this from happening, lodging owners need to have a two-step strategy: a practical plan to prevent and record any bed bug problems, and a plan to address bed bug issues when they happen. Preparing now will help lodging owners properly defend a potential legal claim.

### **Court Decisions Affecting the Lodging Industry**

In a 2008 case, *Grogan v. Gamber Corp.*, a mother and daughter sued for personal injuries sustained when they were bitten by bed bugs in a New York City hotel. Punitive damages were rejected, as the judge referred to a New York City Department of Health pamphlet in ruling that the two women had failed "to raise a triable issue of fact whether bed bugs are anything more than a nuisance." The court denied the defendant hotel's motion to dismiss the complaint, finding that material issues of fact regarding the hotel's constructive notice of bed bug infestation in other hotel rooms precluded a summary determination. However, the court summarily dismissed plaintiffs' punitive damage claim, holding that defendant's actions did not rise to the level of recklessness because it had contracted with a pest control specialist to remediate all vermin.

Conversely, in an earlier case in Illinois, *Mathias v. Accor Economy Lodging Inc.*, a federal appellate court upheld a jury verdict against a hotel for \$5,000 in compensatory and \$186,000 in punitive damages. The court held the hotel was grossly negligent in repeatedly failing to address the known presence of bed bugs, as a result of which plaintiffs sustained personal injury.

In another case, The Helmsley Park Lane was sued by a well-covered guest who blamed the hotel for harboring the critters. The suit was quietly settled.

In San Francisco, a woman who received more than 400 bed bug bites during her stay at the Ramada Plaza Hotel received \$71,000 to settle her claim against the downtown hotel. The out-of court settlement is the largest ever paid to victims in similar bed bug-cases.

San Francisco has seen a dramatic increase in the number of bed bug incidents reported citywide. For example, its Public Health Department reports an increase of 44 percent during the past three years, with 373 incidents reported in 2008 compared to 537 in 2009 and 501 so far in 2010.

### **Infestation – What To Do**

As soon as lodging owners know, or should have known, of a bed bug infestation, they must exercise reasonable care to eliminate them immediately (bed bugs, not your human guests). That's the bottom line when it comes to proactive legal advice for bed bugs. Most lodging properties instruct housekeeping to routinely inspect guestrooms for safety hazards, including bed bugs. This type of inspection requires training – the property's pest control company can be of assistance here. For example, pest control companies nationwide reported a 71 percent increase in bed bug calls since 2001. Left alone, a few bed bugs can create a colony of thousands within weeks.

Lodging owners should also be aware that their insurance may not cover all of the litigation costs. Punitive damages, for example, are typically not insurable. Also, many insurers won't pay claims if owners or managers were clearly negligent in dealing with infestations on their properties.

Because bed bugs are back on the offensive, property owners need to be as well. The last thing a guest should have to worry about is a good night's sleep.

You may want to consult the California Department of Health Services' Bed Bug Guidelines. See <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BB%20Guidelines.pdf>.

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