



Christian Stegmaier

Christian's practice areas consist of appellate advocacy, retail and hospitality liability defense, and state healthcare regulatory issues.

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Hospitality Liability Report: International Bed Bug Symposium Provides Attendees with Difficult Truths About the Growth and Spread of Bed Bug Infestation

The National Pest Management Association and the American Hotel & Lodging Association recently held its first International Bed Bug Symposium in Washington, D.C. Approximately 250 persons attended, including the author. Among those assembled were hoteliers, pest management operators, insurers, third party administrators, and defense counsel. What we was presented during the course of the day was eye opening and - in many respects - alarming.

Bed bugs are small, wingless, blood sucking insects. Adults are no larger than the little fingernail of a human. Baby bed bugs are no larger than the head of a

pin. Their life span ranges from several months to more than a year. They can go a long time between feedings. They multiply rapidly - a female lays approximately 5 eggs per day. One presenter stated that if placed in a 70 degree room, 40 bed bugs can become 5,900 in 6 months.

Like the childhood rhyme suggests, bed bugs bite. Reactions from these bites range from no reaction to itching to swelling to redness to hives to blistering.

Bed bugs are sneaky. They are as flat as a business card and can hide in the smallest of crevasses or openings. While they do not fly or jump, they can travel

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from 2 to 100 ft and find comfort in clothes and luggage - they are prolific hitchhikers.

They are also nocturnal. This circumstance, in addition to their size, makes them especially hard to detect.

Bed bugs have made big news in recent years, from the *Mathias v. Accor Economy Lodging* case (where the 7th Circuit upheld \$186,000 in punitives when only \$5,000 in compensatory damages were awarded) to the NBC Dateline news profiles on the subject, which aired earlier this year. They are on the mind on the public. Unfortunately, in our era of litigiousness, this also means when people get bit, many instantly consider bringing suit. This reality is the reason for meetings such as the one this past week.

The pesticide DDT eradicated bed bugs in the United States during the 1940's and 50's. In contrariety, in many other parts of the world - particularly in the third world - bed bugs have remained a daily part of life. Unfortunately, as the use of DDT has ceased and as immigration and international travel to the United States has exploded, bed bugs have come back to our shores with a vengeance. As a result,

entities such as hotels and other lodging entities - as well as their insurers - must be on guard. The hard truth for these folks is that there is very little they can do to prevent guests or residents from bringing these critters onto their property.

At the present time, there is no evidence demonstrating that bed bugs either transmit or replicate communicable diseases such as HIV or Hepatitis B. Further, most people cannot feel being bitten and bites do not cause permanent injury or scaring. Additionally, it must be noted that many people have no reaction whatsoever to being bitten by bed bugs. Accordingly, it can be asserted that a bed bug attack on a guest or resident has no lasting or dangerous effect. However, as some operators have found, taking a lax approach to either preventing or responding to bed bug infestation often results in them being put squarely in the sights of plaintiff's lawyers.

The fact of the matter is that, in our country, people are not used to being bit by bugs while sleeping, especially in places such as a hotel room. People are afraid of bugs and many have a tremendous psychological reaction to even the thought

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of bugs crawling and biting on them. Further, while there is no automatic nexus between sanitation and their presence (bed bugs have been found in five star hotels), bed bugs connote uncleanliness and poverty - people don't like to be made to feel they are unclean or poor. As a result, in the lodging context, many guests respond negatively to such an attack. If treated badly by management in response to a complaint, they may sue. Their inclination to sue is arguably heightened if they find the hotel either knew of prior infestations and/or took no steps to periodically inspect rooms to ensure they were not hosting these creatures.

Accordingly, the key to mitigating the exposure presented by bed bugs is: (1) take proper steps to prevent their incursion - this means ensuring bedding and mattresses are examined on a daily basis by housekeeping and the entire room inspected on a periodic basis by a competent pest control operator; and (2) in the event of attack, taking the proper measures to take rooms out of service and eradicate the problem immediately. Guests complaining of infestation should be shown care and compas-

sion by management and reasonable responses such as offering to dry clean all of their clothing, "comping" the room, etc. should be strongly considered as a strategy for heading off a litigated claim. A guest who has been attended to and cared for is likely a satisfied one and someone who may be less inclined to later bring suit against the hotelier down the road.

If suit is brought, typical damage assertions include: pain and suffering; emotional distress; damage/loss of physical property; social ostracism; scratching/fear of scarring; post-traumatic stress disorder; moving/relocation expenses, etc. While on its face, these seem to be nasty claims, for a properly-run operator, there are numerous defenses as to both liability and damages, which may operate to eliminate or reduce the exposure. We'll write more about these strategies in further communications.

Several entomologists and other experts presented at this meeting. Each acknowledged that, to date, litigated claims have been few and far between in most jurisdictions - most cases



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have been limited to California and New York. However, each echoed the admonition that bed bugs were likely to become the scourge of the 21st century due to the present-day difficulty in controlling either their spread or growth. As a result, each presenter cautioned the audience gathered that a wave of litigation throughout the United States could be on the way.

Christian Stegmaier is a member of the Retail and Hospitality Liability Practice Group of Collins & Lacy, P.C., a Columbia-based defense litigation firm with a statewide practice. Christian welcomes your questions or comments regarding issues of liability in the hospitality sector by either calling him at (803) 256-2660 or emailing him at cstegmaier@collinsandlacy.com. This material is intended to provide information on noteworthy legal issues and is not a substitute for legal advice.

