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# Legal Tips

## Hospitality Liability Report: Don't Let the Bed Bugs Bite

“Sleep tight, don't let the bed bugs bite,” is not just a cute expression parents say to their kids, it's a very real worry for hoteliers around the country these days.

Within recent years, the prevalence of bed bugs has been on the rise. Further, as recently reported on MSNBC.com, although bed bugs can survive and thrive in almost any type of setting, hotels and motels are particularly vulnerable because of the transient nature of their guests and the ease with which the insects travel in luggage, clothing, and furniture.

Oval-shaped and less than a quarter of an inch long, the brown-colored insects like to

settle close to their food source, often hiding out under mattresses and bed frames, in crevices and behind picture frames. Once attached to a sleeping human, they use a barbed proboscis to bore through the skin and suck their blood meal. They can go months without feeding, patiently awaiting a new host or travel companion.

Rising complaints about these pests are leading to red faces at reception desks and an increase in the number of help calls, according to pest control firms and entomologists interviewed by MSNBC. Hotels battling infestations typically request discreet and immediate service – and for good reason. Even though they don't pose a health threat, bed bugs, which live

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off human blood, can take a nasty bite out of a hotel's reputation and business. Indubitably, if a hotel is known to have bedbugs, it can certainly impact its business, especially in the age of the internet and blogging where unflattering reports of bedbugs at a hotel can be disseminated around the world at the click of a mouse.

Besides embarrassing hotel managers, bed bugs can trigger lawsuits. A number of hoteliers have been sued by guests who complained of being bitten by the insects.

In 2003, a Mexican businessman sued the Helmsley Park Lane Hotel in New York after he and a companion allegedly suffered numerous bedbug bites to their torsos, arms and necks while staying at the property, which overlooks Central Park. Helmsley Enterprises Inc., the owner of the hotel, settled the suit quietly in 2004.

Perhaps the largest and most infamous bed bug lawsuit involving a hotelier is *Mathias v. Accor Economy Lodging Inc. and Motel 6 Operating L.P.*, 347 F.3d 672 (7th Cir. 2003). In *Mathias*, a brother and sister suffered bites from hundreds of bed bugs when they rented a hotel room from the defendant hotel. The court upheld a punitive damages award that exceeded a single-digit ratio because "[t]he defendant's behavior

was outrageous but the compensable harm done was slight and at the same time difficult to quantify because a large element of it was emotional." *Id.* at 677.

Specifically, the evidence revealed an extermination service the defendant motel used discovered bedbugs in several rooms in the motel in 1998 and recommended that it be hired to spray every room. The charge for the service was only \$500. The motel refused the service. The next year, bedbugs were again discovered in a room but extermination service was asked to spray just that room. The motel tried to negotiate a building sweep by the service free of charge; however, not surprisingly, the negotiation failed. By the spring of 2000, the motel's manager "started noticing that there were refunds being given by my desk clerks and reports coming back from the guests that there were ticks in the rooms and bugs in the rooms that were biting."

Further incidents of guests being bitten by insects and demanding and receiving refunds led the manager to recommend to her superior in the company that the motel be closed while every room was sprayed, but this suggestion was rejected. The superior, a district manager, was a management-level employee of the defendant hotel. The

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court found his knowledge of the risk and failure to take effective steps either to eliminate it or to warn the motel's guests were imputed to his employer for purposes of determining whether the employer should be liable for punitive damages.

The judgment upheld by the Seventh Circuit? Each plaintiff was awarded \$186,000 in punitive damages and \$5,000 in compensatory damages – not a chump change verdict.

Hoteliers must be on guard for bed bugs to avoid an Accor-like scenario. As the source populations grow, the rate of spread will inevitably increase. Further, maintaining clean rooms isn't the silver bullet – pest control specialists say the pests can thrive even in a spotlessly clean room. Accordingly, the best plan of action for those operating hotels and motels is to maintain a program of periodic room inspections by specialists in an effort to affirmatively address pest control issues, be responsive to guest complaints, and eradicate any sign of bed bugs if a problem becomes known or suspected.

Sources: "Can't sleep? The bedbugs may be biting."  
<http://www.msnbc.msn.com/id/7829176>  
(May 12, 2005) (quoted extensively

verbatim throughout article); "Lawsuit: Resort let the bed bugs bite," <http://www.cnn.com/2006/LAW/03/07/bedbug.suit.ap/index.html> (March 7, 2006); Mathias v. Accor Economy Lodging Inc. and Motel 6 Operating L.P., 347 F.3d 672 (7th Cir. 2003); Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 604 S.E.2d 385 (2004); University of Toronto Centre for Urban and Community Studies

