

Sleep Tight: Insurance Coverage For Bed Bug Claims

By Marshall Gilinsky and Kenneth Sharperson

Bed bugs are undergoing a resurgence—both beneath the sheets and in the press—and causing problems for many different types of facilities, especially hotels. As a result of this resurgence, there have been an increasing number of lawsuits against hotel owners and operators by guests who allege that they have been bitten and injured by bed bugs.

Property owners must be aware that they can be liable for damages awards and bear the expense of defending against these claims. They may, however, have insurance coverage available for all of the risks associated with bed bugs.

The number of bed bug-related personal injury lawsuits is growing. Many of the lawsuits brought against property owners allege negligence, breach of implied warranty of habitability, nuisance, battery, and fraud. Under any of these potential theories of liability, a property owner may be liable for any bodily injury caused to the claimant as a result of being bitten by bed bugs on the property owner's premises.

If liability is established against your business, then there may be a significant damages award. For example, in 2003, a jury entered a judgment of \$2,000 and \$372,000 in punitive damages against particular hotel in down town Chicago. Under many CGL (Commercial General Liability) policies, the property owner's insurance will pay the judgment.

When confronted with a claim alleging injuries caused by bed bugs on your property, you should immediately look to your CGL policy to determine whether there is coverage. The CGL policy will likely respond to a claim by a guest who claims to have been injured by bedbugs on your property. Because CGL policies cover all liabilities except those which are specifically excluded, step one is to read the policy with an eye for any exclusion pertaining to bedbugs.

If there is no such exclusion, the typical CGL policy also provides for a legal defense for these types of claims. This "defense costs" coverage is important because even if the allegations are false, defense is likely to be expensive.

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Policyholders who face business downturns due to bed bug publicity also may have means to obtain coverage for income losses associated with bed bug infestations, including loss of attraction and business interruption coverage. Loss of attraction coverage may be available if there is a diminution of business due to loss of potential customers as a direct result of bed bug issues. Business interruption coverage may or may not be triggered depending on the policy at issue. Many businesses may have to shut down for a period while remediating bedbug infestations. Business income losses suffered during and following bed bug remediation may be covered under business interruption coverage.

If your hotel is faced with income loss or liability stemming from a bed bug infestation, think “insurance” first, file notice promptly and pursue coverage aggressively. It is important to review your insurance policy with an attorney specializing in insurance recovery to determine the best approach to protect your company with any available insurance.



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Compliance Date Nears for Pools or Spas

The new Americans with Disabilities Act (ADA) Title III regulations cover a number of new elements for the first time, including existing and newly constructed swimming pools, spas and wading pools.

The compliance date for the 2010 Standards is March 15, 2012.

Hotel owners and operators and other lodging facilities must bring their swimming pools, spas and wading pools into compliance with the 2010 Standards to the extent compliance is “readily achievable” (i.e., “easily accomplishable and able to be carried out without much difficulty or expense”) and “technically feasible” (i.e., existing physical or

site constraints do not prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility).

What this means:

By March 15, 2012, most owners and operators will have to retrofit existing pools and spas with a pool lift or some other means of accessible entry, unless they lack the financial resources or physical space to do so.