



## RETAIL, RESTAURANT & HOSPITALITY CONFERENCE

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Orlando, Florida

*Don't Let Them Bite! – Cutting Edge Risk, Management and Litigation Strategies  
for Responding to Bed Bug Infestation Claims*

### **Introduction**

The old bedtime adage "sleep tight, don't let the bed bugs bite," has grown to hold new meaning. Since the turn of the millennium, reports of bed bug infestations in hotels, resorts, cruise ships, apartments, homes, hospitals, retail establishments, and many other places that fall under the umbrella of the hospitality industry have skyrocketed at an alarming rate. For the past few decades, bed bugs were considered a pest of the past, but now, bed bugs have reappeared causing what many are concerned will be a global bed bug epidemic.

This seminar provides background on what bed bugs actually are, why they have reappeared, and offers some surprising national statistics confirming the bed bug resurgence. It also provides an overview of effective methods to handle bed bug claims, the costs of treating and eradicating a bed bug infestation and risk management pointers to address issues associated with media and internet attention given to bed bugs, including, internet postings, online blogs and "bed bug registries." Finally, the seminar helps the hospitality industry develop, amend and/or refine their current protocol for dealing with this rising national concern.

### **Background**

Bed bugs, or in the science community, *cimex lectularius*, are parasites that hide in miniscule cracks and crevices and feed on the blood of human hosts causing red bite marks that resemble mosquito bites.<sup>1</sup> These small reddish insects (ranging from only one to seven millimeters in length) are experts at hiding and while adults are roughly the size of a tick making them easily visible, nymphs rarely can be seen by the naked eye. During a bed bug bite, the insect injects an anesthetic and an anticoagulant that prevents the recipient from feeling the bite.<sup>2</sup> Although it may take up to fourteen days for signs of the

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<sup>1</sup> <http://www.scientificamerican.com/article.cfm?id=sleeping-with-the-enemy>

<sup>2</sup> [http://www.cdc.gov/nceh/ehs/Docs/Joint\\_Statement\\_on\\_Bed\\_Bug\\_Control\\_in\\_the\\_US.pdf](http://www.cdc.gov/nceh/ehs/Docs/Joint_Statement_on_Bed_Bug_Control_in_the_US.pdf)

bite to appear, an allergic reaction may cause itching and inflammation to occur at any time.<sup>3</sup>

Bed bugs have the ability to reproduce at rapid rates with females laying an average of 150-500 eggs over their lifetime.<sup>4</sup> Their small size and undetected presence allows them to be easily transported on clothing, furniture, and other personal belongings and they are attracted to any place where heat and carbon monoxide can be found.<sup>5</sup> To what may come as a surprise to some, studies actually show that there is no correlation between cleanliness and the presence of bed bugs; bed bugs thrive in luxury hotels just as easily as in unclean places.<sup>6</sup> Bed bugs do not just appear in beds, but can live basically anywhere they can find their niche.<sup>7</sup>

By the 1950's, it seemed as if we had rid the country of this household pest for good. The application of broad-spectrum insecticides in America, particularly DDT, eradicated bed bugs from our pest control radar; however, other parts of the world did not obtain our same level of control. Abroad, bed bugs continued to evolve. As international travel has become much more commonplace, bed bugs are re-establishing themselves in the United States.<sup>8</sup> This has created a developing problem because we now use more targeted pest control products and lack the knowledge and ability to properly contain and prevent bed bug infestations.<sup>9</sup> Taking heed to this, the U.S. Centers for Disease Control and Prevention and the U.S. Environmental Protection Agency recently wrote a joint statement on bed bug control in the US.<sup>10</sup> Additionally, the Environmental Protection Agency held its first ever National Bed Bug Summit in 2009 where ten workgroups discussed the potential for bed bugs to rise to an epidemic level thereby being recognized as a public health pest.<sup>11</sup> Participants at the Summit discussed holding property owners liable for infestations, creating regulations to clarify landlord/tenant obligations, and even adding lease addendums addressing property owner responsibilities.

The revival of bed bugs has also stirred up questions and concerns about the potential for disease transmissions. While research indicates that bed bugs can harbor various pathogens, at this time, bed bugs are not known to transmit diseases according to

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<sup>3</sup> <http://www.ca.uky.edu/entomology/entfacts/ef636.asp>

<sup>4</sup> <http://www.scientificamerican.com/article.cfm?id=sleeping-with-the-enemy>

<sup>5</sup> <http://www.scientificamerican.com/article.cfm?id=sleeping-with-the-enemy>

<sup>6</sup> <http://www.bedbugregistry.com>

<sup>7</sup> <http://www.pestworld.org/find-a-pest-control-professional/pest-faqs/bed-bugs/>

<sup>8</sup> <http://www.scientificamerican.com/article.cfm?id=sleeping-with-the-enemy>

<sup>9</sup> <http://www.pestworld.org/all-things-bed-bugs/history-of-bed-bugs/>

<sup>10</sup> [http://www.cdc.gov/nceh/ehs/Docs/Joint\\_Statement\\_on\\_Bed\\_Bug\\_Control\\_in\\_the\\_US.pdf](http://www.cdc.gov/nceh/ehs/Docs/Joint_Statement_on_Bed_Bug_Control_in_the_US.pdf)

<sup>11</sup> <http://www.epa.gov/oppfead1/cb/ppdc/bedbug-summit/partic-recom.pdf>

the California Department of Public Health, the Center for Disease Control, and many other agencies.<sup>12</sup> However, a recent 2011 study has shown that bed bugs can carry the MRSA (methicillin-resistant *Staphylococcus aureus*) and VRE bacteria (USA 300 *Enterococcus faecium*), an antibiotic resistant pathogen that causes severe skin lesions and soft tissue infections. This study conducted in Vancouver, British Columbia suggests that bed bugs may be able to transmit this disease through bites carrying the bacteria from one human to another.<sup>13 14</sup> Although still only in the early stages of investigation, this calls for our national attention.

### **Statistics – Infestations On The Rise**

The most up-to-date surveys and studies verify that reports of bed bug infestations are increasing exponentially each year. The National Pesticide Information Center reports that it has received an increasing number of inquiries over the past several years.<sup>15</sup> A 2013 survey conducted by the National Pest Management Association and the University of Kentucky found that 99.6% of U.S. pest management professionals have encountered a bed bug infestation in the past year and that infestations have increased in the majority of locations in which pest professionals typically treat for bed bugs. Prior to 2000, only 25 percent of those respondents had encountered a bed bug infestation. According to a study conducted in 2010, by the same two groups, there has been an 81% increase in bed bug calls since the year 2000. In addition, 1 in 5 Americans now report they have had a bed bug infestation or know someone who has encountered bed bugs at home or in a hotel.<sup>16</sup>

The Vector-Borne Disease Section of the California Department of Public Health conducted a survey in 2011 to assess local agency response to bed bug infestations and gain information on the extent of the problem. Those responding represented public health, environmental health, and vector control agencies. Of the 25 agencies responding to the question on bed bug trends, 12 indicated that the number of bed bug incidents had increased over the last 3 years. In New York, the Department of Housing Preservation and Development experienced nearly a 50% increase in infestation reports from 2008 to 2009.<sup>17</sup> In Los Angeles County, officials confirm receipt of as many as 55 bed bug cases a month.<sup>18</sup> The reality is that bed bugs are back and making their presence known.

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<sup>12</sup> <http://www.cdph.ca.gov/healthinfo/discond/Pages/BedBugs.aspx>

<sup>13</sup> <http://www.bed-bugs-handbook.com/information-on-bedbugs.html>

<sup>14</sup> [http://www.nbcnews.com/id/42991801/ns/health-infectious\\_diseases/](http://www.nbcnews.com/id/42991801/ns/health-infectious_diseases/)

<sup>15</sup> <http://www.cdph.ca.gov/healthinfo/discond/Pages/BedBugs.aspx>

<sup>16</sup> <http://www.pestworld.org/find-a-pest-control-professional/pest-faqs/bed-bugs/>

<sup>17</sup> [http://www.bedbug.com/Page-Bed-bugs-in-the-US\\_128.aspx](http://www.bedbug.com/Page-Bed-bugs-in-the-US_128.aspx)

<sup>18</sup> <http://articles.latimes.com/2010/dec/04/local/la-me-bedbugs-20101204>

## **Treatment**

Several treatments exist to eradicate a bed bug infestation, each with varying levels of effectiveness. Conventional insect repellants typically cannot maintain an infestation and spraying other toxic insecticides indoors can result in an even more hazardous situation. In order to properly eradicate a bed bug infestation, a thorough inspection should first take place- most commonly using bed bug sniffing detection dogs. Once bed bugs are detected, the three most common treatment methods are: (1) the self-help treatment kit method, (2) the heating method, or (3) the chemical application method.

The do-it-yourself bed bug kit requires multiple products and is the least effective method, costing in the range of a couple hundred dollars. Both the heat treatment and chemical application methods are more effective, but, by contrast, can cost thousands of dollars depending on the area to be treated.<sup>19</sup> As an example, one public housing building in Ohio spent approximately \$500,000 on bed bug control.<sup>20</sup> Hiring a licensed professional can be very expensive and finding one near you can be difficult, but doing so is strongly recommended for proper remediation. The heat treatment is considered especially advantageous because no toxic chemicals are released indoors and infestations can be eradicated in one day rather than over multiple days or weeks. In this procedure, pest control firms utilize equipment to heat the infested area up to about 120 - 130°F, which kills the bugs and their eggs.<sup>21</sup> While professionally applied treatments can be completely effective on their own, in some cases, heavily infested personal property may need to be discarded.

## **Additional Costs To Consider**

The total costs incurred as a result of a bed bug infestation typically exceed those costs directly attributable to treatment methods. For instance, bed bug infestations at hotels can cause substantial economic loss when the hotel has to temporarily close down rooms, or at hospitals when patient rooms need to be closed for days or weeks at a time. Even worse, one infestation report or lawsuit has the potential to destroy the reputation of the hotel or hospital, which can have devastating financial effects in years to come.

## **Litigation**

Bed bug related litigation is on the rise due to the resurgence of bed bug infestations. Tenants are suing landlords, guests are suing hotels, and patients are suing hospitals. Plaintiffs may bring an array of claims, including breach of warranty of habitability, negligent supervision, emotional distress, premises liability, breach of quiet enjoyment, and housing code and health and safety code violations. Due to its prevalence

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<sup>19</sup> <http://www.bed-bugs-handbook.com/bed-bug-lawsuit.html>

<sup>20</sup> <http://www.scientificamerican.com/article.cfm?id=sleeping-with-the-enemy>

<sup>21</sup> <http://www.ca.uky.edu/entomology/entfacts/ef636.asp>

and following the lead of mold and asbestos litigation, bed bug litigation has the potential to become the next mass tort.

Though not confirmed to carry diseases at this time, bed bugs can significantly reduce one's quality of life by causing emotional and physical pain and suffering.<sup>22</sup> Besides the physical bite that leads to itchy and annoying red bumps caused by the immediate allergic reaction, bites lead to embarrassment, sleeplessness, and anxiety. Historically, it is the psychological effects that have become the primary concern. A study published by the New York Universal Medical Center reports that bed bugs may cause the type of stress which can trigger latent or a worsening of a pre-existing mental illness.<sup>23</sup> Bed bug victims can develop a condition called *delusory parasitosis* where they believe insects have covered their body when in fact none exist.<sup>24</sup> Thus, in addition to economic damages for personal property that has to be repaired or replaced, rent overcharges, and medical expenses, plaintiffs are seeking non-economic damages for pain and suffering, sometimes resulting in surprisingly high awards.

Across the country, court dockets are filling up with bed bug related litigation and some of the verdicts are staggering. The list of cases below illustrates this rising trend:

In *Ludlow Properties, LLC v. Young* (2004), the Court reversed long-standing precedent established in *Jacobs v. Morand* (1908) where the court previously held that tenants must pay rent regardless of vermin infestation. In *Ludlow*, the Judge sided with a tenant in an action for warranty of habitability where the tenant refused to pay rent for six months because of a persistent bed bug problem. The Judge stated, "Bed bugs feed on one's blood in hoards nightly turning what is supposed to be bed rest or sleep into a hellish experience." The Court's award amount took into account the size of the premises, the severity of the infestation, and the use of the premises by tenant. The Court reasoned, "There can be no doubt that the presence of the bed bugs in the premises satisfies th[e] criteria for an abatement." Since this seminal case, litigation has been rampant.

In *Mathias v. Accor Economy Lodging, Inc.*, plaintiffs, a brother and sister who were bitten by bed bugs, received a verdict in their favor for \$362,000 against a Motel 6 that rented them a unit it knew to be infested with bed bugs.

In a recent Maryland decision, a woman was awarded \$800,000 in damages for pain and suffering after her landlord rented to her an infested unit and refused to treat it. The amount awarded was more than twice what the plaintiff asked for initially.<sup>25</sup>

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<sup>22</sup> <http://www.ca.uky.edu/entomology/entfacts/ef636.asp>

<sup>23</sup> <http://www.bed-bugs-handbook.com/bed-bug-lawsuit.html>

<sup>24</sup> <http://www.bed-bugs-handbook.com/bed-bug-lawsuit.html>

<sup>25</sup> <http://bedbugger.com>

In a recent San Francisco case, a woman received \$71,000 to settle her claim against the Ramada Plaza Hotel after she received more than 400 bed bug bites during her stay.<sup>26</sup> After spending three nights at the hotel, she noticed small blood stains on the sheets and discovered several insect bites along her face and body. Within a week, her face and body were covered with hundreds of bite marks and she was later diagnosed with dermatographism, an incurable skin condition.

A couple won a settlement of \$49,000 against J.C. Penny after receiving furniture that was infested with bed bugs.

In addition to these notable verdicts and settlements, multiple suits which were ultimately resolved in some confidential manner, have been filed. The increasing damages being sought is telling of the direction these cases will seek to go. For example - A couple from New York sued the Nevele Hotel in 2006 for \$20,000,000 after the wife received 500 bed bug bites while staying at the resort.

In 2007, Plaintiffs sued a Hilton in Ohio for \$5,000,000 for emotional distress, embarrassment, and physical scarring from the bed bug bites. The lawsuit claimed that Hilton breached its duty to provide reasonable safe accommodations which in turn led to embarrassing injury and tremendous emotional distress.

In Rancho Cordova, California, tenants of Cordova Estates Apartments filed a \$10,000,000 lawsuit against the owner. According to the lawsuit, the owner failed to provide tenants a habitable environment.

There is also pending litigation in Iowa where past and present tenants of Elsie Manor and Ligutti Tower are bringing a class action against the landlord seeking as much as \$7,000,000 for being subjected to living with bed bugs without treatment for more than two years. This amount includes reimbursement for rent overcharges, physical and emotional pain and suffering, and replacement of infested belongings.

## **Conclusion**

These tiny but pesky insects have the ability to wreak havoc not only in our every day lives should we fall victim to an infestation, but they also have the ability to cause significant increased risks to a large portion of the business community. Those potentially affected include the obvious hotels, apartments and hospitals, but also the less obvious movie theaters, furniture retailers and the list goes on.

Some states have already begun to pass bills regarding responsibilities for eradication of bed bugs and many others are following suit.

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<sup>26</sup> [http://sfist.com/2008/10/24/downtown\\_bedbug\\_attack\\_costs\\_ramada.php](http://sfist.com/2008/10/24/downtown_bedbug_attack_costs_ramada.php)