

When Bed Bugs Are Biting, Do Not Forget About Your Insurance

Article by:



Marshall Gilinsky



Matthew F. Putorti

Bed bugs are still biting. In fact, the Centers for Disease Control and Prevention and the Environmental Protection Agency released a joint statement declaring that the United States is “experiencing an alarming resurgence in the population of bed bugs.” And these bugs are biting everywhere. Pest control company Orkin recently ranked cities by the number of bed bug treatments Orkin performed in 2013. Chicago tops the list; ranked New York cities include Syracuse (14), New York City (17), Buffalo (38), and Albany/Schenectady/Troy (43). Within the hospitality industry, seventy-five percent of the respondents to a 2013 survey of 251 pest management companies across the United States reported they have seen bed bug infestations in hotels and motels.

As the number of bed bug infestations grow, so too do the number of lawsuits filed by guests against hotels and motels. Since a major case in 2003 (which awarded two guests of a Chicago hotel \$372,000 in punitive damages), other high-profile and high-dollar lawsuits have been brought against hotels: In 2006, a couple sued a New York resort for \$20 million; in 2011, a guest sued a luxury New York City hotel for \$10 million; in 2013, a New York woman sued a North Carolina hotel for \$7 million; and just recently, in January 2014, a woman brought suit against a suburban Chicago hotel for a bed bug problem that ultimately forced her to cut off her dreadlocks. These suits allege, for example, negligence, intentional infliction of emotional distress, and breach of contract.

While these lawsuits might be atypical for the amount of damages they seek, they evidence a trend of guests suing hotels and motels when they are bitten by bed bugs—and these suits can be costly. Not only must hotels and motels spend money to defend and, in some cases, settle these lawsuits, they might lose revenue for closing all or a portion of the property to get rid of the bed bug problem or face reputational damage from bad publicity or reviews on travel websites.

Property owners should take steps to ensure that they have insurance coverage for the risks associated with bed bugs. A commercial general liability (CGL) insurance policy should respond—unless there is a specific exclusion for bed bugs. CGL policies cover all liabilities except those that are specifically excluded, but some do include exclusions pertaining to bed bugs. If there is no such exclusion, the CGL policy will pay the judgment and may also provide for a legal defense for these types of claims (this “defense costs” coverage is important because even if the allegations are false, defense of the lawsuit is likely to be expensive).

Policyholders who face business downturns due to bed bug infestation publicity also may have means to obtain coverage for income losses, 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 income losses—for businesses that have to shut down for a period while remediating bed bug infestations—may or may not be covered under business interruption coverage depending on the policy at issue.

Some insurance companies have recently started offering specific bed bug insurance policies. Because they are relatively new, there is a dearth of case law interpreting the language of these policies. Nevertheless, these specialty policies could also be a source of coverage.

If your hotel or motel is faced with liability or income loss from a bed bug infestation, think insurance first, file notice promptly, and pursue coverage aggressively. If you have avoided such claims to date, take steps to ensure that you are covered if an infestation occurs. 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.

About the Authors:

Marshall Gilinsky (mgilinsky@andersonkill.com) is a shareholder in the Washington, D.C. office of Anderson Kill, a national law firm. Mr. Gilinsky's practice is focused on property insurance, commercial general liability insurance, directors' and officers' insurance, captive insurance and reinsurance issues.

Matthew F. Putorti (mputorti@andersonkill.com) is an attorney in the firm's New York office. His practice concentrates in insurance recovery, exclusively on behalf of policyholders, and in corporate and commercial litigation.