

# HOSPITALITY LAW

Helping the Lodging Industry Face Today's Legal Challenges

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## Guest's bed bug claim goes to trial

### Insect log indicates hotel knew it had pest problem

Bed bugs present a problem for luxury and budget hotels alike. Ignoring the problem only makes things worse — or does it? Surprisingly, a Florida court used one hotel's attempts to eradicate its infestation against it. *Livingston v. H.I. Family Suites, Inc., et al.*, No. 6:05-cv-860-Orl-19KRS (M.D. Fla. 05/22/06).

Mathew Livingston and his family stayed at the **Holiday Inn Family Suites** near Orlando, Fla. Livingston noticed ants and roaches in the first room he was assigned. After complaining, he was assigned another room. On the fourth night at the hotel, Livingston noticed small insects crawling on him and his child. Upon closer observation, he discovered that the bedroom's mattress and box spring were infested with small brown insects. Livingston checked out of the

hotel and into another property. Four to five days later, his wife and child sought medical attention after they discovered red, welt-like bug bites on their arms and legs.

Livingston sued the hotel for gross negligence, alleging it rented him a room without warning him of the potential dangers presented by the bed bug infestation. Livingston contended that the hotel was aware of the infestation in the room it rented him. The hotel denied exposing Livingston to a known danger.

The U.S. District Court, Middle District of Florida said Livingston could pursue his claim because the hotel's insect log revealed that it was aware of the infestation.

Gross negligence is best described as an act or omission that a reasonable, prudent person would know is likely to result in harm to another. "Liabil-

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## Harassment complaint doesn't stop casino from imposing discipline

### Discharge prompted by agent's confession, not retaliation

Filing a sexual harassment complaint does not give an employee the freedom to violate company rules. If an employee needs to be disciplined for misconduct while a complaint is under investigation, the employer should not hesitate to do so. A casino was not faulted for discharging an employee who complained about harassment because termination was a known consequence of violating company policy. *Imbornone, et al. v. Treasure Chest Casino, et al.*, No. 04-2150 Sec. F (E.D. La. 05/03/06).

Sylvia Imbornone worked as a surveillance agent at the **Treasure Chest Casino** for seven years. She contended that she was subjected to sexual harassment by coworkers during most of her employment. An investigation following her first complaint in June 2002 led to the termination of a female coworker. In March 2003, Imbornone attended an employee training on the company's harassment policy, which included the possibility of termination for those who violated the policy.

In July 2003, a male coworker filed a sexual harassment complaint against Imbornone. While on suspension pending the outcome of an investigation, Imbornone admitted to making inappropriate comments and again complained that her coworkers sexually harassed her. One month later, the casino discharged Imbornone for violating its sexual harassment policy.

Imbornone sued the casino and its parent company, **Boyd Gaming Co.**, alleging that she was discharged in retaliation for complaining about sexual harassment.

The U.S. District Court, Eastern District of Louisiana dismissed Imbornone's suit, saying that the casino had a legitimate nondiscriminatory reason for discharging her. "[An employer] cannot be rendered powerless to discipline or discharge [an employee] for inappropriate behavior, simply because she complains of sexual harassment," the court said.

The court pointed out that Imbornone admitted that she engaged in the inappropriate behavior. Further, Imbornone's attendance at the casino's

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**Regardless of how thorough the treatments are to the infested room, it is virtually impossible to guarantee that every last bug has been eliminated or that all of the eggs have been destroyed.**

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ity for gross negligence focuses on the hotel's awareness of the danger, not the victim's," the court said.

The court rejected the hotel's ignorance argument, citing its own insect log. Just 15 days prior to Livingston's arrival, the court pointed out, a guest who stayed in the same room assigned to Livingston complained about an insect infestation. In the two weeks preceding Livingston's arrival, the hotel recorded the presence of insects on the Livingstons' floor four times. The court also noted that the hotel amended its pest control contract in January 2004, to provide for the treatment of bed bugs.

The court also rejected the notion that the Livingstons were bitten at their second hotel. The insect log confirmed that Livingston reported the presence of bed bugs the day he discovered them, the court said, and an employee wrote in an e-mail that she observed them moving around under the mattress.

Because the hotel's own documentation of its insect problem corroborated Livingston's claim that the hotel knew about the infestation, the hotel could not avoid a trial.

#### HLaw Comment, by Richard Cooper

This case illustrates that hotels may be in a no-win situation when it comes to dealing with bed bugs.

Despite a very aggressive approach to bed bug management, it may not always be possible for a hotel to guarantee that a room where bed bugs have been identified is 100 percent free of bugs before it is placed back into service. There are a number of reasons why this is true.

Regardless of how thorough the treatments are to the infested room, it is virtually impossible to guarantee that every last bug has been eliminated or that all of the eggs have been destroyed. So even if all of the bugs are killed, eggs may still hatch. It is for this reason that bed bug management efforts typically require several follow up treatments to completely resolve the problem.

Taking the room out of service until the bugs have been eliminated is not necessarily a solution either. Bed bugs feed exclusively on blood but are able to survive several months without a meal, and have been reported to survive as long as a year without feeding. If a hotel takes a room out of service after treating it for a bed bug infestation, the insects that survived the initial treatment can lay dormant for months waiting for a host to return. Lack of a host may also stimulate

bugs to migrate to surrounding occupied rooms in search of a meal.

In addition, there are no reliable monitoring methods available to help verify the presence or absence of bed bugs. Due to their secretive behavior, these insects are capable of avoiding visible detection by hiding beneath baseboards, within wall voids, or in crevices that are too small to visually inspect.

#### What can the hospitality industry do?

Hotels must show that they were as active as possible in addressing the problem. Following these suggestions is still no guarantee that a room will be pest free:

1. Take the infested room out of service until it has been thoroughly treated for bed bugs.
2. Place the room on a frequent follow-up schedule that includes intensive inspections, physical removal of any visible bugs, and re-treatment as necessary.
3. Establish "clean perimeters," which means placing rooms that share a common wall, floor or ceiling with the infested room on a treatment and inspection program to reduce the likelihood of bugs spreading to surrounding rooms.

In the long term, hotels may want to:

1. Implement procedures for handling infested furniture to more likely achieve 100 percent mortality of all bugs and eggs, such as heat treatments or fumigation.
2. Work closely with a pest-management firm to understand the benefits and limitations of the services provided. Make sure the program suits your needs and that the treatment provided will reduce the likelihood of a population rebound.

In this case, the presence of bed bugs doesn't appear to be in question, so the real question for the jury is: Did the hotel take adequate measures to address the bed bug infestation? A hotel that can't show that it made diligent efforts to resolve the problem before putting the room back into service may be held liable for the injuries the bugs inflict on its unwitting guests.

*Richard Cooper is the technical director of Cooper Pest Solutions in Lawrenceville, N.J. For more information on bed bugs, see April 2006 issue, p.10. ■*

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