



BEDBUG LITIGATION ON THE RISE

BY GARY SHAPIRO, SENIOR VICE PRESIDENT
OF WEISBURGER INSURANCE BROKERAGE

I was searching the Internet the other day and came across several lists of the worst cities for bedbugs. No matter which list included New York City, my hometown, it ranked near the top.

More alarming is that the occasional stories about the infected mattress are escalating to dramatic newsworthy items, to an epidemic that has reached hotels, retail stores, movie theaters, and other frequently visited public places. Many businesses are discovering that they are not immune to bedbugs. Who would have thought that the Brooklyn District Attorney's office could be infected with bedbugs?

According to the Associated Press, the Bloomberg administration fielded 537 complaints about these pests in fiscal 2004. In fiscal 2009, that number rose to

nearly 11,000! These tiny blood sucking critters that crawl around at night and leave welts are playing on the fears of the public and are making it into the local and national news. While attending the New Jersey Pest Control Association's 61st trade show and clam bake, the buzz was that all three major news channels in the metro area were there to do a piece on bedbugs.

As the bedbug epidemic continues to worsen, and public awareness increases, business owners must follow strict guidelines to prevent exuberant financial loss that can result from bedbug lawsuits. Pest manage-

ment professionals (PMPs) are not exempt from these lawsuits - they are now also becoming the victims of lawsuits given their involvement in the treatment of these critters. It's important to make sure the proper precautions are taken by PMPs to protect their business if they find themselves in litigation.

When PMPs are called in to evaluate a possible infestation, an important value added service is preventative advice. For example, hotels should be advised to practice state-of-the-art sanitation and to follow strict standards of laundering, drying and vacuuming, including the use of bedbug proof mattress covers. As effective as a regularly administered pest control program is a trained and knowledgeable housekeeping staff equipped with a first-response action plan. It is the job of the PMP to properly educate their clients about future maintenance of this issue, as well as ways to prevent it from happening, if it has not yet happened.

Although the cost of extermination can be estimated, the overall financial loss from a bedbug infestation can result in immeasurable damage to a business. As noted by the court in *Mathias v. Accor Economy Lodging, Inc.* while upholding a six-figure judgment in favor of two hotel guests, "Bedbug bites are painful and unsightly." PMPs must be prepared that if a lawsuit ensues, they have the proper insurance coverage to combat claims made against them by a commercial business stating their services were not performed properly.

Business owners can be held liable to their tenants, guests and visitors for all bodily injuries, personal property damages and any related losses (i.e. relocation expenses, etc.) resulting from a bedbug infestation on their premises. Consequently, property owners often attempt to shift liability for their bedbug claims to their PMPs on the theory that the PMP was negligent in failing to prevent the infestation in the first place (when regular inspection/maintenance services exist) and/or failing to completely eradicate the infestation after being called upon to do so.

PMPs are also frequently targeted by those that occupy neighboring areas of the original infestation site on the theory that the PMP failed to act timely or to otherwise prevent the infestation from spreading into surrounding areas. Finally, PMPs can be targeted

by those that seek recovery for alleged injuries caused by the ingestion of the chemicals used to eradicate the bedbugs. In the case of *Ellis v. Orkin Exterminating Company*, the parents of a 7 year old boy sought recovery, albeit unsuccessfully, from a PMP for their son's death caused by asphyxiation from hydrocyanic gas that was released by the PMP into the house for the purpose of exterminating bedbugs and other vermin.

One of the first calls made on the discovery of a bedbug infestation is to a PMP. Often commercial businesses have one year contracts with pest control companies, not necessarily covering the extermination of bedbugs. It is important for PMPs to educate their clients, so that each customer knows their rights and responsibilities. Pest control companies must make sure that each contract represents exactly what services they are offering, including whether bedbugs are covered explicitly or accidentally.

Along the same lines, PMPs should speak with their insurance professional to make sure that they understand the ins and outs of their current program and specifically, that it covers their different bedbug extermination techniques. Besides special machines that use cold, heat, steam and vacuuming to kill bedbugs, a relatively new method of sniffing out these pesky critters are trained dogs. A competitive insurance professional should be well versed in Canine Mortality Coverage for those PMPs that earn their living with dog inspection fees. A proper insurance policy should cover accident, injury, illness and/or disease of dogs that are specially trained to detect vermin or insect infestations.

For more information on the best kind of coverage that protects your pest control business, please contact Weisburger Insurance Brokerage at 800-431-2794, info@weisburger.com, or visit our site at www.weisburger.com. Weisburger is the nationally endorsed insurance broker of the National Pest Management Association (NPMA). With over 75 years of experience, our experts are able to review your current coverage and identify ways to best protect your Pest Control business in today's economically challenging times. «



537

2004



2009

COMPLAINTS ABOUT BEDBUGS IN FISCAL 2004 VERSUS FISCAL 2009

*According to the Associated Press,
fielded by the Bloomberg administration*

 = 500 complaints