Introduction

For some time, bed bugs (also spelled bedbugs) have been making a comeback in the United States.¹ Almost entirely eradicated by 1949, two factors – the advent of jet planes (in 1958) and the outlawing of DDT (in 1972) – have allowed bed bugs (or, more precisely, ‘cimex lectularius’) to regain a foothold. At the US Environmental Protection Agency’s first-ever National Bed Bug Summit, held in Washington, DC in April 2009, attendees agreed that the problem will only get worse in the future.²

Although bed bugs can turn up anywhere,³ no sector of the American economy has been hit harder by their re-emergence than the hospitality industry.⁴ As a result, there now are nearly

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³ In 2007, for example, bed bugs were discovered in the word processing department of the Wall Street law firm of Cadwalader, Wickersham & Taft LLP. See David Lat, Breaking: Cadwalader Overrun by Bed Bugs!!!, Above the Law: A Legal Tabloid, June 25, 2007, at http://www.abovethelaw.com/2007/06/breaking_cadwalader_bed_bugs.php (last visited Aug. 1, 2009).
⁴ See, e.g., Peter Greenberg, Don’t Go There! The Travel Detective’s Essential Guide to the Must-Miss Places of the World 140 (2008) (‘Over the past few years, the media has been in a frenzy over the topic of bed bugs in hotels. In fact, there has been a sharp rise in the number of bed bug reports – anywhere from a 70 percent to a 150 percent increase, depending on your source. . . .The thing about bed bugs is that they can strike anywhere, not just in low-budget or unsanitary hotels.’), and Joe Sharkey, A Pest From Yesteryear, Bed Bugs Travel Nowadays, N.Y. Times, July 14, 2009, at B6 (‘There is a Web site, www.BedbugRegistry.com, with national bed bug alerts. While most reports are about economy or midlevel roadside hotels where housekeeping standards may be less strict, well-known big-city four-star hotels also occasionally turn up. . . .The industry, while cringing at the very word, seems to be facing the bed bug issue head on, while insisting that the problem is not confined to hotels and is not widespread.’). See also Lisa Fickenscher, Hotels Seek Solutions to Keep Bed Bugs at Bay, Crain’s New York Bus., July 6, 2009, at http://www.crainsnyc.com/article/20090706/FREE/907069974 (last visited Aug. 1, 2009) [reporting on the attempts of some hotels to squelch public discussion of their infestations].

Not surprisingly, the industry’s troubles have become fodder for popular culture plot lines. For example, in the 2006 episode ‘Buggie Nights’ of the television sitcom The King of Queens, Carrie and Doug’s house is infested with bed bugs brought back by Carrie’s father after a stay at the budget Republic Motel in Boynton Beach, Florida. By the end of the show, Danny and Spence have checked into this hotel, causing the cycle to begin anew. See Buggie Nights, at http://www.tv.com/the-king-of-queens/buggie-nights/episode/663641/ summary.html (last visited Aug. 1, 2009). Likewise, in the 2007 movie Ocean’s 13, bed bugs are planted in an inspector’s room to ensure a bad review for a brand new luxury Las Vegas resort (‘The Midas’). See Vail C. Reese, Bed Bugs in ‘Ocean’s 13’ and ‘Bug,’ Skinnies Awards 2008, at http://www.skinema.com/ Skinnies2008BedBugs.html (last visited Aug. 1, 2009).
a dozen reported court cases in which a hotel has been sued for bed bug injuries. Thus, after a necessary bit of background, this article will examine these decisions and then suggest a simple means for analysing a hotel’s exposure in a bed bug case.5

Background

According to the National Pest Management Association Inc.,

*Bed bugs get their name because they like to live and feed in beds. [They] like to travel and will hide in suitcases, boxes and shoes to be near a food supply. They are elusive, nocturnal creatures. They can hide behind baseboards, electrical switchplates, picture frames, even wall paper. They come out at night for a blood meal. ... Although bed bugs can dine on any warm-blooded animal, they primarily dine on humans. Bed bugs do not transmit diseases, but their bites can become red, itchy welts.*6

No one knows how or when the popular expression, ‘Good night, sleep tight, don’t let the bed bugs bite’ arose, although several theories have been proposed.7 Regardless, it is clear that bed bugs were present in the American colonies;8 were a major nuisance in 1808, when the word ‘bed bug’ was coined;9 and caused several major outbreaks in the 1930s.10

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5 Because of space considerations, this article does not discuss lawsuits against hotels arising from other types of pests. See, e.g., Mills v Best Western Springdale, 2009 WL 1710765 (Ohio Ct. App. June 18, 2009) (upholding dismissal of a guest lawsuit involving ‘scabies’). See generally Sincoff v Liberty Mut. Fire Ins. Co., 183 N.E.2d 899 (N.Y. 1962) (analysing the catch-all term ‘vermin’ and explaining the differences between bed bugs and carpet beetles, fleas, house flies, and lice).


7 In discussing the phrase’s origin, a leading English authority opines:

> Sleep tight! Mind the fleas don’t bite! [is] a children’s goodnight to parents, brothers, and sisters, friends: certainly of late C19–20, but perhaps existing very much longer: this is the sort of phrase that, naturally enough, escapes the attention of lexicographers, even the light-hearted. ... The US form is goodnight, sleep tight, don’t let the skeeters (or the bedbugs) bite... because mosquitoes and bugs are commoner pests than fleas [in the United States].


8 Another source suggests that the phrase is also a reminder to those about to retire to take precautions against bed bugs – such as moving the bed away from the wall, placing its feet in cans of kerosene, and keeping the sheets from touching the floor – to ensure a good night’s rest. See Cecil Adams et al., *Sleep Tight*, The Straight Dope, at http://www.straightdope.com/columns/read/1570/whats-the-origin-of-the-expression-sleep-tight (last visited Aug. 1, 2009).

9 See Randall Magwood, *How to Prevent and Eliminate Bed Bugs: Everything You Need to Know to Stop Bed Bugs Once and For All* 23 (2009) (‘It is commonly believed that the bed bug has been around for thousands of years ... [and] came to the Americas just as the colonists did. They traveled with them on board the shipping vessels that were used by immigrants. With each new wave of colonists came a new wave of bed bugs.’). See also Frank Cowan, *Curious Facts in the History of Insects* 265 (1865) (noting that written descriptions of bed bugs in England can be found as far back as 1503).


As a result, this period proved to be a high point in the scientific study of bed bugs, led by Dr. Maurice C. Hall (1881–1938) of the United States National Institute of Health and Dr. L. Kenneth Mellanby (1908–93) at Sheffield University in England. In 1937, Hall released his influential report, ‘The Bedbug: Its Relation to Public Health, Its Habits and Life History, and Methods of Control,’ while throughout the decade Mellanby published papers detailing the results of his experiments. See, e.g., *Animals: Cimex Lectularius*, Time, Apr. 18, 1938, at 48 (‘From England there arrived in the US last week a dissertation by a Sheffield University researcher named Kenneth Mellanby on the longevity of bedbugs.’).
The first published court case in the United States to mention bed bugs appears to be \textit{Choice v State},\textsuperscript{11} an 1860 Georgia decision in which it was said that ‘a man may be sane at one moment, and the next crazy as a bed-bug,’\textsuperscript{12} an expression that alludes to the fact that bed bug bites cause their victims to ‘itch like crazy.’\textsuperscript{13}

Although the dangers posed by bed bugs were well known by the late 19th century,\textsuperscript{14} it generally was felt that little could be done about them. As a result, it was during this time that the ‘bed bug letter’ appeared. As has been explained elsewhere: ‘[A] bedbug letter [is a] letter of apology from a respectable hotel to a recent guest who has complained of bedbugs. (The catch is that it’s a \textit{form} letter.)’\textsuperscript{15}

Reflecting these sensibilities, the New York Supreme Court, in a 1908 case known as \textit{Jacob v Morand},\textsuperscript{16} refused to grant any relief to a tenant whose apartment was overrun by bed bugs because such pests were an ‘inconvenience … to which all more or less are subject at times. …’\textsuperscript{17} Thirty years later, with the doctrine of ‘caveat emptor’ in retreat,\textsuperscript{18} courts did an about-face and agreed that landlords had a duty to keep their dwellings free of bed bugs.\textsuperscript{19}

And so matters stood when DDT—a powerful chemical invented in 1874—was discovered during World War II to be a highly effective pesticide.\textsuperscript{20} Quickly introduced into civilian life,\textsuperscript{21} by 1949 it had all but eliminated bed bugs as a problem.

During the next five decades, very few bed bug cases arose. Indeed, bed bugs became such a small problem in the United States that the term was appropriated by securities lawyers, who in...
1972 began referring to registration statements deemed materially deficient by federal regulators as having received a ‘bed-bug letter’ (due to the fact that they were teeming with problems).22

There was, however, one case of note during this time. In Oddi v Mariner-Denver, Inc.,23 an Indiana resident named Marcia J. Oddi claimed that while staying at the Holiday Inn Denver-Downtown in September 1977, she had been given a room that was infested with bed bugs. Upon her return home, she sued both the hotel and its franchisor, alleging breach of warranty (express and implied), negligence, products liability, and third party beneficiary of a breached contract. Unfortunately, these issues were never litigated because the court granted the defendants’ motion to dismiss due to a lack of sufficient contacts with the forum.24

In retrospect, it appears that Ms. Oddi was one of the first victims of a bed bug resurgence brought about by the federal government’s decision to ban DDT,25 coupled with the growth in international travel. As has been written elsewhere:

[T]he most-cited reason for the dramatic worldwide rise in bedbug cases in recent decades is increased international travel. In 1999, four separate infestations throughout the United Kingdom alerted people to the possibility of an increase in the worldwide bedbug population, facilitated by international travel and trade. ... Since 1999, infestations have been reported in the United Kingdom, Germany, Spain, Australia, Canada, India, Israel and the United States. Two separate studies in Tuscany, Italy offer further correlation of international travel with a resurgence in bedbug infestations. ...

Bedbugs had nearly been eradicated by the widespread use of potent insecticides such as DDT. However, many of these strong insecticides have been banned from the United States and replaced with weaker insecticides such as pyrethroids. Many bedbugs have grown resistant to the weaker insecticides. In a study at the University of Kentucky bedbugs were randomly collected from across the United States. These ‘wild’ bedbugs were up to several thousands of times more resistant to pyrethroids than were laboratory bedbugs.26

21 See, e.g., DDT Cuts Complaints of Vermin in Newark from Three or Four a Day to One a Week, N.Y. Times, Aug. 20, 1946, at 31 (quoting Christopher Nugent, the city’s assistant health officer, as saying, ‘If the American people want to, we can make the bedbug extinct within two years.’).


24 Id. at 309 (‘The clear conclusion is that this Court does not have personal jurisdiction over Denver-Mariner. There was no allegation that it does business in Indiana and the clear weight of authority in similar cases is that a franchisee or licensee is not subject to the jurisdiction of a state merely because another franchisee or licensee of the same name does business in the forum state. The Court also holds that it has no jurisdiction over Holiday Inn of America, Inc., a Tennessee corporation which also has its principal place of business in that state. There has been no allegation that it does any business in Indiana and the mere fact that it may have subsidiaries, franchisees or licensees in this state does not subject it to the jurisdiction of this state.’).


26 Bedbug, at http://en.wikipedia.org/wiki/Bedbug (last visited Aug. 1, 2009) (footnotes omitted). Of course, these conditions—easy travel and a lack of effective pesticides—are the same ones that facilitated outbreaks in the 19th century. See, e.g., Bristol, supra note 14, at 662 (‘Travelers say that all trains coming into this city [St. Louis], especially Pullman cars on which these insects, being of luxurious tastes, prefer to travel, are abundantly supplied; and the porters say that the animals leave the cars on their arrival here and at once locate for business. This they determine because of the utter absence of them from outgoing trains.’).
Recent Cases

Now that bed bugs are once again present in the United States, lawsuits against hotels are being brought with increasing frequency. So far, however, the only case to be decided on the merits is *Mathias v Accor Economy Lodging, Inc.*

Siblings Burl and Desiree Mathias were bitten by bed bugs during a November 2000 stay at a Motel 6 in downtown Chicago. By that date, the 191-room property had been infested with bed bugs for two years, a fact that had been repeatedly brought to management’s attention by both employees and guests. Despite charging ‘upwards of $100 a day for a room,’ the motel refused to take corrective action (an exterminating company offered to fumigate the building for $500) and instead instructed its desk clerks ‘to call the ‘bedbugs’ ‘ticks,’ apparently on the theory that customers would be less alarmed [by such verbiage].’

At trial, a jury awarded each plaintiff $5,000 in compensatory damages and $186,000 in punitive damages. On appeal, Circuit Judge Richard A Posner, writing for a unanimous panel, upheld the jury’s decision and found that inasmuch as the defendants had been guilty of gross negligence, the jury’s verdict was neither irrational nor excessive:

> It is probably not a coincidence that $5,000 + $186,000 = $191,000/191 = $1,000; i.e., $1,000 per room in the hotel. ... But this is just the beginning. Other guests of the hotel were endangered besides these two plaintiffs. And, what is much more important, a Chicago hotel that permits unsanitary conditions to exist is subject to revocation of its license, without which it cannot operate. We are sure that the defendant would prefer to pay the punitive damages assessed in this case than to lose its license.

Because the motel’s liability in *Mathias* was obvious – at the appeal the defendants largely conceded that punitive damages should be imposed but argued that $20,000 was a more reasonable figure – its precedential value has been limited. In more recent cases, hotels have either raised fact-specific procedural objections or moved, with mixed success, for summary judgment on the grounds that: 1) there was no problem; 2) they did not have actual or

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27 Bed bugs also are making Americans rethink their hotel preferences. See *Guests Consider Bed Bugs*, Lodging Hospitality, Nov 1, 2007, at 94 (discussing polls showing that 59% of travellers have become ‘more choosey’ because of bed bug concerns).
28 347 F.3d 672 (7th Cir. 2003).
29 Id. at 675.
30 Id. at 678 (citation omitted).
31 Id. at 674. Given the United States Supreme Court’s recent decision in *Exxon Shipping Co. v Baker*, 128 S. Ct. 2605 (2008), which suggested that a ratio of 1:1 normally will be sufficient, it seems clear that the 37:1 ratio approved by Judge Posner would now not pass muster and that a request for remittitur would be granted. See further Jeffrey L. Fisher, *The Exxon Valdez Case and Regularizing Punishment*, 26 Alaska L. Rev 1 (2009). For a pre-*Exxon Shipping* criticism of Judge Posner’s handiwork, see Steven Shavell, *On the Proper Magnitude of Punitive Damages: Mathias v Accor Economy Lodging, Inc.*, 120 Harv L. Rev 1223 (2007).
constructive knowledge of a problem; or, 3) they did their best to solve the problem. With the typical hotel’s liability less clear than in Mathias, some plaintiffs have sought to expand the pool of defendants by either including the hotel’s exterminating company or suing their travel agent for failing to mention that the property had bed bugs.

Of course, most civil lawsuits in the United States settle, and bed bug cases have proven to be no exception:

*The deluxe Mandarin Oriental Hyde Park, London, was sued in 2007 by a couple claiming several million dollars in damages after allegedly suffering hundreds of bed bug bites. In this posh Knightsbridge hotel, where room rates start at £245 a night (that’s almost $500) in the low season, attorney Sidney Bluming and his wife, Cynthia, certainly weren’t expecting nightly attacks by the little buggers during their 5-night stay. ... The Blumings sued the hotel for fraud, deceptive trade practice, negligence, recklessness, nuisance, and intentional infliction of emotional distress.*

According to a statement released by the couple’s lawyer, Michael Weinstein, of the Newark, New Jersey-based firm Robertson Freilich Bruno & Cohen ... [t]he hotel general manager and a third-party exterminator ultimately admitted that there were bed bugs embedded in the head board of the couple’s hotel room. ...

Another bed bug case was settled around February 27, 2008, after Rose M Pagley-Brown sued the Stone Inn’s in Siloam Springs, Arkansas, claiming that she was infested by hundreds of bed bugs during her stay. The suit alleged negligence and sought damages for pain and mental anguish, embarrassment and humiliation, medical bills, and other expenses. ...

*The Hotel Pennsylvania [in New York City], where room rates start at about $138 a night ... had to pony up nearly $100,000 to six victims after two Swiss women claimed that they were bitten ‘head to toe’ during their 2005 stay. To make matters worse, the women’s attorney, Adam Sattler, noted, ‘As soon as they approached the counter to check out, before they were even able to say anything, the person behind the counter said, ‘We know it, bed bugs.’’*

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34 See Grogan and Martin, supra note 33. As it happens, both cases involved the same pest control company (P.A.C. Exterminating).

35 See Kaloyeva v Apple Vacations, 866 N.Y.S.2d 488 (N.Y.C. Civ Ct. 2008) (opening default judgment). Presumably for jurisdictional and logistical reasons, the plaintiffs did not sue the hotel (the Santana Beach Resort & Casino in La Romana, Dominican Republic).


37 Greenberg, supra note 4, at 140-41 (emphasis in original).
Conclusion

In May 2008, the New York City Department of Health and Mental Hygiene issued a two page flyer entitled ‘Stop Bed Bugs in Hotels Safely.’ In pertinent part, it states:

In most cases, guests carry bed bugs into hotels unknowingly, in infected luggage, clothing, blankets, and pillows. Hotels with high occupancy turnover are especially vulnerable to infestation. There is little that can be done to prevent guests from bringing in bed bugs. No hotel is immune to a bed bug infestation. ...

[Hotels therefore should have an inspection plan in place so staff can identify a bed bug infestation before guests do. Train your employees to inspect rooms upon vacancy and whenever a guest complains about bed bugs. Your staff should look for living or dead bed bugs, small bloodstains from crushed insects, or dark spots from droppings. They might find bed bug remains on the linens, the mattress and its seams, the bed springs, behind the headboard, in the seams of upholstered furniture, or even between floor boards. ...]

When a guest complains about bed bugs, hotels should: Immediately offer a new room to the guest; provide a fact sheet about bed bugs; reassure the guest that bed bugs are not known to spread disease; offer to launder the guest’s clothes ... in the hottest water and dried on the hottest cycle that is safe for the materials; bring in a licensed pest control professional for a complete inspection and treatment of the room; [and avoid using] the infested room until a pest control professional certifies it free of bed bugs.38

Thus, the issue in any bed bug lawsuit is not whether the hotel should have prevented the infestation—doing so is simply not possible.39 Instead, the three questions that a lawyer needs to ask are: 1) did the hotel regularly check for bed bugs?; 2) upon discovery, did it take immediate steps to get rid of the infestation?; and, 3) did it protect guests during the eradication process?40 Three ‘yes’ answers should result in a win for the innkeeper, while a single ‘no’ answer should spell victory for the traveller.

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40 As has been pointed out elsewhere, answering these questions is made easier when hotels meticulously document their actions—and a lack of records should weigh in favour of the plaintiff. See Karen Morris, , Apr. 24, 2008, at 8.