

Bedbugs: They're Still Here (and Causing
Trouble) – Current Trends in Litigation and Risk
Management

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Notable Jury Award at the Trial Court Level

Stacey Belle v. Red Roof Inns, Inc., RRI West Management, LLC and FMW RRI I, LLC, Prince George's County, MD Circuit Court(September 15, 2015)

A DC-area jury awarded a six-figure judgment to a woman in September 2015 who filed a lawsuit after she said she suffered injuries from bedbugs at a Red Roof Inn-branded property in Prince George's County, Maryland.

Stacey Belle, of Winston Salem, North Carolina, said she stayed for one night in January 2014 at one of the chain's hotels in the 6100 block of Oxon Hill Road. She woke up itching. When she turned on her lights, she saw welts covering her arms and hands, lifted her pillow and found bedbugs crawling.

"She was completely disgusted," said her lawyer Daniel Whitney, of Towson, Maryland.

In the lawsuit, which she filed against the flag, the ownership, and the management company, Belle claimed that the Oxon Hill hotel had previously found bedbugs in guest rooms and treated infestations. She also maintained the hotel did not check that Belle's room was free of bedbugs before it rented it out to her.

On September 15, a Prince George's County jury awarded Belle \$100,000 as compensation for her bites and subsequent distress. Whitney, her attorney, said he believes it is one of the biggest sums in damages in Maryland that has been awarded against a hotel for a bedbug case.

In an e-mailed statement, a Red Roof Inn spokeswoman said the company "disagrees" with the jury's award and "plan[ed] on exercising all of its rights related thereto."

As the legal blog Above the Law once put it: "There's Only One Way to Deal With Bedbugs: Release the Sharks."

In Maryland, Belle's lawyer — Whitney — has become known locally for filing dozens of lawsuits that seek a total of millions of dollars in damages related to bedbug cases. He said most of his cases are against apartment building owners and managers who the victims say were negligent in dealing with infestations. Whitney has become known as the "bedbug attorney."

Source: "Jury in Prince George's County awards woman \$100,000 in bedbug case." The Washington Post (September 18, 2015). (https://www.washingtonpost.com/local/crime/jury-in-prince-georges-county-awards-woman-100000-in-bedbug-case/2015/09/18/25b83036-5e26-11e5-8e9e-dce8a2a2a679_story.html?wprss=rss_crime&tid=sm_tw_pl)

The award was entered jointly and severally against the flag, the franchise owner, and the management company.

The defendants have appealed the judgment.

Disposing of Cases Using Finely-Detailed Arguments

Reese v. Loews Madison Hotel Corp., 65 F. Supp. 3d 235 (D.D.C. 2014), appeal dismissed (Mar. 20, 2015)

Plaintiff Creola Reese, a hotel guest, brought an action against a DC hotel operator, seeking compensation for damages she sustained allegedly as a result of bed bug bites during a July-August 2010 hotel stay. In her Complaint, Plaintiff alleged breach of contract and violation of District of Columbia Consumer Protection Procedures Act (DCCPA). The operator moved to dismiss claims via Rule 12(b)(6) and the guest moved for leave to amend complaint. The operator's motion was granted, while Plaintiff's motion was denied.

The Complaint was dismissed as time-barred after the Court engaged in very specific analysis of Plaintiff's allegations.

The Complaint and proposed Amended Complaint stated "the events described ... arose[] from Saturday, July 31, 2010 through Thursday, August 5, 2010." The Complaint was filed in District of Columbia Superior Court on August 5, 2013. The two claims alleged in the Complaint, breach of contract and unlawful trade practices in violation of the DCCPA, are governed by a three-year statute of limitations. Under District of Columbia law, a claim accrues "from the moment a party has either 'actual notice of her cause of action,' or is deemed to be on 'inquiry notice' by failing to 'act reasonably under the circumstances in investigating matters affecting her affairs,' where 'such an investigation, if conducted, would have led to actual notice.'" (Citation omitted).

The basis of Plaintiff's breach of contract claim is that the defendant "placed the plaintiff in a room that was infested with bed bugs," after she checked into the hotel on July 31, 2010. She sustained sufficient discomfort from itching her very first night to take steps to have her bedding changed and, by the night of August 3, 2010, the plaintiff was allegedly "in agony and distress from the itching"

brought on by “multiple red bumps and welts on her face, neck, arms, hands, legs and buttocks.” Between the time she checked into her room on July 31, 2010, and the time she called a doctor in the early morning hours of August 5, the plaintiff asked the defendant's staff to change the bedding in her room at least three times, and purchased medication to treat her symptoms.

Plaintiff took steps after her each of her first three nights at the hotel to have the bed linens changed, on August 1, 2, and 3, indicating from these efforts that she was cognizant as early as August 1, 2010, that the source of her condition was the hotel room. Moreover, a person exercising reasonable diligence, accepting all facts in the Complaint as true, would have certainly known she was injured by the evening of August 3, when she described her condition as “agony and distress from the itching,” prompting her to purchase a “large bottle of liquid Benadryl and Benadryl itch cream, which she administered to herself....” Plaintiff was also certainly aware, at the latest, by 6:00 a.m. on August 4, 2010, when she stated she was “horrified to see more swelling, welts and lesions on her buttocks, thighs, legs, hands, face and arms,” that she had been sustaining injury from the condition of her hotel room. A person exercising reasonable diligence would have called a doctor by this point, particularly since Plaintiff avers that she had already purchased antihistamines and applied them without relief. Had she exercised such reasonable diligence, she would have learned the cause of her injury—bed bugs—and have had some evidence of the wrongdoing alleged, i.e., that the defendant placed her in a room infested with bed bugs, the conduct on which her breach of contract claim is predicated.

Concerning the cause of action premised upon violation of unlawful trade practices, under District of Columbia law, a DCCPA “claim accrues for purposes of the statute of limitations at the time the injury actually occurs.” Plaintiff alleged the violation of the DCCPA occurred when the defendant allegedly “conceal[ed] and misrepresent[ed] the existence of a bed bug infestation in some of the rooms of the Madison.”

Considering the fact that Plaintiff alleged she was bitten by bed bugs during her first night, July 31, 2010, this alleged concealment or misrepresentation had to have occurred when she checked into the hotel and was assigned that room. Plaintiff did not allege the defendant made any other representations to her until after she was admittedly aware of the bed bug infestation on August 5, 2010,

when she had her first conversation with the hotel's general manager. Thus, the Court found this cause of action accrued on July 31, 2010. Consequently, the plaintiff's claim for violation of the DCCPA was found to be time-barred.

The Court noted DCCPA specifically provides for a tolling of the statute of limitations upon the “filing of a complaint with the Department [of Consumer and Regulatory Affairs] ... until the complaint has been resolved through an administrative order, consent decree, or dismissal...” Although Plaintiff alleged that she made a complaint to the District of Columbia's Department of Health Community Hygiene, Plaintiff did not allege that she made a complaint to the District of Columbia's Department of Consumer and Regulatory Affairs, which resides in a separate District of Columbia agency from the Department of Health. Thus, the Court found the plaintiff could not assert any tolling had occurred under District of Columbia statute.

Calling Out Plaintiffs at the Summary Judgment Stage

Thomas v. NCL (Bahamas) Ltd., No. 13-24682-CIV, 2014 WL 3919914 (S.D. Fla. Aug. 11, 2014)

Plaintiff Anna–Maria Thomas brought this lawsuit against Norwegian Cruise Line for injuries sustained as a result of alleged bed bug bites contracted during her stay on a Norwegian cruise ship. Upon motion by the cruise line, Court found that Norwegian was entitled to summary judgment.

The benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition. The mere fact that an accident itself occurred does not prove the defendant had notice of the allegedly dangerous condition.

Plaintiff did not set forth sufficient evidence to create an issue of fact as to whether Norwegian breached its duty to Plaintiff:

- First, she has not sufficiently alleged the existence of a dangerous condition, as there are no facts on the record confirming the existence of

bed bugs. Plaintiff conceded she saw no bed bugs on the cruise, that she did not have any evidence there were bed bugs on the cruise, and that she was not aware of any individual on the cruise—passenger or Norwegian staff—who saw bed bugs in Plaintiff's cabin. Similarly, Plaintiff conceded she had no knowledge that Norwegian had any notice of any problems with bed bugs prior to Plaintiff boarding the ship.

- Plaintiff's medical records reflect that Plaintiff never complained she was bitten by bed bugs. Moreover, the shipboard physician diagnosed Plaintiff with allergic dermatitis, and stated that while it was “possible” that Plaintiff could have been complaining about bed bugs, “it didn't look like bed—bedbugs or insect bites because of the distance and the cluster type instead of linear [locations of bites].”
- Norwegian also argued—and Plaintiff did not refute—that the medical records of Plaintiff's own dermatologist indicate the absence of any diagnosis of bed bug bites. The records do not indicate Plaintiff complained to him about bed bug bites or that he determined her condition was caused by bed bugs.
- Second, there is no evidence that Norwegian failed to act in a reasonable manner which caused the alleged exposure to bed bugs. Plaintiff has not put forth any evidence of a failure to inspect or correct any known or existing dangerous condition, or evidence establishing a failure to properly maintain Plaintiff's cabin. Plaintiff's sole evidence to refute Norwegian's argument is two-fold: *first*, her own testimony that she was indeed bitten by bed bugs, and *second*, though not expressly argued by Plaintiff, that Dr. Aponte–Perez stated it was Norwegian's practice to notify housekeeping to change all the linens and towels and clean the room when someone has any allergic reaction.
- Third, even assuming that a dangerous condition existed, Plaintiff failed to present any evidence that Norwegian knew or should have known of the existence of bed bugs.
- Fourth, there was no testimony or evidence, other than Plaintiff's unsubstantiated opinion, that her damages resulted from the alleged bed

bug bites. As stated above, the cruise physician and Plaintiff's own dermatologist never diagnosed Plaintiff with bed bugs. Rather, the cruise physician's diagnosis indicated the condition was something other than bed bugs.

Plaintiff's unsubstantiated testimony, based on nothing more than speculative belief, and her reliance on medical records that do not reflect any medical opinion as to whether she was in fact bitten by bedbugs, was simply insufficient to create an issue of fact for trial. Plaintiff has not adduced evidence that a dangerous condition existed on Norwegian's vessel, that Norwegian failed to act reasonably, that Norwegian had actual or constructive notice of the alleged dangerous condition, or that Plaintiff's damages were caused by the alleged bed bug bites.

Testing What Conduct Really Rises to the Level of Outrage

Bour v. 259 Bleecker LLC, 104 A.D.3d 454, 961 N.Y.S.2d 98 (N.Y. S.Ct.-App. Div-1st Dept. 2013)

Elizabeth Bour, an apartment tenant brought action against her landlord, asserting various claims, including personal injury, for alleged bedbug infestation. The Supreme Court granted the landlord's motion for summary judgment and denied tenant's cross motions for summary judgment, among other motions. Tenant appealed. On appeal, the Supreme Court, Appellate Division, affirmed as modified.

At the trial court level, Plaintiff submitted both testimonial and documentary evidence supporting her claim there was a bedbug infestation in the apartment and that she sustained bedbug bites. The absence of any medical treatment for the bites, while significant to the value of the damages sought, did not mandate dismissing the claim for personal injury damages as a matter of law.

Plaintiff, however, failed to show that the defendant's failure to maintain the property in a reasonably safe condition unreasonably endangered her physical safety or caused her to fear for her safety so as to sustain the claim for negligent infliction of emotional distress. Further, the landlord's leasing of the apartment to Plaintiff while aware of a bedbug history did not rise to the level of outrageous conduct required to sustain a claim for infliction of emotional distress, especially

since at the time this case was filed there was no legal obligation for landlords to give a prospective tenant notice of bedbug infestation history and the defendant had been treating the condition before Plaintiff moved in. For the same reason, the Court found that in renting the apartment, the defendant was not “morally culpable, or ... actuated by evil and reprehensible motives” so as to warrant punitive damages. Nor did the defendant engage in pervasive or grave misconduct of a quasi-criminal nature affecting the public in general.