

**Title: Bed Bugs Litigation**

**Description:** All across America, from motels to five-star hotels, bed bugs are affecting people both physically and mentally, resulting in lawsuits. These tiny creatures are not only limited to hotels, but can be found virtually anywhere; from apartments, schools, and hospitals, to warehouses, box springs, and mattresses. Ringler Radio host, Larry Cohen joins Ringler colleague and co-host, Ross Duncan and guest, Attorney Daniel W, Whitney, managing partner of Whitney & Bogris, LLP, as they take a look at the impact of bedbugs, the preventive measures to help avoid them, as well as some of the litigation that's risen up to combat the problem.

**Host: Larry Cohen**

**Co-Host: Ross Duncan**

**Guest: Attorney Daniel Whitney**

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**Larry Cohen:** Well, hello everyone. Welcome to Ringler Radio. I'm Larry Cohen, head of Ringler Associates Northeast Operations, and we're glad you could join us again today. All across America, from motels to five-star hotels, there's a huge problem and it's affecting people both physically and mentally. That huge problem comes from a very tiny creature we call the bedbug. In recent years, there have been several lawsuits filed, even at prestigious hotels like the Waldorf Astoria in New York, and lawsuits over bedbug infestation have been growing.

Bedbugs are not only limited to hotels, but can be found virtually anywhere, from apartments, schools, hospitals, to warehouses that house furniture, box springs, and mattresses. According to a survey by the National Pest Management Association, one out of every five Americans has had a bedbug infestation in their home, or knows someone who's encountered bedbugs either at home or in a hotel.

Today on Ringler Radio, we're going to be taking a look at the impact of bedbugs and the preventive measures to help avoid them, as well as some of the litigation that's risen up to combat the problem.

To help me do all that, my co-host today is my Ringler colleague from Philadelphia, and my friend, Ross Duncan. Ross has been with Ringler since 1984, during which time his office has participated in over 5,000...is that 5,000 settlements, Ross?

**Ross Duncan:** That's correct.

**Larry:** A long time, Ross. By the way, Ross has recently been elected chairman of the board of Ringler Associates. So, congratulations, and welcome, Ross.

**Ross:** Well, thanks, Larry. It's always my pleasure to participate with the voice of Ringler Radio.

**Larry:** Thanks, Ross. Those are kind words. Our special guest today is Dan Whitney, managing partner of Whitney & Bogris, from Towson, Maryland. Dan has an extensive background in product liability, fire and life safety litigation, medical malpractice, medical device and pharmaceutical litigation, and toxic torts. Dan also represents individuals who've been impacted, importantly for our discussion, by bedbugs. So, Dan, welcome to the show, and it's great to have you here today.

**Dan:** Thank you, Larry.

**Larry:** Great. Dan, let's take a look at how these bugs infest mattresses, box springs, and furniture. Where do these bugs come from, and what do bedbugs look like?

**Dan:** Typically, I see situations where someone has gone to some location where there's been a bedbug infestation, like a hotel. They come home after hitting the hotel, and they start experiencing rashes, itchy rashes. It finally dawns on them; they trace it back to the hotel. Sure enough, bedbugs have hitched a ride on clothing or luggage, and now the home is infested.

**Larry:** Now, where do the bedbugs come from in the hotel environment? Are they brought in by people with certain clothing? Are they there in the wood? Where do they come from?

**Dan:** From both locations, actually. At some point, someone has come to the hotel, or several people have come to the hotel, depending on the location, with bedbugs on them, on their clothing, or in their luggage. Once the bedbugs become entrenched, they go from room to room, floor-to-floor, if not properly treated. It could be from the original person that brings them or different guests that bring them and then they get into the walls. I see the same problem with apartment buildings. If you have a multi-unit apartment, you can have someone on the floor below you with bedbugs, and it'll spread from room-to-room, floor-to-floor. I've seen it in case after case.

**Ross:** It appears, Dan, that as you indicated, these things can be transported in any number of ways. Not only on your body or your clothing, but suitcases--any which way. Is there any way to counteract that when you're in a hotel? Is there anything you can do?

**Dan:** Sure. The advice that entomologists give and pest control contractors give is to make sure when you go to a hotel, that you don't put your luggage on the bed. For instance, if you want to be super cautious, bring a white plastic bag with you. Put your luggage in the plastic bag and then close it up. Do it before you actually get into bed, pull the sheets up and look around the corners of the mattress to see if there's any signs of fecal stains. You're not likely to actually see a bedbug because they're very secretive and come out at night, unless you've got a really bad infestation. You need to check for the signs. You asked me about what they look like.

**Larry:** Yes.

**Dan:** When a bedbug is first hatched, the nymph is almost invisible. It's completely clear until it has its first blood meal, and then it has that crimson appearance. The adult, which is oval shaped and can be about a quarter of an inch in size, has different shades of brown. They move

fast and they're wingless. Typically, people don't see them unless it's really a bad infestation. It finally dawns on them, that, "Oh my gosh, it's bedbugs." They look it up on the Internet and Google "bedbug photo," and then make the identification.

**Larry:** Interesting. That recent survey I mentioned before by the Pest Association, the responses were...it was amazing. 76 percent of respondents said that bedbugs are the most difficult pest to treat, more than cockroaches, ants, and termites. How do you get rid of these bedbugs?

**Dan:** From speaking with entomologists and licensed professional pest control contractors, the consensus seems to be that you have to have a comprehensive approach. It's called the IPM, Integrated Pest Management. You might have more than one way to try to get rid of them. Physically, when a professional goes into an apartment that has bedbugs for instance, the first step might be to actually use a vacuum and vacuum up the clusters. You might go from there to using steam to kill the bedbugs around the bedding, because you don't want to use chemicals where people sleep or on their furniture.

There are chemicals that do work. But the problem with chemicals is that there has to be direct contact with the bugs. The bedbugs, like I said, are very secretive. They hide in cracks and crevices after they feed. If the chemical doesn't hit them, there's really low residual impact on these bugs.

That's when you go to using dust. One of the popular dusts is called Drione Dust. Diatomaceous earth is another one. You put that into wall voids, electrical outlets, and things of that nature, as a backup approach.

Sometimes, the pest control contractor gets called back several times. In fact, I think it's pretty standard for them to come back three times, two weeks apart. If there's still a problem, and there's more than one unit affected, I've seen a lot of apartment complexes and hotels go to heat because heat will kill bedbugs if you go above a certain temperature.

**Larry:** That might work in the winter I guess, [laughs] but not in the summer.

**Dan:** Well, they actually bring in portable heaters, or actually have something in the parking lot. They set up massive rigging where they have vents and ductwork that bring up the temperature to 140 degrees throughout the entire premises for a three-hour period. This will kill the bedbugs. As long as there's no thermal voids, it'll kill them, and kill the eggs as well. But even that's not 100 percent. The gold standard, the most expensive I think—and it's a rare approach—is fumigation. That requires a special license. You have to tent the entire building. It's very expensive. But that will kill with 100 percent accuracy.

**Ross:** Dan, what injuries can you incur, or can one incur, from a bedbug?

**Dan:** I've seen a range. I know from speaking to doctors and from multiple people that have called me, and clients, that some people have no reaction to bedbug bites. But other people have serious hive-like welts that itch intensely and can have a burning sensation, and sometimes lead to secondary skin infections, swelling. You just can't deal with it with

over-the-counter steroid cream. You have to go to the doctor, the emergency room, and get something like prednisone, and take that for several weeks before you finally get it under control. But that's not going to work if you keep getting bitten. You have to get out of that environment, or somehow get relief from where you are.

**Larry:** Prednisone is not a pleasant drug to take, because it has all those side effects in itself.

**Dan:** Exactly. I mentioned that those are the physical symptoms. But I think what's even more troubling to most people is the psychological stress and the very debilitating nature of when bedbugs come into your life. They drive people nuts. They become sleep deprived, anxious. They just become exhausted from fighting bedbugs, wondering where they are, because they can hide anywhere in a home, literally anywhere--in electronics, not just a bed or headboard but anywhere in the room. The females lay eggs randomly and they breed very fast.

**Larry:** Amazing.

**Dan:** The mental anguish and the suffering goes with not only the bites, but you have no peace in your life, basically.

**Larry:** There's no question the psychological impact is great. Ross, one of the reasons we wanted to have you on today as co-host is because you know some people who have actually suffered from the impact of bedbugs. Tell us about that personal experience you had with those folks.

**Ross:** Well, it's true, Larry. Before I even get there, you've had the pleasure of meeting my bride, Ellen, who you know quite well. Several years ago, we were going to New York City to spend a long weekend, and ironically there was an article in the "New York Times" when bedbugs first became front-page news. My wife, as you know, can be very dogmatic in some ways. Well, she read this article and obviously reacted in such a way that she actually called and spoke to the exterminator who was quoted in the "New York Times" article. She questioned him about the hotel we were going to and also, how can you say, discover if there are bedbugs in your room and where to look. As Dan has said, not only on the bed board and the bed-- but also in drawers, blinds and so forth. He also told us that one possible way, if you suspect bedbugs, is to take a hairdryer and get it as hot as you can and focus it on one section of the bed, generally the corner. If in fact there are bedbugs, they may possibly be attracted to the heat and come to the surface.

**Larry:** That's interesting. That mirrors what Dan was saying about heat being a factor in trying to get rid of them, and identify them and do some things with them.

**Ross:** Yes. But only a few weeks ago an associate of both yours and mine Larry, he and his wife attended a wedding on the Eastern Shore down in Maryland in a very nice hotel, certainly very clean and a place that most people would not think there could be a bedbug infestation. But, nonetheless, as they were driving home and had left the wedding and the hotel, she discovered that she had a series of bites on her leg, and only discovered that because of the itching. They stopped and pulled over and she had a whole series of bites up and down her one leg and they

started to pull apart their luggage and actually discovered that they had some of them in their luggage.

**Larry:** Wow.

**Ross:** By the time they got home they had already contacted exterminators and people came to their house with big old dogs and so forth to sniff some of the bedbugs out. But, psychologically, I think, more than anything was the trauma that they incurred.

**Larry:** Sounds like they need to call Dan! [laughs] Well, Dan, you mentioned the psychological impact a little while ago, and Ross you just mentioned that that was probably one of the bigger results of what happened to that couple in Maryland. Tell us more Dan about this emotional impact. People get itchy repercussions from the bedbugs, but it lasts a lot longer with this emotional impact. What's that about?

**Dan:** People feel violated. People have busy days and stressful days without bedbugs. But they come home and they want to go to bed and have a peaceful night's rest. When you actually realize there are bedbugs that have not been treated by the landlord, which is the typical scenario, or if the pest control contractor has not yet got them under control, you're worrying about whether every little touch of your skin, is that a bedbug crawling on me? The thought that vermin are sucking your blood when you're sleeping, and they can be crawling on your face or get into your ears and you feel totally violated. Especially women, it causes a state of great upset.

When children or babies are being affected, then the parents especially become extremely distraught, because they feel powerless to prevent the parasites from getting on their children.

Women who wake up in the morning that have bedbug bites in their face, that is an intense violation of bodily integrity, and it's embarrassing, and then you've got this stigma where people don't want to come to your house because they don't want to get bedbugs and you're afraid that you're going to bring them to work--are your kids going to bring them to school.

I've got cases where the kids were sent home from school where the school nurse said, "There are some bedbugs that came out of your son's books. Where are they coming from and what's the rash from?" Sometimes the doctors don't diagnose it right away.

But, eventually, if someone comes to the point of seeing a bug and it's haunting them what it is, then you're dealing with the problem. But until it's under control, people feel powerless; it's exhausting and embarrassing.

Many times people are in situations where if they're a tenant for instance in an apartment, it's the responsibility of the landlord---and a lot of times they don't deal with it promptly. So you have to wait for the contractor to come and treat it.

**Larry:** Sounds very frustrating.

**Ross:** It sounds from listening to some of your stories that there really is a lot of litigation as a result of this.

**Dan:** I can tell you that my office has filed probably about 25 cases so far in the past two years, and I've been contacted by several hundred, probably well over 300 people. I get calls constantly.

**Larry:** Who were the defendants in those cases? Typically hotels or landlords--who?

**Dan:** Yeah, I've got the full array. I've got hotels, low-end hotels and luxury hotels. I just filed a suit against a luxury hotel in Salt Lake City. Multi-unit apartment communities, against furniture stores, against stores that rent furniture, camps---there are endless varieties--- a condominium association. I had a case involving a townhouse in Georgetown where the neighbor had the bedbugs and she was a hoarder. She actually had a side business of selling used furniture and she would bring home this furniture--that's a great way to get bedbugs. And then, she would have these yard sales and the house was completely infested with bedbugs and mice. They came through the walls into the neighbors--my clients at the townhouse--- and she refused to treat.

So, eventually, my clients actually agreed to pay for the treatment of *her* house.

**Larry:** Amazing. Well you know what? I'll tell you one thing. I don't know about you Ross, but I think I am going to stay away from yard sales [laughs]. I am not buying any more used furniture from a yard sale.

**Ross:** Oh, my gosh.

**Larry:** Dan, it would be remiss if we didn't say that some defense attorneys obviously have a little different point of view. Some have said that bedbug claims are among the "top frauds perpetrated against hotels." What do you say to that point of view--that things like bedbugs are the latest targets to go after to try to make these hotels look bad?

**Dan:** I discount that and let me tell you why. If you have a hotel with a history of infestation where you know from your own pest control contractor--and every hotel has one--that there have been outbreaks on that floor or in that room and then the guest complains about bedbugs, that's not a fraud. And if a guest makes a claim and comes to the front desk and says, "I think I've been bitten by a bedbug," well, it's not going to be a fraud. All you have to do is say, "OK, fill out this incident report" and check out the room.

People, in any context, can make an unfounded claim. And, really, for most of my career I've been a defense lawyer. You investigate it, and if the person has for instance the characteristic bites---and there is usually a pattern of bites---if the guest can provide a photo of the bites--and many people today take photos of their bites. You might have medical records documenting an insect bite or bedbug bite. I really doubt it. In fact, what I see is typically hotels

responding by saying, "Oh you must have brought them," when they actually know that they have a problem on the premises. So, I am really very skeptical of that claim.

**Larry:** Interesting. Well, I can imagine that's just the adversarial system we live in and you're always going to get that kind of back and forth.

**Dan:** Sure.

**Larry:** Well let's take a quick break right now before we go any further, and let's come back and talk more about bedbugs. Before we do that, I was at the Paul Revere House in Boston for a little historical visit, and they talked about how they used to tighten up with rope the beds, because they were basically straw mattresses. It was interesting, because the phrase that was used back then was, "Sleep tight," which means tighten up the ropes in those beds. "Sleep tight and don't let the bed bugs bite." That phrase has more meaning to me right now.

Well, let's come back in a second with a lot more from attorney Dan Whitney and my co-host Ross Duncan. We'll be right back.

Welcome back to Ringler Radio. I'm your host Larry Cohen. Glad you could join us. I'm joined by my co-host Ross Duncan from Philadelphia, and attorney Dan Whitney, managing partner of Whitney & Bogris in Towson, Maryland.

Well, Dan, since a lot of these lawsuits have started against hotels-- and I know you've filed quite a few against these landlords and these apartment complexes, have we seen any changes in the prevention of bed bugs? Are there now more preventive measures in place at these places, to try to prevent this?

**Dan:** Yes, Larry. In fact, I've become very popular with pest control companies in Maryland.

**Larry:** I can imagine.

**Dan:** There's been a lot of increase in business, because, normally, I don't direct lawsuits against the pest control company. They make recommendations that aren't followed. What I've seen is, since there's been publicity with these lawsuits--and the newspapers just love to write about bed bug stories--that the landlords are actually becoming more sensitive to the complaints and are having a more proactive approach, having their pest control contractors actually coming up with the required IPM program. They're not only just reacting to problems, but also having a proactive approach, where they actually have a program of inspections.

It's one thing to treat and to retreat, but you have to monitor the situation, and you have to involve the tenant in knowing what to look out for. There has to be cooperation between the landlord, the tenant, and the pest control company, with feedback among all three groups. I can tell you this about a case we have against a mattress store. It's a national chain, and this is a case where a family bought a brand new mattress, paid a hefty price for it, and a few weeks later, the children and families were having these unexplained rashes and very bad itching



problems, eventually which traced back to the mattress. It turns out the mattress was delivered in a truck that also carried away old mattresses from other people.

Since the filing of this lawsuit, the store has adopted a policy where they will not use the same truck to deliver new mattresses and pick up old ones. I'm seeing some change. There's room for a lot more improvement, but people are becoming more sensitive to problems and taking them more seriously.

**Larry:** That's a great example of how what you've been doing has affected real change to help the public. Like in most things, the publicity, by shining the light on the problem, is the best disinfectant of all.

**Ross:** Dan, you mentioned earlier that the hotels are bringing the exterminators and so forth. How often, in your opinion, should hotels that cater to the public do inspections and have exterminators come into their facilities?

**Dan:** There's no cookie cutter answer to that. You have to deal with the history of that particular premise. If that hotel has a long standing problem, a chronic problem with bed bug infestation in various rooms, and repeat treatments, and just a chronic problem, you better be in there on a weekly basis or even more frequently and you better be in there with dogs that are trained to detect bed bugs. You just can't rely upon a visual inspection by housekeeping because you're obligated, if you manage or own a hotel, to use reasonable and ordinary care to keep premises safe for your business invitees, and protect them from injury. That's your legal obligation under court law so you better be inspecting.

**Ross:** For some of our listeners who do travel a lot, there is a site---there are numerous sites---but one good site that my wife uses every time I get ready to pack up and go to a hotel is the BedbugRegistry.com, which actually lists hotels in cities across the country who have had difficulties with bedbugs. It's a good site to use before you hop on a plane and check into a hotel.

**Larry:** It sounds like a great idea. The only thing I can say, Ross, is you better not open the door to your house and start scratching anywhere. Ellen's going to have a real problem. [laughter]

**Larry:** Well, Dan, we know that bedbugs have the propensity to cause the willy-jillies, and people get emotionally involved, and come back with these itching and scratching marks. What about actual disease? Do bedbugs have the ability to actually cause physical disease among these folks that come in contact?

**Dan:** I've studied this, and I read an article that was published in the BNA Toxics Law Reporter in December of last year. I believe that contrary to conventional wisdom, the scientific literature has identified a viable mechanism by which bedbugs can transmit disease, and I can tell you why. It's been established, there are various blood-borne diseases, whether it be a virus, a single cell parasite, or bacteria that can survive inside the bedbug, and be deposited in the



bedbug feces. Bedbugs are known as--they have reflexive defecation. They eat, and they deposit their feces often on the victim, on the host.

If that person has open sores, then the affected feces can get into the body. Whether it's MRSA, or whether it's the parasite that causes Chagas disease, or Hepatitis B. It's something that really deserves more research, because it's a very plausible mechanism.

**Larry:** Ross, I'll let you do the research on that! [laughs]

**Ross:** I'll tell you what, Dan, you've just made me even that much more uncomfortable. Not only itching and the psychological trauma, but to think the possibility exists that you can actually contract disease, that's frightening.

**Larry:** It's like most problems; they expand as you get into the detail. Really glad that you raised some of these issues though, because it really informs our public and that's what we're here to do. So, thanks Dan

**Dan:** OK.

**Larry:** Dan, let's close here. Give us what I call final words of wisdom to anyone who's suffering from bedbugs and what people can do to protect themselves from this. It's a much bigger problem than I think any of us thought about, so give us some final words of wisdom.

**Dan:** Well, it depends on your level of resources. If you're someone that has some financial means, you can take precautions and actually spend the money necessary to treat your home if it's infested with bedbugs. But, if you're someone who lives in an apartment or Section eight housing, and you don't have the means, or legal right really to treat bedbugs, then you've got a problem. All you can do is to make your complaints, and if that goes unanswered, try to get a lawyer to help you. But, for someone that just is going out into the world and going to a hotel for instance, then you just have to be alert to the issue. Know what to look for and just make sure you don't bring your pillow with you to the hotel and carry it home.

**Larry:** There you go. I think Ross, your comment about BedbugRegistry.com sounds like a good one, and I guess we just have to all be a little more vigilant when we go into these hotels to make sure we're not doing the wrong thing or going to the wrong place. I appreciate everything you've told us today Dan, you've enlightened us a lot. If someone wanted to get a hold of you, Dan, to talk about this or talk to you about other things, how would they reach you?

**Dan:** Probably my email address, [dwhitney@whitneybogris.com](mailto:dwhitney@whitneybogris.com).

**Larry:** OK that's good, that's terrific. Ross, if someone wanted to reach you how would they do that?

**Ross:** Larry my email is [RDuncan@RinglerAssociates.com](mailto:RDuncan@RinglerAssociates.com), or they could certainly visit our Ringler web page, which lists all of our brokers across the country.

**Larry:** That's right. RinglerAssociates.com has all the brokers listed. It also has a tremendous amount of information to increase your knowledge base about structured settlements, and issues like we're talking about today. I would encourage you to do that. You can download this Ringler radio show from ringlerassociates.com, as well as any of the Ringler radio shows we've done. or you can also access them through LegalTalkNetwork.com. With that I will say, Dan, it's been a pleasure. Thank you for informing us and making me itch all over![laughter]

**Dan:** Thank you very much, Larry.

**Larry:** Ross, thanks for being a great co-host, and good luck going home.

**Ross:** All right, thank you guys.

**Larry:** For the rest of you, go out and have a great day and be careful when you go to those hotels! Bye-bye now.