

**TRAVEL LAW: STOP BLAMING THE PASSENGERS: ERADICATE
NOROVIRUS NOW**

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This week's article returns to the subject of the contraction of disease while on vacation but this time instead of focusing on a single traveler being infected [see Dickerson, *Travel Law: Duty to warn of dangerous environments-the case of the Chinese tick* (ETN)] we shall examine disease outbreaks, typically, at hotels/resorts and on cruise ships which often affect hundreds of travelers. Who is responsible and what can be done to prevent future outbreaks?

Hotels/Resorts

There have been reported incidents of hotel guest sickness arising from tainted food [see *Howard v. Kerzner International Limited* (consumption of "fish with ciguatoxin at a restaurant in

the Bahamas"); *Averitt v. Southland Motor Inn of Oklahoma* (food poisoning; violation of health codes; failure to warn guests of ingestion of shigella; punitive damages awarded)], contaminated water [see *Klein v. Marriott International, Inc.* (guest ill from contaminated water served at Bermuda hotel); *Amsellem v. Host Marriott Corp.*; ("hundreds of other people became ill after drinking the water"); *Joachim v. Crater Lake Lodge, Inc.* (contraction of "Crater Lake crud" from contaminated water)], carbon monoxide poisoning [see *Anson v. Star Brite Inn Motel* (guests allegedly "overcome by carbon monoxide that leaked into their rooms and suffered varying degrees of harm", complaint dismissed); *Expert: Chinese tourists dies of carbon monoxide poisoning*, www.eturbonews.com (12/16/2013)], insecticide spraying [see *Gass v. Marriott Hotel Services, Inc.* (guests alleged that defendants "allowed dangerous chemicals to be sprayed inside their hotel room while it was still occupied"; complaint dismissed);], black mold (see *Ramsay v. Och-Ziff Capital Management Group* (guests alleged "they were exposed to black mold and suffered personal injuries; motion to dismiss strict liability claim denied)], MRSA [see *Frederick v. InterContinental Hotels Group* (guest allegedly contracted MRSA in hotel; complaint dismissed)], smallpox [see *Gilbert v. Hoffman* (contraction of smallpox at hotel; misrepresentations regarding safety)], ant poison [see *Johnson v. Wyndham Hotels and Resorts* (daughter of

guest "drinks" ant poison from a tube of pesticide left on the night stand")] and possibly norovirus [see *Intestinal Virus Outbreak Shuts Down Mohonk Mountain House Resort In Catskills*, CBS News (February 7, 2014) ("An iconic mountain resort in the Catskills was temporarily shut down Friday, after an illness there left hundreds of people sick...The resort said it was working with the New York State Health Department, which confirmed to CBS 2 News the situation was consistent with norovirus"); *More Taiwanese tourists test positive for norovirus after trip to South Korea*, www.eturbonews.com (1/7/2014)].

Legionnaires' Disease

And, of course, let's not forget the frightening Legionnaires' Disease as discussed in *Licari v. Best Western International, Inc.*, a recent case involving a hotel in Utah ("The Licaris allege that, during their stay, Ms. Licari was exposed to bacteria that caused her to contract Legionnaires' disease.. "Legionnaires' disease is caused by a waterborne bacterium and results in a number of symptoms, including pneumonia. The disease acquired its name after an outbreak among American Legion convention-goers who were staying at a hotel in Philadelphia in 1976...the disease caused illness in 221 individuals, with thirty-four deaths...The plaintiffs claim that

due to the Paradise Inn's failure to properly maintain its potable water distribution system, colonies of legionella bacteria were able to form in unsafe levels...A subsequent investigation by the CDC (and other agencies) determined that five cases of Legionnaires' disease occurred between June 2009 and December 2009 in patients whose only commonly shared trait was that they all stayed at the Paradise Inn...The Licaris may present a jury with evidence that Best Western should be held liable...under a theory of apparent authority"); see also *Boyle v. Starwood Hotels & Resorts* (guest alleges contraction of Legionnaires' disease at a hotel located in United Arab Emirates; *forum non conveniens* motion granted); *Braucher v. Swagat Group* (guest alleges contraction of Legionnaires' disease; doctrine of *res ipsa loquitur* not applied); *Sudbeck v. Sunstone Hotel Properties* (guest exposed to Legionnaires' disease; "a reasonable trier of fact could find that Sunstone had itself established the requisite standard of care and in failing to follow its own (standard) had not exercised due care")].

Cruise Ships

In addition to hotels, the contraction of Legionnaires' disease has been reported on cruise ships allegedly caused by defective spa pool filters [see *In re Horizon Cruises Litigation*

(motion to strike demand for punitive damages denied); *Freeman v. Celebrity Cruise, Inc.* (cruise passenger claims physical illnesses and emotional distress after learning of exposure to Legionnaires' disease; class certification granted); *Celebrity Cruises, Inc. v. Essef Corp.* (Jury award of damages of \$190 million to cruise line against manufacturer of water filter; modifies and remitted for retrial on lost profits); *Hague v. Celebrity Cruises, Inc.* (passenger who suffered from Legionnaires' disease awarded compensatory damages)]. In addition bacterial enteritis may have been contracted by a passenger [see *Bird v. Celebrity Cruise Line, Inc.* (passenger " rushed to the emergency room several days after (cruise ended)...claims that she was diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of poisoning from food ")].

Norovirus

As noted in Peterson, *Leading Passengers to Water*, N.Y. Times (September 28, 2003) "The norvirus, as the Norwalk virus has been renamed, has been making unwelcome headlines in the cruise industry for a decade or more, most recently when the Regal Princess...tied up in New York early this month with 301 of 1,529 passengers and 45 of a crew of 679 stricken with the illness. The virus is so closely associated with cruise ships

that it has come to be called the cruising sickness...cruise ships are an ideal vessel for spreading the virus, said Dave Forney chief of CDC's Vessel Sanitation Program...' You have 3,400 passengers in a relatively confined space for 10 days at a time, so if you have someone who throws up in an elevator or has an accident in a restroom,, the risk becomes actually quite high for many people".

CDC Norovirus Response

The U.S. Centers for Disease Control and Prevention (CDC) must be recognized for its ongoing efforts to protect travelers from, among other things, unsanitary cruise ships [see <http://wwnc.cdc.gov/travel/page/cruise-ship>]. While the CDC's passenger recommendations regarding Norovirus are seemingly helpful, e.g., "The best way to prevent illness is frequent handwashing with soap and water. Wash your hands before eating and after using the bathroom, changing diapers, or touching things that other people have touched, such as stair railings; it is also a good idea to avoid touching your face", such "hands-on" suggestions shift blame to the passengers and do not solve the problem.

Hand Washing May Not Be Enough

First, they haven't worked to stop the repeated outbreak of norovirus as the CDC's own data indicates [see "Outbreak Updates for International Cruise Ships" on CDC website]; see also Bakalar, *Why Norovirus Crops Up in Cruises*, N.Y. Times (2/11/2014) ("By the time the Explorer of the Seas docked in Bayonne, N.J., late last month, more than 600 passengers and crew members were sick to their stomachs; the Caribbean Princess arrived on Houston the same day after an outbreak sickened at least 192 people onboard. Over the past five years, an average of about 14 cruise ships a year have had outbreaks of diarrheal illness and the culprit is almost always norovirus, as it was on these two ships").

Blaming The Passengers

Second, the CDC should not be satisfied with blaming the passengers [Bakalar, *supra* ("Jan Vinje, head of the National Calivirus Laboratory at the (CDC) said...The cause is not necessarily cruise line maintenance ...The problem...is passengers. 'If Grandma is sick when she gets on, she's going on the cruise anyway'")] and should do whatever it takes to "encourage" cruiselines to thoroughly clean their ships before

and during each cruise [see Bakalar, supra, ("Dr. Philip C. Carling, a clinical professor of medicine at Boston University, said that regardless of the origin, once onboard, the illness spreads widely. He says the reason is failure to clean restrooms properly. In a study published in Clinical Infectious Diseases in 2009, he marked toilet seats, flush handles and other objects in restrooms on cruise ships with an easily removed substance, visible only under ultraviolet lights. Then examiners returned the next day to see if the substance had been wiped away. Only 37 percent of the 8,344 objects marked were cleaned daily. On three ships that had baby-changing tables, none were cleaned at all during the three-year study period... 'Of course they've been doing a good job with food'... But they're not doing any routine examination of cleaning processes'. The C.D.C. does inspect ships but not every changing table or bathroom even. 'We inspect some bathrooms, and we don't inspect for norovirus' said Bernadette Burden, an agency spokeswoman")].

Insufficient Disincentives

Third, the consequences for cruiselines when their passengers suffer from a Norovirus outbreak may be insufficient to encourage the development of serious (and perhaps costly) cleaning processes. Typically, a cruiseline may offer stricken

passengers some compensation and/or a substantial discount on a future cruise and/or the cruiseship may appear on the CDC's list of Norovirus Outbreaks. However, these disincentives may be meaningless given the increasing public demand for cruising. It may, simply, be more cost effective for cruiselines to just go with the "flow" instead of implementing measures to eradicate norovirus disease.

Conclusion

The CDC and cruiselines need to allocate the resources necessary to stamp out Norovirus now by developing rigorously enforced cleaning processes.

Justice Dickerson been writing about *Travel Law* for 38 years including his annually updated law books, *Travel Law*, Law Journal Press (2014) and *Litigating International Torts in U.S. Courts*, Thomson Reuters WestLaw (2014), and over 300 legal articles many of which are available at

www.nycourts.gov/courts/9jd/taxcertatd.shtml.

