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Legionnaires' Disease: Controlling Liability and Damage Exposure After the Outbreak

The successful defense of a Legionnaires' disease matter presents challenges on the legal, scientific, and public relations fronts. The goal is to evaluate defenses quickly, magnifying strengths and minimizing weaknesses, while accurately assessing exposure among multiple defendants and damages among multiple plaintiffs. Defense counsel must also consider not just how to succeed in the courtroom but in multiple arenas of conflict outside the courtroom. Like many other toxic torts, these cases can attract the best of the plaintiffs' bar, drawn by the opportunities presented by large liability and damage exposures involving sympathetic plaintiffs, who face lengthy recoveries if they survive. In this article, we identify the keys to evaluating these matters and developing as strong a defense as possible.

Legionnaires' disease takes its name from a 1976 American Legion convention in Philadelphia, where an outbreak led to 212 reported illnesses and confirmed 34 deaths. Nearly 50 years later, it continues to present unique threats to public health. Between 8,000 and 18,000 Americans are hospitalized each year with Legionellosis, a bacterial infection (typically pneumonia) *caused primarily by the species of bacteria Legionella pneumophila*. The CDC notes that "... reported cases of Legionnaires' disease have been increasing since the early 2000s, with a peak in 2018. While reported cases dropped during the first year of the COVID-19 pandemic, they increased in 2021."

A major outbreak of Legionnaires' disease has been in the headlines again in 2025. The New York City Health Department recently finished investigating a community cluster of Legionnaires' disease in Central Harlem. The Department noted that as of August 29, 2025, there were 114 confirmed cases, 90 total hospitalizations, and seven deaths. The Department tested water from

the investigation zone and claims to have matched the *Legionella* strain to two cooling towers in the area.

This outbreak occurred even though New York has among the most stringent laws and regulations in the country to reduce the risk of Legionnaires' disease from cooling towers. Building owners with cooling towers are required to register their cooling tower, develop and implement an operating protocol, and monitor water quality at least three times a week. Health Department technical experts (water ecologists) conduct inspections to promote compliance.

The result of this outbreak? Well-publicized "bet the company" litigation involving high-profile plaintiff's counsel Ben Crump and the Reverend Al Sharpton, regulatory action, and extensive publicity.

The Sources of Legionnaires' Disease

A thorough understanding of the science of Legionnaires' Disease is essential to defending these matters.

Legionellae are aerobic bacteria widely found in nature as well as water systems. *Legionella* bacteria flourish in warm water (ideally, 68-122 degrees F) where stagnant conditions, deposits, and biofilms exist. Examples of stagnant water include non-flowing or low-flowing areas in pipes, water tanks, and cooling tower basins. Sediments and other deposits in stagnant water can allow for the development of biofilms—bacteria that adhere to one another and surfaces adjacent to a body of water. Biofilms, in turn, create an environment where bacteria like *Legionella* can grow and multiply. It is critical to identify the source of the legionella, the species of the legionella, and whether multiple sources and species may be involved.

Legionnaires' disease is contracted by inhaling water droplets that contain the *Legionella* bacteria. People with suppressed immune systems, people with pulmonary or liver dysfunction, and the elderly are at particular risk, but people with no risk factors can also contract the malady.

Civil Legal Exposure from Legionnaires' Disease

A single outbreak can affect significant populations in areas surrounding the *Legionella* source. Plaintiffs' attorneys frequently rely on the known latency period (2-14 days) of the onset of illness to prove causation. From a defense perspective, one key is to differentiate the strain of *Legionella* found in the source from the strain found in the infected person or determine if the strain found in the infected person is from a different source.

Outbreaks of Legionnaires' Disease impose substantial risks on the infected and costs on the community. The CDC has reported that about one out of every 10 people who get sick with

Legionnaires' disease will die due to complications from their illness. For those who contract Legionnaires' disease during a stay in a healthcare facility, about one out of every four will die.

Infected persons who survive still can have extensive hospitalizations, long recovery periods, and often experience severe and permanent impairments. In addition to contracting pneumonia, claimants allege a wide variety of related injuries and ailments. The serious personal injury or death caused by this disease makes proof of extensive compensatory damages simple.

Damages can be significant. While most case resolutions involve confidential payouts, examples of recent jury verdicts and settlements include:

\$4.5 Million Verdict (2010): A jury award for two road department workers who contracted Legionnaires' disease after staying at a hotel in 2008.

\$2.268 Million Verdict (2014): A federal jury award in a wrongful death case where a doctor contracted the disease from a contaminated hotel hot tub.

\$1.1 Million Verdict (2017): A Lehigh County jury award to the estates of two men who died and three others sickened by Legionnaires' disease contracted from a tainted decorative fountain at a medical facility.

\$3 Million Settlement (2021): A settlement obtained for the family of a man who died from Legionnaires' disease contracted from a hotel hot tub.

The investigation and remediation of a Legionnaires' outbreak can give rise to expenses beyond the already significant potential for millions in legal exposure and defense costs (including substantial expert witness fees). Outbreaks often result in the temporary closure of an affected building, creating the possibility of substantial first-party business interruption losses. Outbreaks can also come with regulatory consequences, irreparable negative publicity, and brand damage.

Of course, civil lawsuits present the most immediate source of legal and financial exposure. Generally, these suits are based on theories of premises liability, negligence, product liability, and professional negligence. Those connected to actual or potential Legionnaires' disease outbreaks should be aware of the evidence used in such cases, the parties likely to be sued, and damages for which they can be held responsible. Let's consider them in turn.

The key evidence used to prove liability may include:

Lack of a water management plan: Failing to have and implement a plan to control Legionella is a significant indicator of negligence, particularly in high-risk buildings. The relevant standard is

ANSI/ASHRAE Standard 188-2021. While adhering to the standard is voluntary, building owners and designers ignore it at their peril.

Poor maintenance records: Maintenance logs can expose a failure to properly clean water systems, test water quality, and maintain appropriate water temperatures.

Ignoring guidelines: Evidence that the facility did not follow industry guidelines from organizations like the CDC and ASHRAE can demonstrate a breach of the standard of care.

Prior incidents: A history of positive Legionella tests or previous cases without adequate remediation is strong evidence of negligence.

Defective equipment

Defective water system design

Inadequate service by third-party contractors

Expert testimony: Qualified experts, such as environmental engineers, can provide their professional opinion that a defendant's maintenance and operating practices fell below industry standards.

Legionella cases usually involve other experts, including industrial hygienists, water management experts, bacteriologists, medical and health care experts, and, for damages issues, economists and life care planners. It is critical to the defense to have experienced and knowledgeable experts retained as soon as practicable to assist in assessing defenses.

Liability can extend to any number of entities and individuals who fail to prevent the growth and spread of the bacteria. The parties with potential liability may include:

Property owners and managers: These parties have a duty to keep their water systems safe and are the most frequent targets of lawsuits.

Maintenance contractors: Third-party companies hired to manage cooling towers, treat water, maintain equipment, or provide training can be held liable if they fail to meet their contractual duties.

Architects and designers: Liability can extend to designers if a building's water system was poorly planned in a way that promotes Legionella growth.

Manufacturers and installers: If a defective product, like a cooling tower, hot tub, or water feature, contributes to bacterial growth, the manufacturer or installer could face product liability claims.

Legal exposure for a Legionella outbreak can be substantial and include:

Significant medical costs: The disease often requires hospitalization for weeks or months, leading to high medical expenses.

Compensatory damages: Victims and their families can seek compensation for lost wages, pain and suffering, and long-term health impairments such as brain damage, lung damage, heart failure, and stroke. Exacerbation of pre-existing conditions may also increase exposure.

Wrongful death damages: If the illness results in death, the victim's family can file a wrongful death claim to recover damages for the loss of a loved one and funeral expenses.

Punitive damages: In cases of gross negligence, juries may award punitive damages to punish the defendant.

First-party losses: The outbreak can result in temporary building closure, causing substantial business interruption losses and negative publicity.

Defending Legionnaires' Disease Cases

It is critical that those who are or could be targeted by civil lawsuits be proactive in addressing Legionnaires' Disease claims. Here are the actions that should be undertaken by counsel overseeing a privileged pre-suit investigation:

Institute a document hold and then identify and interview all relevant document custodians.

Collect and analyze all relevant documents, with particular attention to evaluating water management policies and practices, as well as maintenance, testing and sanitation records.

Understand the duty of care—analyze local regulatory requirements and related documents, as well as recognized industry standards such as the ASHRAE standards.

Engage necessary experts to assist in developing factual defenses.

Confirm parties involved with building water system or other suspected sources.

Interview key fact witnesses.

Identify a corporate representative witness.

Analyze vendor records and agreements.

Analyze training done of employees or done by agents and vendors

Obtain all CDC/Health Department investigative reports, including water sample test results.

Compare the strain of bacteria in the building with diagnostic cultures.

Investigate other potential, alternative exposure sources.

Obtain all medical records (including pre-exposure records), confirming the symptoms, date of onset and an actual Legionnaires' Disease diagnosis.

Analyze and apply the latency period of legionellosis, which is normally 2 to 14 days

Prepare a protective order and an e-discovery protocol.

Address and evaluate regulatory issues and prepare to respond to regulatory actions.

Prepare for managing crisis communications, and dealing with negative publicity.

Analyze contractual issues, especially warranty, indemnification, liability limitations, and insurance provisions.

Analyze insurance provisions, exclusions and place carriers on notice.

Defending Legionnaires' Disease Matters Beyond the Courtroom

Outbreaks of Legionnaires' disease are highly publicized events. Not unexpectedly, an outbreak will lead plaintiffs' counsel to aggressively court cases through both traditional and social media. Publicity can be heavy and negative for potential defendants. These cases are not just fought out in the courtroom, but in other arenas, most notably regulatory agencies and the court of public opinion.

Regulatory liability

Beyond civil lawsuits, businesses may face adverse action from government agencies. That may come through:

Health and safety violations: The Occupational Safety and Health Administration (OSHA) can issue citations and fines for workplaces with recognized Legionella hazards under its General Duty Clause. Such action could also involve state and local OSHA and health agencies.

Enforcement actions: Regulatory authorities can use these proceedings to mandate corrective actions, such as implementing water management plans, and impose penalties for non-compliance.

Hearings: Significant outbreaks may result in regulatory hearings and perhaps legislative hearings, and a number of states and localities are considering new regulations, often based on ASHRAE Standard 188.

In regulatory hearings and other proceedings, whether involving an agency or political body, subpoenas and discovery can present significant challenges. The discovery will be broad and can prove difficult to narrow, timelines for response may be short, and maintaining privilege can be a challenge. It is critical to maintain positive and professional relations with government staff. Among other reasons for doing so, the plaintiffs' bar will take its cues from regulatory proceedings and seek discovery from them. Thus, presenting key defense points and themes is necessary, and harmful admissions need to be avoided.

Public Relations

Legionnaires' disease outbreaks, not unexpectedly, results in highly negative publicity for defendants. Plaintiffs will almost never bear any fault and often have pre-existing conditions that made them more susceptible to contracting the disease and more sympathetic. To position themselves most favorably, it is critical that potential defendants quickly evaluate their defenses. To the extent those defenses are meritorious, themes should be developed. Crisis communications experts should be consulted on major outbreaks to monitor media coverage and to strategize on responding to it. Any talking points and public statements developed must dovetail with the themes of the legal defense and, of course, be scientifically accurate. Having a contingency response plan that includes addressing an event like a legionella incident or outbreak would be a best practice.