



## Bitten by bed bugs

NICHE PRACTICE EXCLUSIVELY REPRESENTS BED-BUG VICTIMS, LARGELY FOR EMOTIONAL DISTRESS

During these challenging times, we all need some respite from quarantine and lack of social interaction. As you can glean from the name of my firm, MYBEDBUGLAWYER, INC., my office specializes exclusively in bed-bug litigation. We typically sue apartment owners, hotel operators and furniture rental companies.

### How to select a bed bug case

This is one of the most frequently asked questions that I get from attorneys trying to vet potential bed-bug cases. Truth be told, picking the right bed-bug case is like picking the right case in any

specialized field of law, it all starts with the client. The more credible the client, the better chance you have to make something good happen for them.

The only way you can get a feel for the potential client is to spend some time talking to them. Not a novel concept, but there are no shortcuts. You must invest the time to get to know them and listen to their story to decide if you want to take the case. You must remember that the vast majority of bed-bug cases don't involve significant medical expenses ("meds"). The value of these cases is derived almost exclusively from emotional distress damages. In nearly every bed-bug

case we handle, the meds will be less than \$500 (usually about a hundred bucks for one doctor visit and some topical medicine to address the bites). And sometimes there are no meds at all. You have to be able to tell the story of their emotional distress in a way that will resonate with your audience.

### The nitty gritty

As in any case, after you are retained by the client, the work begins. Initially, you will have to start crafting your complaint, propounding discovery, taking depositions and potentially preparing for

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trial. One of the big takeaways from litigating bed-bug cases is that they typically *do not* settle pre-litigation. In most cases, you will have to file suit and work for it. In my practice, defense counsel will file demurrers and motions to strike in nine out of 10 cases, so there will be considerable work involved. Just because you filed your complaint doesn't mean that the defense is going to start backing up the "Brinks" truck for your client.

### **The value of emotional distress in bed-bug cases**

Another factor that you must remember is that bed-bug litigation is a relatively new industry. There is very little precedent as to what the reasonable value of a bed-bug case is. In most cases, the insurance adjuster or defense counsel will reach out to you in hopes of resolving the matter early on. However, the numbers that you will typically see are downright insulting. I can tell you from experience that it has been an exceptionally long road to finally get the attention of the carriers and the defense.

I'm still battling every day trying to educate the other side as to the value of emotional distress from bed-bug exposure (you can see how some juries valued my cases at [www.juryverdictalert.com](http://www.juryverdictalert.com)). Unfortunately, it is not uncommon for defense to offer up a whopping \$2,500 (if you are lucky) to settle the case early in the litigation. Obviously, that's a non-starter. So, we are off to the races.

### **Bluffing won't work in bed-bug cases**

I wish I could tell you that there is a "magic pill" to litigating a bed-bug case, but there is not. As my mentor Gary Dordick once told me, "When you take a case, you *must* be ready to go to trial.... and *win*."

The concept of going to trial in a bed-bug case can be daunting. It takes time and money. It's like poker; if you are not ready to go "all in" you're just bluffing. And in most bed-bug situations, your bluff *will* be called. You must remember that you are trying a case with

low or no meds. The defense is not particularly worried. Moreover, you still have to prove liability, which is always step one. If you don't get through step one, you don't even have a chance to get to the money. Therefore, you have to be ready to try your case... and *win*.

Another layer of fun is that in every bed-bug case, you will get served with a statutory offer to compromise under section 998 of the Code of Civil Procedure. The number will be insulting. But you must take into consideration that by rejecting it, you may be exposing your client to potential expert costs if you lose at trial. Many bed-bug clients do not have any resources to pay for CCP 998 costs if you lose, so the conversation must be had with the client.

### **100% client commitment, no exceptions**

The harsh reality is that not only do jury trials cost time and money, they require a 100% commitment from your client, no exceptions. If the client is not as committed to go "all in" as you are, you are simply wasting your time, period. The same thing happens when you are unprepared and take a case to trial. Trial will take most, if not all your time leading up to trial. It will also take more money than you really wanted to (or can afford) to spend. You must be careful and strategic. Unfortunately, caution and strategy are often the byproduct of experience, but you have to start somewhere and *believe in yourself*. When I mentioned earlier in this article that there is no "magic pill," I take that back. The magic pill is *you!*

Let's face it, not every lawyer is in the financial position to drop tens of thousands of dollars to go to trial to get their feet wet in a relatively new area of law. And more importantly, you must... *win*. There is an old adage about being a successful trial lawyer that goes something like... "If it was that easy, everyone would do it." But there is no substitute for experience. If you do not try, there is zero chance you will win.

### **Everyone wants to be like "Mike"**

For those who remember when Michael Jordan was playing in the NBA, there was a time when everyone wanted to be like "Mike." But no one can be like someone else. It is no different in the practice of law. Everyone wants to be like . . . fill in the names of the lawyers who are constantly nominated for Trial Lawyer of the Year; you know their names. The reality is it just "ain't never gonna happen." I have had the privilege of watching some of the best trial lawyers in Los Angeles in trial, and I learned a ton.

The one thing that all the great trial lawyers have in common is that they know how to be themselves and allow their own personality to come through when trying a case. This usually takes time and experience. It took many years to come to this realization. There was a lot of blood, sweat and tears shed before I started to learn how to be myself and let that transparency come through in trial. The bottom line is that jurors simply don't trust lawyers, clients or the legal system, but they do trust people who are genuine, transparent and passionate about their cases and clients.

The bottom line is that when you take a case (bed bug, or any other case) you have to leave it all on the field. If you do the best you can (and only you know what that looks like), regardless of the outcome, you'll be fine. There is no guarantee that you will win in trial, but if you do the best you can and truly gain the trust of your client (and they see that you did your best) ... win, lose or draw, you have done your job. That is all anyone can ask for.

*Brian Virag may well be the pre-eminent "bed-bug lawyer" in the United States. His law firm, MYBEDBUGLAWYER INC., based in Encino, was the first law firm in the country to focus exclusively on representing victims of bed-bug exposure. He has brought apartment owners, hotel operators and furniture-rental companies to justice via the jury system for exposing his clients to bed bug infestations.*

