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Manhattan's Rash of Legionnaires' Outbreaks, Suits

BY PETER HAYES

Most New Yorkers don't think about how their buildings' air conditioning systems work. Maybe they should, health officials and lawyers tracking a spike of new Legionnaires' disease outbreaks and related lawsuits tell Bloomberg Law.

Rising temperatures, more virulent strains of the potentially lethal disease, and aging populations and cooling and plumbing systems, are just some of the many reasons driving the boom in New York and other U.S. cities.

Reported Outbreaks Steadily Rising The number of Legionnaires' cases reported to the U.S. Centers for Disease Control has been steadily increasing over the last two decades. Last year showed a greater than six-fold increase over year 2000 levels.

"This may reflect a true increase in the frequency of disease," Kristen Nordlund, a spokeswoman for the CDC in Washington, told Bloomberg Law. "But it may also be in part a result of increased use of diagnostic testing or better reporting."

Legionella bacteria can cause a form of Legionellosis, known as Pontiac fever, with influenza-like symptoms lasting just a few days, according to the World Health Organization.

But the Legionella bacteria, which is found in fresh water like lakes, streams, rivers and other sources that feed urban and rural water systems, may also cause respiratory failure and death when it comes in its pneumatic form, called Legionnaires' disease.

Water-containing building fixtures like cooling towers and other parts of large air conditioning systems are especially prone to spreading the bacteria. Hot tubs, shower heads, and sink faucets can also be problematic, according to the CDC.

The first documented outbreak of Legionnaires' disease, and the one that explains its name, occurred in 1976 and was linked to a Philadelphia hotel's air conditioning system. The outbreak, which took place at an the American Legion conference at the Bellevue-Stratford Hotel, killed 34 people and made more than 200 other attendees severely ill.

Newest Outbreaks, Suits Last month, the hottest month of the year in New York, a spate of new outbreaks and related lawsuits occurred in that city and elsewhere in the U.S.

The New York City Health Department announced in July a cluster of Legionnaires' disease in upper Manhattan that sickened 26 people and killed one elderly resident.

The outbreak, which is being investigated by testing water samples from area cooling towers, came on the heels of two New York police officers suing the city over their contraction of the disease.

The officers were allegedly exposed at a Manhattan police precinct which was the scene of another Legionnaires' outbreak in 2016. The officers allege the city negligently renovated the 23rd Precinct building after the prior incident, leaving the water tower, sewage system, locker room, and bathrooms all contaminated.

Elsewhere in the U.S., the family of a man who allegedly died of Legionnaires' at a state-run veterans' home in Illinois filed suit July 19, the latest of at least a dozen cases brought recently against the facility's operators.

The complaint alleges the Illinois Department of Veterans' Affairs and the Quincy Veterans' Home didn't ensure appropriate levels of water in the water towers, inadequately chlorinated the water system, and failed to maintain appropriate temperatures in the air conditioning system's water holding area.

Further west, a 68-year-old woman sued Harrah's Laughlin LLC July 25, alleging she contracted the disease while visiting the Las Vegas casino. The complaint alleges contamination in the water supply, and said Legionella "can contaminate hot water tanks, hot tubs, and cooling towers of large air conditioners."

Higher Temperatures Plaintiffs' attorney Elliot Olsen with Siegel Brill PA in Minneapolis said climate change, coupled with inadequate precautions by building owners, may be factors in the Legionnaires' disease increase.

"Legionella is in water supplies at low levels, but it amplifies at certain temperatures," Olsen said. "If chlorine levels drop below a certain level, then Legionella proliferates."

Olsen represents clients in foodborne illness, Legionnaires' disease, product liability, and medical malpractice cases.

"Building owners also have been slow to adopt protections," Olsen said. Magnifying those problems are the U.S.'s aging population, which results in a larger pool of people more susceptible to the disease, he said. "Most of my clients are at least in their late 60s," Olsen said.

The Bronx Incident Defense attorneys agree the number of outbreaks and suits are proliferating, but they disagree about the causes.

“We are definitely seeing an increase in Legionella related litigation,” defense counsel Susan E. Smith with Beveridge & Diamond PC in San Francisco told Bloomberg Law.

Smith’s practice is focused on toxic tort, drinking water, and related insurance litigation.

But Smith ties the bump to heightened attention by public health officials and clinicians, an active plaintiffs’ bar, and increased media scrutiny of not only Legionnaires’ outbreaks but other high-profile water problems across the country.

Defense attorney Kevin Mayer with Crowell & Moring LLP in Los Angeles agrees.

He points specifically to attention around still another outbreak in New York tied to cooling towers, this one in the Bronx in 2015, which sickened 138 people and caused 16 deaths.

Public health officials in cities and states nationwide have been keeping a lot closer tabs on the disease since the Bronx outbreak, he said.

One of those officials, Dr. Mary-Margaret Fill, a medical epidemiologist with the Tennessee Department of Health, told Bloomberg Law it’s uncertain if CDC’s outbreak data shows a true increase in the incidence of the disease or if it indicates health officials are doing a better job finding and counting infection rates.

“In the mid to late ‘90s a urine antigen test for Legionella was developed, that provides results in one day, so there is an improved diagnostic capability,” Fill said. “And this may be a self-fulfilling prophecy—a greater awareness among health care providers and the general public may be driving up the numbers of reported cases.”

Still, the demographic numbers are sobering: “One out of 10 people die after being infected,” Fill said. She noted that most of those fatalities have been in older people, or those who smoked, or had other serious health problems, however.

By 2050, Fill said, the number of people in the U.S. over age 50 is expected to double.

Few Regulations, Tough Suits New York City, and the state, in response to the 2015 Bronx outbreak, enacted regulations requiring the regular inspection of cooling towers.

The laws require building owners to register, and regularly maintain, test, and clean the towers. The owners also must follow record keeping and notification re-

quirements when high levels of the Legionella bacteria are detected.

The state law also includes cooling tower requisites for hospitals and residential health care facilities.

The regulations provide a standard of care in Legionnaires’ disease cases by informing building owners what they must do, Mayer said.

“But there are no regulations in most places, so there is no clear standard of care,” he said, noting that the majority of U.S. cities and states don’t have similar requirements.

The lack of clear standards poses problems for those who try to hold building owners and others liable for disease-related injuries in court, Mayer said.

“Plaintiffs must show negligence—that the conduct fell below the standard of care,” he said.

Smith, the defense attorney with Beveridge & Diamond, also said problems exist with the notion that risk management called for by the New York regulations will provide an adequate solution to the outbreaks.

“There’s a lot of uncertainty about what exactly should be done to reduce the risk, and whether any particular practice or set of practices is consistently effective over time,” she said. “There is no one-size-fits-all approach for all facilities.”

Further, where there are regulations, “guidance often conflicts with other guidance,” she said.

Problem with the Water Defense attorney Kimberly Connick with Harris Beach PLLC in New York said all of the above factors are driving the upsurge in incidents of Legionnaires’ disease.

But Connick adds another to the list: the quality of municipal water in the first place. She said the water itself in many cities is being made more susceptible to the disease as the Environmental Protection Agency has enacted regulations that require municipalities to reduce the amount of disinfection-related byproducts.

“Changes in regulations controlling the treatment of municipal water have reduced the amount of chlorine, a disinfectant that prevents Legionella,” she said.

“This issue has become a major talking point for advocacy groups and other critics of the New York regulations who claim that the regulations’ narrow focus on only building equipment fails to address the source of the problem—public water systems,” Connick said.

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