Legionnaires’ Disease: New Responsibilities Under ANSI/ASHRAE Standard 188

Presented to

Potomac Chapter

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Presenter

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Garry Boehlert focuses his practice on resolving claims and disputes arising on the type of complex projects for which AIHA and ChABSA members perform their services. He specializes in defending Legionellosis lawsuits associated with potable water systems, non-potable water systems and cooling towers.

Mr. Boehlert is familiar with the scientific, medical, engineering and legal issues involved in Legionnaires’ disease cases. As a result of his work in this area he has strong working relationships with many of the best laboratory, water treatment and medical experts in the industry. He was recently successful in gaining dismissal of a multi-million dollar wrongful death Legionnaires’ disease case in the trial court by summary judgment. The dismissal was affirmed based on arguments he presented to the Fourth Circuit Court of Appeals.

Mr. Boehlert has litigated cases in the federal and state trial and appellate courts in more than 20 states and in several international forums. He is familiar with creating and participating in various forms of alternative dispute resolution and has successfully conducted numerous mediations and arbitrations. In short, he knows his way around a project and speaks your language when it comes to resolving disputed issues.

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Topics For Today

- Legionella Bacteria in Our Water and How it Causes Legionnaires’ Disease
- New *Legionella* ASHRAE Standard 188 for cooling towers and building water systems
- Legal impact of ASHRAE Standard 188

Legionella Is In Our Water
Sources of Legionella

What Biofilm Looks Like

Pipe Inside Ice Machine
Legionnaires' Disease Is Bacterial Pneumonia

- Chest x-ray shows fluid in the lung
- Chest pain common
- Cough is often accompanied by high fever which can exceed 104°F
- Diarrhea occurs in 20-40% of patients

How Is Legionella Transmitted from Water to People?

- Pathogenic Legionella present in water system
- Exposure to this water occurs
  - Water containing Legionella reaches the airway of the host by being inhaled or aspirated
- Disease can occur if host is susceptible
  - over 65
  - weakened immune system
  - smoker
  - lung disease
Who Typically Gets Legionnaires’ Disease?

- Elderly
- Smokers
- Immunocompromised
  - Transplant patients
  - High-dose steroids for lung disease
  - Diabetes
  - Cancer

"Legionella ... is the single most common etiologic agent associated with outbreaks involving drinking water."

Report by the U.S. Environmental Protection Agency (EPA) and the Committee on Public Water Supply Distribution Systems, 2006. National Academy of Sciences Report
Isn't Legionnaires' Disease Very Rare and Basically a Thing of the Past?

Unfortunately, No!
Legionnaires’ Disease is a Worldwide Problem

Outbreaks are on the Rise

• Legionellosis cases have increased substantially, particularly in the eastern U.S. and among middle-aged adults

• Public health professionals should focus on prevention of this important and increasing public health problem
217% Increase in Cases (2011)

Centers for Disease Control and Prevention

Morbidity and Mortality Weekly Report
Weekly / Vol. 60 / No. 32
August 19, 2011

Legionellosis — United States, 2000–2009

Legionnaires disease (LD), a serious, sometimes fatal pneumonia, and Pontiac fever (PF), an influenza-like, self-limited illness, are the two most common forms of legionellosis, which is caused by Legionella bacteria. Legionellosis cases are reported to CDC through the National Notifiable Disease Surveillance System (NNDSS) and a Supplemental Legionnaires Disease Surveillance System (SLDSS) designed to manage surveillance data on travel-related cases and enhance outbreak detection. For this report, cases reported to NNDSS during 2000–2009 from the 50 states and the District of Columbia (DC) were assessed, and crude and age-adjusted incidence rates per 100,000 persons were calculated. If the Legionellosis cases reported annually increased 217% from 1,110 in 2000 to 3,522 in 2009, and the crude national incidence rate increased

Estimated Number of Cases

- In the U.S. approximately 600,000 adults are annually diagnosed with community-acquired pneumonia requiring hospitalization
- Approximately 2-5% are caused by *Legionella*
- That’s approx. 30,000 cases annually
Legionnaires’ Disease Claims and Lawsuits are Often Associated with

- Hotels
- Hospitals
- Homes for the elderly
- Casinos and related facilities
- Cruise ships
- Vacation spots
- Dwellings with multiple housing units
- Governmental, commercial, institutional and industrial office buildings

Outbreaks Occur From East to West
The Disease Can be Contracted From Both Old and New Facilities

Legionnaires’ Disease Claims and Litigation Making the News...
Family blames hospital for man's death from Legionnaires' disease

By Loud Grieco, Staff Writer
February 9, 2012
DAYTON — Miami Valley Hospital is responsible for the death of a 94-year-old Kettering man from Legionnaires’ disease, his family claims in a lawsuit filed Tuesday in Montgomery County Common Pleas Court.

The lawsuit, which includes three other deaths, is the first filed concerning an outbreak of Legionella at the hospital in February 2011.

8 Guests Sue Las Vegas Resort in Legionnaires Case

Publication Date: 08/24/2011 Source: Associated Press
LAS VEGAS -- Eight former hotel guests are suing a Las Vegas Strip resort and its builders, seeking $337.5 million in damages and alleging they were exposed to Legionnaires' disease during stays there earlier this year.

A lawyer for the plaintiffs said Wednesday the huge amount sought in compensatory and punitive damages on behalf of a handful of guests at the posh Aria Resort & Casino stems from negligence by resort owners ... and the builders of the massive City Center complex.
New York City Officials Identify Source of Legionnaires’ Outbreak

NEW YORK -- New York City officials say they have pinpointed the source of the Legionnaires’ disease outbreak in the South Bronx that left 12 people dead and sickened more than 100, CBS New York reports.

After extensive sampling and testing for the bacteria that causes Legionnaires’ disease, laboratories have matched the strain found in the hotel’s rooftop unit - also called a cooling tower - with the strain found in 25 patients, some of whom died, Bassett said.

August 20, 2015
CBS/AP
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Legionnaires’ Outbreak Grows, Keeping San Quentin Locked Down

An environmental consultant has been brought into the hunt for the source of Legionnaires’ disease at San Quentin state prison. After six days of testing, officials still do not know what caused the outbreak that has left more than 100 inmates sick and the sprawling historic prison in near-lockdown.

By Paige St. John
September 2, 2015
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Legionnaires’ Disease Claims 2 More Residents At Illinois Vets Home

QUINCY, Ill. -- The Illinois Department of Veterans’ Affairs says that two more veterans’ home residents have died from Legionnaires’ disease. That increases the number of recent deaths from the water-borne illness in Quincy to 12.

All of the elderly residents who died had underlying health conditions that made them more susceptible to the severe form of pneumonia. The source of the outbreak remains unknown as environmental tests continue.

September 14, 2015

I am Familiar with Existing Legionella Guidelines Published by Organizations Such as:
Aren’t These Enough?

Although existing guidelines are a step in the right direction

- Some of their recommendations are backed by little or no science

- When it comes to the law – Courts generally don’t view them as establishing best practices for the industry
Guidance Documents
Alone Have Not
Controlled
Legionnaires’ Disease

As of June 26, 2015, We
Have New ANSI/ASHRAE
Legionella Standard 188
What is ASHRAE Standard 188?

A risk management approach for the prevention of *legionellosis* (Legionnaires’ Disease and Pontiac Fever) associated with centralized industrial and commercial building water systems.

Who is it for?

The Standard is intended for use by owners and managers of human occupied buildings and those involved in the design, construction, installation, commissioning and operation, maintenance and service of centralized building water systems and components.
What Does the Standard Require?

On an annual basis, building owners must conduct a survey of their buildings (new and existing) to assess the water systems (potable and nonpotable) associated with the building.

What Is the Objective of the Survey?

To determine if the building

1. Has one or more of the water systems identified in Section 5.1 (cooling towers, evaporative condensers, whirlpools, spas, ornamental fountains, misters, humidifiers, etc);

or
What Is the Objective of the Survey?

2. Possesses one or more of the following building characteristics listed in Section 5.2 (historically associated with cases of Legionnaires’ Disease):
   - Multiple housing units with one or more centralized potable water systems,
   - More than 10 stories high (including levels below grade)
   - Health care facility where stays exceed 24 hours
   - Occupants that are immunocompromised or at risk including elderly, smokers, transplant recipients, etc.
   - Designated to house occupants more than 65 years old.

What Do I Do With Survey Results?

- If Survey reveals one or more of the building water systems in Section 5.1 but none of the factors in Section 5.2, the water systems shall be managed consistent with Sections 6 and 7 of the Standard.

- If Survey indicates one of the Section 5.2 factors, then a Water Management Program shall be implemented to manage the risk of legionellosis in both the potable and nonpotable building water systems.
What Are the Elements of a Water Management Program?

**PROGRAM TEAM**—Identify persons responsible for Program development and implementation.

**DESCRIBE WATER SYSTEMS/FLOW DIAGRAMS**—Describe the potable and nonpotable water systems within the building and on the building site and develop water-system schematics.

**ANALYSIS OF BUILDING WATER SYSTEMS**—Evaluate where hazardous conditions may occur in the water systems and determine where control measures can be applied.

**CONTROL MEASURES**—Determine locations where control measures must be applied and maintained in order to stay within established control limits.

**MONITORING/CORRECTIVE ACTIONS**—Establish procedures for monitoring whether control measures are operating within established limits and, if not, take corrective actions.

**CONFIRMATION**—Establish procedures to confirm that

- the Program is being implemented as designed (verification), and
- the Program effectively controls the hazardous conditions throughout the building water systems (validation).

**DOCUMENTATION**—Establish documentation and communication procedures for all activities of the Program.

Who Is Responsible?

Owners and facility managers on front line for water safety.
What About Legionella Testing?

Informative

- Under ASHRAE 188, Program Team should consider the value of testing to determine if Legionella are present at detectable quantities in building water systems.
High Risk Units

Facilities with solid organ transplant programs or stem cell transplant recipients should perform periodic culturing for *Legionella* in the transplant unit's potable water supply.

ASHRAE Standard 188 is a Two-Way Street

It Imposes Burdens but it Also Offers Rewards
Obligations

- Performance of an Annual Building – by – Building Risk Assessment with an eye on the risk factors contained in the Standard
- If risk factors are present – assembly of a Team and creation of a written Plan
- Validation and documentation of compliance with the plan
- If outbreaks or a suspected case of disease occurs then perform disinfection

Rewards

- Compliance with ASHRAE 188 will provide
  - Safer and healthier buildings
  - Fewer Legionnaires’ disease claims and lawsuits
  - Greater protection against allegations of negligence and wrongdoing if claims or litigation are filed
Legal Liability and the New ASHRAE Standard

The First Reported Outbreak
July 1976

34 people died
221 more sickened
from Legionnaires’ disease
contracted at a Philadelphia
hotel hosting a statewide
American Legion Convention
Prior to ASHRAE Standard 188, there has been little uniformity in what actions, if any, designers, owners and facility managers should take to guard against the waterborne bacteria that cause Legionnaires’ disease.
Claims Typically Asserted in a Legionnaires’ Disease Lawsuit

- Typical Counts in Complaint
  - Negligence
  - Gross Negligence
  - Res Ipoa Loquitur
  - Breach of Warranty of Merchantability
  - Strict Liability

Most Legal Battles in Legionnaires’ Disease Cases are Fought Over the Allegation of Negligence
Negligence Defined

The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

Critical Elements a Plaintiff Must Demonstrate to Meet Their Burden of Proof for Negligence

- Establish that you breached an applicable Industry Standard of Care
- Establish causation between your Acts and Omissions and the Plaintiff’s Injury
Expected Legal Significance of ASHRAE Standard 188 After Adoption

- It applies equally to new and existing facilities
- If, as in New York, Standard 188 is adopted into city, county and state building codes, it will have the force of law
- Even if not formally made part of a code, plaintiffs are expected to argue that the new standard sets best practices for your industry

New York City Council Passes Law to Curb Legionnaires’ Outbreak

The New York City Council voted unanimously on Thursday to pass legislation that mandates strict regulations of cooling towers, a move that comes in response to the current outbreak of Legionnaires’ disease in the South Bronx. The Council voted 42-0 in favor of new regulations that will require all cooling towers be registered, tested and then disinfected if they’re found to contain Legionella bacteria. By

By: Jessica Firger 8/13/15
“This summer’s outbreak of Legionnaires’ disease caused concern in communities across the state, and today we are moving forward to help prevent future outbreaks and keep our neighborhoods safe,” Governor Cuomo said. “Our new emergency regulations will make sure that building owners live up to their responsibilities and provide health officials with critical information to counter the spread of Legionella bacteria. I want to reassure all New Yorkers: We are addressing the problem at its source and protecting the public health, statewide.”
With Compliance Comes More Protection

Because of the ubiquity of Legionella bacteria in natural and manmade aquatic environments it is expected that some outbreaks will continue to occur despite every precaution. When outbreaks occur, compliance with Standard 188 should provide you and your clients a compelling defense against claims of negligence or other wrongdoing.

FAQ

Q. Should I educate my clients to Legionella bacteria and the risk presented?
   A: Yes, education of your client offers you a level of protection. An educated client is in the best position to make informed decisions.

Q. How should I raise the topic?
   A: In writing, and optimally, as part of the proposal process.

Q. Should I document my client’s response?
   A: Yes -- the services you end up providing will generally be governed by a written contract. It could help if you can show you offered Legionella related services.

Q. Should I test for Legionella without my client’s knowledge or consent?
   A: Generally, no. As service providers, let your educated client contract for the services they select.
Questions

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