

## **Premises Liability - Two men suffered from Legionnaires' Disease after using a hotel's hot tub**

*Estate of Handley, et al., v. Wingate Inns Int'l, et al.*, 09-900170

Plaintiff: M. Todd Wheelles, *Morris Haynes & Hornsby*, Birmingham

Defense: Thomas M. Little, *Smith Spires & Peddy, P.C.*, Birmingham

Verdict: \$4,500,000 for plaintiffs (comprised of \$1,500,000 in compensatory damages and \$750,000 in punitives for each plaintiff)

Circuit: **Calhoun**, 11-18-10

Judge: Malcolm B. Street, Jr.

On 5-15-08, Rodney Handley and Emanuel Howard were part of a group of employees of the Jefferson County Commission who were staying at the Wingate Inn in Oxford. They had been assigned to go there to help with cleanup on the roads in Heflin, which had recently been hit with two tornadoes.

While staying in the Wingate Inn, Handley and Howard used the hotel's hot tub, which was located in the public area near the swimming pool. On 5-30-08, both Handley and Howard became ill. They were eventually diagnosed with Legionnaires' Disease.

Both men suffered long-term health consequences. Howard complained of permanent damage to his lungs and nerve damages in his legs. His medical expenses totaled \$127,009. Handley's medical expenses totaled \$231,815. Both men sought and were paid workers' compensation benefits.

The Alabama Department of Public Health immediately looked into the possibility that Handley and Howard might have become ill because of Legionella bacteria in the hot tub. In response to the Department's request that the hotel spa be closed, Wingate Inns immediately hyperchlorinated, disinfected, and generally cleaned the spa.

This successfully removed any Legionella bacteria from the hot tub, but it also had the consequence of spoliating any evidence. The hotel provided maintenance records to the Department about the hot tub, but a dispute later arose regarding the accuracy of the maintenance records.

Handley and Howard filed separate suits against Wingate Inns and Manju Purohit, the manager of their hotel. Plaintiffs blamed defendants for poor maintenance of the hot tub. Their theories included negligence, wantonness, and negligent or wanton hiring, training, or supervision. They argued that Purohit was not informed as to proper spa conditions and she had hired a maintenance man who also had no training on proper spa maintenance.

Defendants responded and minimized the damages claimed by Handley and Howard. They also pointed to the lack of evidence that Legionella bacteria had ever been in the hot tub.

Plaintiffs responded with the expert opinion of James Barbaree, Microbiology, Auburn, who opined that in spite of the lack of Legionella bacteria currently in the hot tub, the bacteria had existed in the past and had caused plaintiffs to become ill.

Handley and Howard's respective lawsuits were consolidated before trial. Handley died of a heart attack, and his estate replaced him as plaintiff. It was unclear whether Handley's heart attack was related to the Legionnaires' Disease.

After less than an hour of deliberation, an Anniston jury returned a verdict of \$1,500,000 in compensatory damages for Handley's estate and the same amount for Howard. It also awarded each plaintiff \$750,000 in punitives, for a total \$4,500,000 verdict.

Thereafter, Jefferson County moved to intervene to exercise its subrogation rights. At the time the AJVR reviewed the record, the court had not yet entered a final judgment, and the disposition of Jefferson County's subrogation claim had not yet been determined.