15 Reasons Hotels Need

- $15 Million -

In Umbrella Insurance

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Introduction

Relative to the ages-old practice of insuring a risk on a primary level, excess insurance is a fairly recent innovation. The earliest excess policies didn't start cropping up until the mid-to-late 1940s, and even then, they didn't start becoming commonplace until the late 1960s[1].

Before that, primary limits of merely $5,000 were the standard, which proved unhelpful when larger losses began to plague business owners. As such, insurers—namely, Lloyd's—created a solution: a policy that sits over lower limits and provides additional coverage in the event of a large loss.

Today, $5,000 in coverage is laughable, with the average liability award clocking in around 24 times that amount—and even that number is growing steadily on a yearly basis[2]. In any case, the modern Commercial General Liability (CGL) policy provides at least $1 million in coverage. Is that enough to cover the basic hazards you may face as a business owner? What makes a modern-day excess policy necessary?

Umbrella Insurance

Let's first start with the CGL and how it responds to claims. Average CGL limits are $1 million per occurrence with a $2 million aggregate. The maximum amount paid on any single claim is the $1 million from the occurrence limit. The maximum amount paid in total is the $2 million from the aggregate limit.

That means, if you have one single severe claim, you're on the hook for anything after that first $1 million paid by the CGL. If you're unlucky enough to have *two* $1 million dollar claims, you'd use up your $2 million aggregate, depleting all of your coverage. That's where excess insurance comes in. Excess policies are designed to sit on top of the CGL, supplementing anything you owe on top of the $1 million occurrence limit or "dropping down" to provide additional coverage after your total policy aggregate is gone.

Additionally, some policies (like McGowan Program's) provide "umbrella" coverage, as well. To clear up confusion, though the terms are often interchanged, there *is* a difference between true excess and true umbrella policies—excess supplements an underlying policy while umbrella has the ability to provide broader, "first dollar" coverage. In other words, true umbrella policies fill coverage gaps in the underlying CGL so that, if the underlying insurance does not apply, the umbrella will take its place.

The Climate

Now you know how umbrellas work—but why are they necessary? Why would anyone need an umbrella policy with limits of $15 million or more?

Because they are tried as common law claims, there really are no standard CGL lawsuits. To put it differently, negligence claims are based on the precedents set by rulings before them, not on legislation. So, each courtroom is different, making each verdict virtually unpredictable[3].

In recent years, there has been an uptick in higher payouts, which can be attributed to three factors[3,4].

Litigious Atmosphere

As PartnerRe states, "American society has developed a culture of fault." When bodily injury or property damage occurs, there is an almost immediate price tag created. Patrons are more likely to sue, and they have their sights set on high dollar amounts—amounts that would eat up your CGL limits.

Climbing Medical Costs

With the advancements in medical technology, even catastrophic injuries do not necessarily equate to a death sentence. Injured parties may need costly medical support for the rest of their lives, which is taken into account in court and drives losses upward.

Social Inflation

In the fast-paced world of social media, high dollar cases get the most attention, swaying the public's perception of how often they occur. This phenomenon biases juries in tandem, resulting again in increasingly expensive awards.

"It Will Never Happen to Me"

It's still easy to adopt the mindset that a large claim is too unlikely to happen to you.

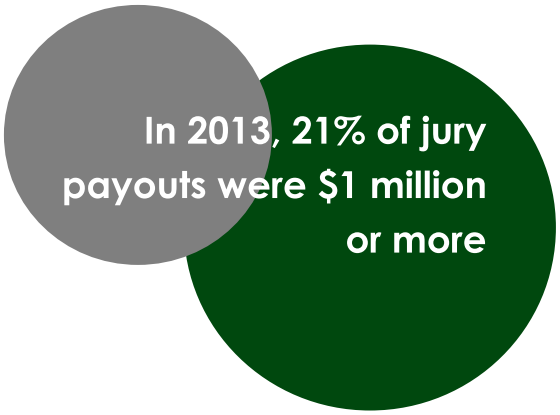
However, according to The Hartford, based on five year loss data from 2011-2015, 40% of small business owners will experience a claim in any given year. Of those claims, 35% will result in a lawsuit[6].

And, while the frequency of CGL claims is on the decline, mostly due to diligent loss control efforts implemented by business owners, the likelihood of a higher payout is on the rise[2]. In other words, although you may be paying out fewer "small" claims, the chance of a larger one is climbing. In fact, from 2007 to 2013, $1 million personal injury payouts jumped from 18% to 21% of jury awards[7].

On top of that, from 2013-2016, the top 100 verdicts were all over $20 million. Compare that to 2012, when just 88% breached that amount[7]. Higher claims have driven the average cost up.

Hotels in particular are susceptible to lawsuits. With dozens of guests in and out each day, and high-risk exposures like pools, alcoholic beverages, and shuttle vans present at even the most basic chains, there is little room for error.

So, though you may think, "It will never happen to me," the reality in today's legal climate is that when it rains, it pours—but having an umbrella policy can help you weather the storm.



15 Claim Scenarios

To demonstrate just how likely a multi-million dollar suit can be, we've compiled 15 real claim scenarios.

Some of these scenarios highlight common risks hotel owners face on a daily basis. Others present outlier losses that may arise from unexpected exposures.

Either way, our goal is to prove that having that extra $15 million in umbrella limits is a life-saver when a severe claim arises.

01. Murky Water Creates Clear Liability

02. Bedbug Claims Creeping Upward

03. Slip-and-Falls Slide into Millions

04. Heightened Risk from Railings and Balconies

05. Legionnaires Claims Spike a Fever

06. Background Checks Run Up Bill

07. Carbon Monoxide Chokes Policy Limits

08. Pool Lighting Illuminates Hazard

09. Running Tab for Liquor Lawsuits

10. Speeding Vehicle Crashes Through Coverage

11. Steepening Price of ADA Compliance

12. Showers Put Hotels in Hot Water

13. Shuttle Vans Drive Up Claim Costs

14. Lack of Security Breaches Policy Limits

15. Emerging Threat of Human Trafficking

*Sections are in no particular order

Murky Water Creates Clear Liability

Pools are one of the biggest liability exposures present at hotels. With young children playing, large crowds blocking views, and oftentimes a lack of proper supervision, a lot can go wrong. From disease to drownings, the risks a hotel faces are great.

In 2013, a man went unnoticed at the bottom of a pool due to its cloudy, over-chlorinated water. Though the local fire department attempted to search the pool, the man's body was not recovered until much later. His family sued the Seattle Quality Inn & Suites, citing multiple code violations that were not abated and negligence in monitoring the water quality.

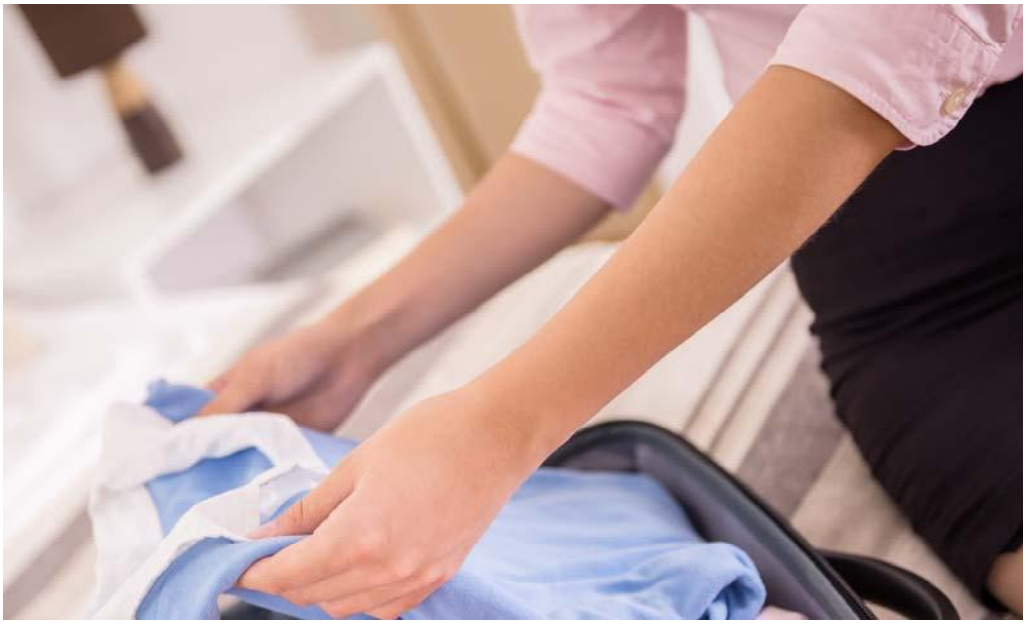
In a similar 2017 case, a Kentucky Comfort Inn was ruled negligent in the death of a five year-old boy who drowned in the pool. The clarity of the water had not been monitored, creating a murky environment in which it was hard for his mother to keep track of him. The resulting lawsuit ended in a **$3.1 million** award to the family.

Bedbug Claims Creeping Upward

According to their 2017 Global Claims Review, Allianz reported that bedbug or insect incidents account for 30% of all liability claims reported to insurers[2]. Bedbug claims are particularly on the rise in the U.S., especially in hotels, which rank third on the National Pest Management Association's list of most likely places you'll run into the critters.

Consequently, bedbug claim payouts have been on the rise. In October of 2017, an Arkansas family won **$546,000** from a Hilton Garden Inn.

Because bedbugs are so resistant to even the harshest of conditions, and because of the number of guests who may potentially be affected by an infestation, it isn't impossible for a future claim to surpass the $1 million mark. Indeed, such amounts have been attempted by patrons, as in a **$7 million** lawsuit against a North Carolina Holiday Inn & Suites in 2013.



Slip-and-Falls Slide into Millions

Slip-and-falls are ranked number five on Allianz's list of top liability loss causes for businesses. Paired with vehicle collisions, they account for half of all claims reported to insurers[2].

Slip-and-falls can get expensive quickly. For example, a 2014 verdict awarded **$1.2 million** to a Texas women for an ankle injury caused by ice on a sidewalk at a Marriott hotel.

In another case, the floor at Crestline Resorts in Georgia was not properly mopped after a rainstorm. As a result, a woman injured her shoulder and wrist. The damage was enough to keep her from working. Ultimately, she was awarded **$3.6 million** for her injuries.

With increased traffic at hotels, the potential for a slip-and-fall is high. Wet floors, icy sidewalks, and slippery showers are just a few of the common hazards present.

Heightened Risk from Railings and Balconies

Balconies and railings present a large exposure for most hotel owners. If not properly installed, inspected, and maintained, potentially disastrous incidents can occur.

Such was the case in 2012 at the Newport Inn in California, where a patron won **$38.6 million** after falling from a second story walkway and suffering brain damage. Though the guest was intoxicated at the time of the fall, he was ultimately deemed only 15% at fault for his injuries. The hotel was found negligent as the railing violated building codes for being under three feet in height.

In another incident, a small boy fell through a missing spindle at a Virginia Ramada Inn, also suffering severe brain damage. That claim was settled at **$10.9 million.**

Legionnaires Claims Spike a Fever

Legionnaires Disease is a potentially deadly form of pneumonia that originates in water and is most often linked to water systems such as pools or storage tanks. Hotels, then, which often have both such exposures present, have an increased risk of playing host to an outbreak.

In a hotel, where water often sources hundreds of guests, the scope of Legionnaires can be catastrophic. In 2014, 140 people were affected at a New York City hotel. Twelve of those 140 passed away. In a more recent incident, a suspected 29 people may have been sickened by a 2017 outbreak at a Las Vegas hotel.

In 2008, a **$4.5 million** settlement was reached in the death of two men who had contracted the Legionella bacterium in the Alabama Wingate Inn's hot tub. This incident only involved two guests—imagine how much would be on the line for more casualties.

Hotels have a heightened risk of playing host to a Legionnaires outbreak.

Background Checks Run Up Bill

Any hotel owner would agree that guest safety is the highest priority, and a huge part of ensuring that safety comes from a well-trained staff. Gaps in proper vetting of employees can lead to tragic results.

Unfortunately, failure to obtain proper background checks at a Tennessee Days Inn resulted in the hiring of two illegal immigrants, one of whom raped and murdered a 21 year-old female guest while on the job. The man entered the woman's room using a master key card and carried out his vicious crime. The lawsuit was settled in 2009 for more than **$10 million**.

In another incident, a Pennsylvania hotel failed to research a male employee hired to perform massages in an on-site spa. The man sexually assaulted three women, one of whom sued the hotel and was awarded **$1 million**. Had a background check been completed, the man's prior history of rape and assault would have been discovered.

Carbon Monoxide Chokes Policy Limits

Annually, there are relatively few deaths resulting from unintentional carbon monoxide poisoning: According to the Center for Disease Control, about 400 deaths were reported in 2015. 36% of those deaths occurred in the winter months of December, January, or February, when carbon monoxide threats increase with more gas-powered heating systems in use.

However, at hotels, carbon monoxide leaks can originate in pool heating systems that run on natural gas, as well, creating a year-round threat.

Such was the case in 2013, when a young boy and two others were killed at a Washington Best Western. The wrongful death and injury case was settled for **$16.5 million.**

A similar incident occurred in California in the same year. A man suffocated in his suite, which sat directly over the mechanical room that housed the CO2-emitting pool heater. That case settled for **$5 million** in court.

Carbon monoxide leaks can originate in pool heating systems that run on natural gas.

Pool Lighting Illuminates Hazard

Improper installation and maintenance of the electrical wiring used to light and heat pools can have disastrous results.

In a worst case scenario, a man was electrocuted and killed in a Texas Hilton pool. While Hilton's third party electricians were ultimately deemed negligent for failing to install proper circuits, the hotel was additionally on the line for a payment of at least **$2.2 million** to the family.

In the same vein, *not* properly lighting pool areas can be just as hazardous. In a 2008 incident at a Florida resort, a man suffered permanent back injuries after falling into a hot tub that was not properly illuminated. The hot tub had been partially emptied in the evening hours but was not cordoned off or lit up. The man was awarded **$7.5 million**.

Running Tab for Liquor Lawsuits

Many hotels include a restaurant or bar in which guests can unwind with a drink. However, alcohol consumption opens up another world of liability risks. Employees serving alcohol must be properly trained to do so, otherwise a hotel chances overserving a patron, which can have deadly results.

Dram Shop Liability Law, which is applicable in 48 states, holds business owners accountable for overserving patrons. The law applies when a third party is injured by the intoxicated party, most commonly involving drunk driving or assault.

Unfortunately, the latter occurred at a Pennsylvania Holiday Inn in 2006. An intoxicated man assaulted another man with a punch to the head, causing severe brain trauma that eventually proved fatal. The intoxicated man was charged with third-degree involuntary manslaughter, while the hotel that overserved him settled with the family of the deceased for **$5.5 million**.

Note the CGL policy excludes Liquor Liability, so hotels with alcohol exposure must purchase separate liquor coverage. Liquor Liability forms often have an aggregate of only $1 million rather than $2 million, meaning just one large claim would exhaust the limits.

Speeding Vehicle Crashes Through Policy Limits

In a bizarre incident occurring at a Florida resort, a wrongful death involving a speeding car resulted in a **$24 million** settlement. A newlywed couple were in the pool area when a speeding drunk driver careened off of an adjacent road and crashed into the cabana. The wife, who was pregnant at the time, was killed.

Riverside Hotel was pulled into the case, with the family of the victim alleging that the resort was aware of vehicles regularly speeding down the road. Furthermore, a sharp turn presented a clear danger to hotel guests, yet an adequate security barrier was not erected.

Though the majority of fault was ultimately placed on the drunk driver—who was sentenced to 15 years in prison—the remaining fault was placed on the hotel, amounting to **$3.6 million**.

Steepening Price of ADA Compliance

The Americans with Disabilities Act (ADA) lays out a laundry list of regulations with which hotel owners must comply in an effort to ensure accessibility for disabled guests.

That said, ADA lawsuits have flooded courts country-wide, in some cases with false accusations or doctored malfeasances. In other cases, patrons visit hotel after hotel not to stay overnight, but to look for a misstep in compliance so that they are able to take a claim to court. These incidents have been coined "drive-by" lawsuits.

An Arizona woman, for example, filed hundreds of suits against California hotels she had never visited. According to her, the hotels failed to comply with ADA regulation that requires hotel pools to contain a wheelchair accessible lift. The validity and legality of the cases were called into question.

Lack of disabled-friendly accommodations, though, can result in serious injuries. At a Florida resort, a man fell down a poorly constructed ramp and suffered traumatic brain injuries that led to his death. The family was awarded **$1 million** after it was discovered that the ramp was three times steeper than permitted. Further, the hotel had prior knowledge of its non-compliant ramps.

Whether it is a "drive-by" lawsuit or not, hotels must be aware of the risks associated with ADA non-compliance.

Shower Puts Hotel in Hot Water

In a freak incident at a hotel overseas, a 59 year-old woman was scalded in a hot shower. Her injuries were so severe that she later died from multiple organ failure.

Though the English hotel monitored water temperatures in the building, they were still on the hook for a **six-figure payout**.

On U.S. soil, a lawsuit of a similar nature arose in New York in 2008 after a woman was "nearly burnt to death" in a shower. The hot water hit her so hard that she fainted and suffered serious burns, which later required multiple skin graphs to repair. She sued the Hotel Chandler for **$100 million**.

These particular events may be somewhat isolated incidents, yet they still demonstrate how a seemingly innocuous exposure can turn ugly and cost a hotel considerable sums.

Shuttle Vans Drive Up Claim Costs

Today's hotel shuttle vans are safer than ever, yet collisions and crashes still make up more than a fifth of all liability claim values[2], according to Allianz. Further, the 2018 Driver Risk Safety Report indicates that accidents were reported at record highs last year, with 40% being work-related and costing business owners $56.7 billion. The average claim comes in around $80,000[2].

However, tragic incidents can hike the price up very quickly and, given the numerous factors involved in ensuring a safe journey, may be hard to protect against. Seatbelts may be nonexistent or not enforced, seating arrangements may be abnormal, drivers may not be adequately trained or may be distracted, or the vehicle itself may not be functioning properly.

In 2014, a man was pinned between two shuttle vans at the Portland International Airport while loading bags. The driver of a Sheraton shuttle had accidentally pressed the gas instead of the brakes when attempting to stop his vehicle. The injured man consequently lost a leg, and later sued for **$10.5 million**.

Collisions and crashes make up more than a fifth of all liability claim values.

Lack of Security Breaches Policy Limits

In 2016, a 30 year-old woman was brutally murdered at a motel in Florida. The man who killed her was not a guest of the hotel, yet he had been lingering on the property, at one point even advancing on a house-keeper. Because the hotel had knowledge of his presence, they were ordered to pay **$12 million** to the bereaving family.

Another security mishap led to the rape of a California woman. The Holiday Inn's front desk attendant gave a key to a man who claimed he was the woman's boyfriend and had locked himself out of their room. Had the attendant checked the man's ID, the crime and **$3.5 million** lawsuit could have been avoided.

Again, the number one concern for hotel owners is guest safety. Ensuring that everyone on the premises is supposed to be there and is behaving in a safe manner is crucial.

Emerging Threat of Human Trafficking

Human trafficking is one of the world's biggest crime enterprises. More than 4,400 cases were reported to the National Human Trafficking Resource Center in 2017 alone. Hotels are often epicenters for the illegal activity—private rooms, lax security, and untrained staff unfortunately allow trafficking to go unnoticed.

Some states, like Florida, are proposing bills that require educational training so that staff members can recognize and report signs of human trafficking. Many hotel chains already have such procedures in place, like Marriott International.

Florida is additionally in the process of passing legislation that would allow victims to sue hotel owners if they willingly allowed the crime to take place on their premises. Such a law is already in force in Pennsylvania, where the first suit was filed against the Roosevelt Inn in Philadelphia.

Though the future and scope of these lawsuits are yet to be determined, because of the prevalence of human trafficking, chances are that it will become a source of major legal battles in the near future.

Any suspicion of human trafficking should be reported to the National Trafficking Resource Center, 1-888-373-7888.

Conclusion

Severe claims can arise from unexpected sources. At the same time, they may also arise from the most common of exposures. Either way, hotel owners should not sacrifice cost for coverage, and they must be properly insured in the event that a claim takes a turn for the worst.

While Commercial General Liability policy costs are generally on the rise[4], their policy limits are not. To help, McGowan Program Administrators offers low cost, high limit umbrella options to keep you covered up to **$100 million**. We use A+ rated paper and broad coverage forms to ensure that you are adequately protected.

Many hotel franchisors actually require their franchisees to maintain $15 million in umbrella coverage. So, when you think "hotel umbrella," remember to "Think McGowan." Visit our website today for more information, or contact an underwriter to submit a risk for a quick quote.

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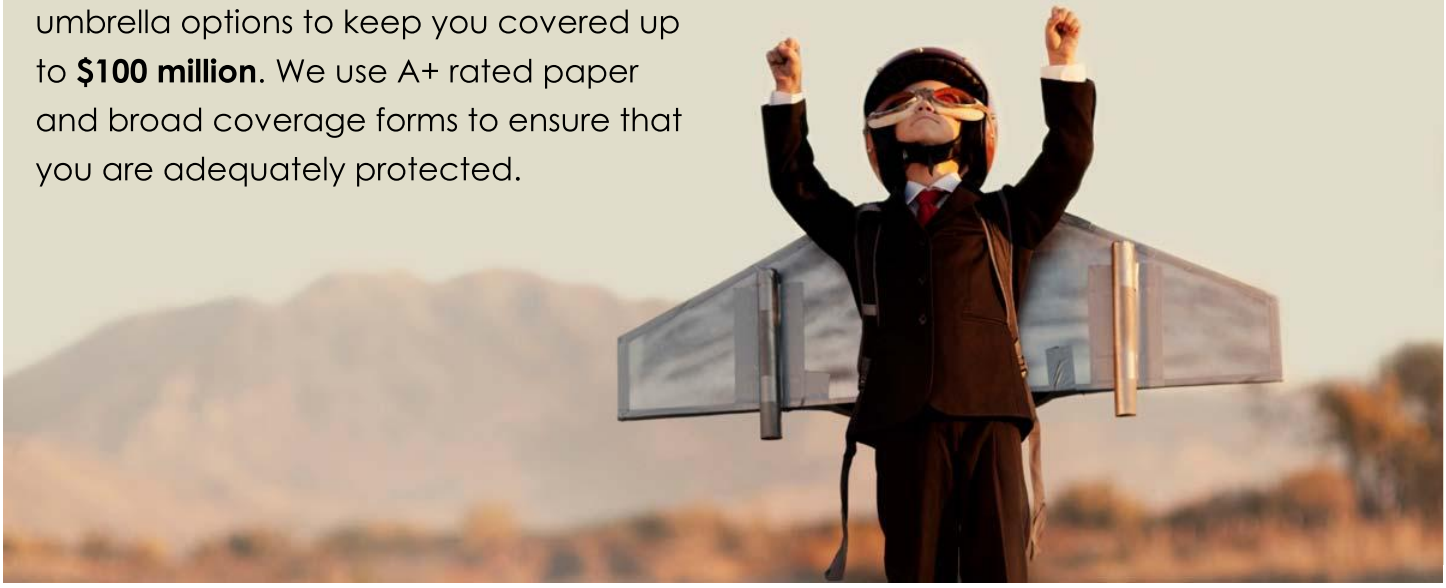

Sources

Industry Data

[1] Robertson, Jim. *How Umbrella Policies Started*. March 2000. Website. February 2018.

[2] Allianz Global Corporate Specialty SE. Global Claims Review: Liability In Focus. 1 March 2017. PDF. 25 April 2018.

[3] Congress of the United States Congressional Budget Office. The Effects of Tort Reform: Evidence from the States. June 2004. PDF. 7 May 2018.

[4] Liberty Mutual Insurance. Buyers Beware: General Liability Outlook May be Shifting. 5 July 2016. Website. April 2018.

[5] PartnerRe. Social Inflation in the U.S.: What is it and Why is it a Concern? 26 November 2010. Website. 7 May 2018.

[6] The Hartford. The Hartford Reports: More Than 40 Percent Of Small Businesses Will Experience A Claim In The Next 10 Years. 30 March 2015. Website. 25 April 2018.

[7] Duffy, Michael and Kroh, Chuck. National Trends & Emerging Claim Issues. 2017. PowerPoint. 04 May 2018.

15 Claim Scenarios

01- Murky Water Creates Clear Liability

http://www.wdrb.com/story/34365860/louisville-hotel-ordered-to-pay-31-million-after-child-drowns

https://www.seattletimes.com/seattle-news/blame-flies-over-drowning-death-in-seattle-hotel-pool/

02 - Bedbug Claims Creeping Upward

http://www.latimes.com/business/la-fi-bed-bug-lawsuit-20171004-story.html

https://www.usatoday.com/story/news/nation/2013/01/10/women-sues-hotel-over-bedbugs/1566206/

https://www.cntraveler.com/stories/2016-02-10/bed-bugs-in-hotel-rooms-are-on-the-rise-yuck

https://www.businesswire.com/news/home/20150520005843/en/Survey-Finds-Bed-Bug-Infestations-Spike-Summer

03 - Slip-and-Falls Slide into Millions

http://qctimes.com/news/local/marriott-will-appeal-m-slip-and-fall-verdict/article_92d1b6be-a89b-5858-b368-cc75f9765fe9.html

https://www.sjl-law.com/slip-fall-at-hotel-yields-plaintiff-3-6-million.html

04 - Heightened Risk from Balconies and Railings

https://www.walkuplawoffice.com/2012/11/16/california-hotel-guest-wins-38m-in-slip-and-fall-lawsuit/

https://pilotonline.com/news/article_254086ee-143b-5949-854b-a8deb7cea258.html

05 - Legionnaires Claims Spike a Fever

http://www.nkytribune.com/2017/11/keven-moore-legionnaires-disease-is-deadly-but-preventable-businesses-need-insurance-for-protection/

http://mhhlaw.net/2010/09/10/handley-and-howard-v-devi-llc-et-al/

https://www.theguardian.com/us-news/2015/aug/21/new-york-hotel-source-legionnaires-outbreak

https://www.reviewjournal.com/local/local-las-vegas/7-cases-of-legionnaires-disease-tied-to-las-vegas-rio-hotel/

https://www.cdc.gov/legionella/about/causes-transmission.html

Sources (Continued)

06 - Background Checks Run Up Bill

http://archive.knoxnews.com/news/local/100m-lawsuit-filed-in-jennifer-lee-hamptons-death-ep-410672458-359682691.html/

https://www.martinsonandbeason.com/settlement-reached-in-wrongful-death-of-alabama-woman/

https://www.phillymag.com/news/2017/02/17/elena-myers-loews-hotel-sexual-assault/

07 - Carbon Monoxide Chokes Policy Limits

https://www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm

https://www.wataugademocrat.com/news/best-western-death-lawsuits-reach-million-total-in-settlements/article_80c229aa-ff21-5d41-ac02-86236238264c.html

http://wsbt.com/news/local/niles-tragedy-brings-attention-to-carbon-monoxide-one-year-later

08 - Pool Lighting Illuminates Hazard

https://www.sheridanandmurray.com/2011/07/26/sheridan-murray-obtain-5-5-million-settlement/

http://www.mcall.com/news/all-a1_5wellsapr10-story.html

09 - Running Tab for Liquor Lawsuits

https://www.sheridanandmurray.com/2011/07/26/sheridan-murray-obtain-5-5-million-settlement/

http://www.mcall.com/news/all-a1_5wellsapr10-story.html

https://www.insurancejournal.com/news/national/2012/07/17/255919.htm

10 - Speeding Vehicle Crashes Through Coverage

https://www.lawyersandsettlements.com/settlements/18606/24m-settlement-awarded-in-wrongful-death-lawsuit.html

http://www.dailymail.co.uk/news/article-3513011/Hotel-sued-toddler-s-estate-starved-cult-member-father.html

11 - Steepening Price of ADA Compliance

http://culmotrialattorneys.com/wrongful-death-settlement/

http://nerej.com/drive-by-litigation-in-the-hotel-industry-an-unintended-result-of-the-ada-by-sherin-and-lodgen-llp

http://www.jsslaw.com/news_detail.aspx?id=557

12 - Showers Put Hotels in Hot Water

https://www.thecaterer.com/articles/503382/premier-inn-in-six-figure-settlement-following-scalding-shower-death

http://gothamist.com/2008/03/22/100_million_law.php

13 - Shuttle Vans Drive Up Claim Costs

http://www.kptv.com/story/26683032/man-hit-by-shuttle-bus-at-pdx-files-10-million-lawsuit-against-hotel

https://www.insurancebusinessmag.com/us/news/commercial-auto/automobile-accidents-cost-employers-56-7-billion-in-2017--report-99612.aspx

14 - Lack of Security Breaches Policy Limits

https://www.nbcmiami.com/news/local/Hialeah-Motel-Must-Pay-Family-of-Woman-Killed-12M-in-Negligence-Lawsuit-461911263.html

https://www.callahan-law.com/Articles/Kern-County-jury-awards-3-5-million-verdict-in-hotel-rape-case.shtml

15 - Emerging Threat of Human Trafficking

https://www.usatoday.com/story/opinion/2018/02/19/our-hotels-fighting-human-trafficking-but-we-cant-do-alone-arne-sorenson/336959002/

https://www.washingtonpost.com/news/morning-mix/wp/2017/03/14/forced-to-have-sex-with-1000-men-a-girl-is-now-suing-the-motel-that-she-says-let-it-happen/?noredirect=on&utm_term=.6fd7b0a801be

http://www.orlandosentinel.com/news/crime/os-human-trafficking-hotel-legislation-20171226-story.html

CONTACT
Megan Davis
National Program Manager
Real Estate & Hospitality Umbrella

HOME OFFICE
Old Forge Center
20595 Lorain Road
Fairview Park, OH 44126

McGOWAN PROGRAM ADMINISTRATORS
phone : 440.333.6300 | fax : 440.333.3214
mcgowanprograms.com