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HOTEL BREACHED DUTY OF CARE BY FAILING TO FOLLOW INTERNAL LEGIONELLA TREATMENT PROCEDURES.

Shortly after his stay at a resort owned by Sunstone Properties, Inc. ("Sunstone"), Gilbert Sudbeck contracted Legionnaire's Disease. *Sudbeck v. Sunstone Hotel Properties, Inc.*, No. 2:04-CV-1535, 2006 WL 2728624 (D. Ariz. July 26, 2006).

Subsequently, Sudbeck sued Sunstone alleging it negligently caused him to be exposed to Legionella Pneumophilla bacteria. Sunstone moved for summary judgment alleging both that it owed no duty to Sudbeck and that he could not prove he contracted the disease at Sunstone.

The Court rejected Sunstone's argument that it owed no duty to Sudbeck even though it acknowledged that no law or regulation compels testing for Legionella and that no industry standard requires periodic testing in the absence of a suspicion that the bacteria are present.

Regardless, it determined a duty to Sudbeck existed because Sunstone had itself established certain procedures for testing for Legionnaire's Disease. The Court further held that its failure to follow those self-imposed procedures constituted a breach of Sunstone's established duty to Sudbeck.

The Court did, however, accept Sunstone's argument that Sudbeck could not prove he was exposed to Legionella during his stay at the Sunstone resort, and therefore entered a judgment in its favor.