FEDERAL COURT RULES AGAINST EMOTIONAL DISTRESS CLAIMS FOR COVID-19 EXPOSURE IN DECISION FAVORABLE TO GATHERING PLACES, HOSPITALITY INDUSTRY

Hodgson Russ COVID-19 Litigation and Employment Action Team Alert
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On July 14, the U.S. District Court for the Central District of California dismissed emotional distress claims brought by Princess Cruise Lines passengers after an outbreak of COVID-19 aboard their ship. In *Weissberger v. Princess Cruise Lines, Ltd.*, 2020 WL 3977938, the plaintiffs alleged that, while they did not contract COVID-19 or even have symptoms of the disease, they feared contracting it while they were quarantined on board the ship. Applying federal maritime law, the court held that plaintiffs could not recover for emotional injuries from fear based solely on proximity to infected individuals.

Maritime law limits recovery for emotional distress to two narrow circumstances: (1) where the plaintiff suffers a physical impact, or (2) where there is no physical impact, but the plaintiff was placed at "immediate risk of physical harm." This limitation is often called the "zone of danger rule." Courts have long held that, under the first prong of the test, fear of contracting a disease as a result of exposure is not compensable unless the plaintiff manifests some symptom of the disease. The second prong is less clear, but some courts have held that it requires more than a "minimal" risk of immediate harm.

In *Weissberger*, the plaintiffs acknowledged that they did not manifest any COVID-19 symptoms. They limited their claim to the second prong of the test, and claimed their time on the ship put them at immediate risk of infection. The court rejected the plaintiffs' theory, and held that plaintiffs must establish that they actually manifested symptoms of COVID-19. The court was mindful that a cause of action based on mere contact with infected persons, without any later symptoms of infection, would lead to countless lawsuits brought by anyone who came in close proximity to one of the millions of people infected in the United States alone.

The court also declined the plaintiffs' invitation to limit the potential for a flood of lawsuits by carving out an exception for the cruise industry. They argued that risk of spreading disease is higher on a cruise ship than in other industries. But the court found that "restaurants, bars, churches, factories, nursing homes, prisons, and other establishments" continue to report outbreaks just like the cruise industry, and the

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risks of exposure are the same.

The *Weissberger* decision is limited to federal maritime law, and it does not set a nationwide rule. Each state makes its own rules for emotional distress claims, and those rules are mostly developed by court cases. In New York, for example, claims for emotional distress are not limited to persons who are injured or placed at immediate risk of physical injury. Immediate family members can recover for emotional distress suffered by witnessing other family members get injured. New York also allows emotional distress claims in the absence of physical injury when the emotional injury directly results from breach of a duty owed specifically to the plaintiff, and the defendant's conduct was "extreme and outrageous" and "beyond all possible bounds of decency."

Nonetheless, *Weissberger* is encouraging precedent for operators of any establishment where people congregate. Given that COVID-19 has broken out to some degree in virtually every corner of the globe, the court recognized that there must be some limitation to who can recover for their concerns about contracting the disease. A rule limiting claims only to those in which the plaintiff manifests symptoms of COVID-19 would substantially reduce liability for businesses.

Contact Patrick J. Hines (716.848.1679) to learn more about protecting your business from liability arising from the pandemic.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.