

Memorandum

COVID-19 Litigation Developments

March 20, 2020

Access to Courts Will Be More Limited in the Coming Weeks

As part of the government's efforts to ensure "social distancing," in the wake of the rapid spread of the novel coronavirus disease 2019 ("COVID-19"), federal and state courts around the country are adjusting their operations. Since last week, most courts have asked attorneys, parties and other visitors to stay away from the court if they have a fever or symptoms of respiratory illness or if they have been exposed to anyone diagnosed with COVID-19. Many have denied entry to anyone who has visited China, Italy, Iran, Japan, South Korea and other high risk locations in the past three weeks. Detailed within the following memorandum is information regarding court access and examples of COVID-19-related litigation that has already been filed.

Now, courts in many areas are continuing civil and criminal trials and grand jury proceedings without date, and some are canceling all "non-essential" services. The United States Supreme Court has postponed oral arguments calendared for this month's session running March 23 to March 25 and March 30 to April 1. Businesses should expect that even emergency relief will be harder than usual to obtain.

Parties to litigation should prepare for adjournments of in-person proceedings such as oral arguments, trials and hearings. Courts that have the capability to use telephonic and video proceedings are expected to do so whenever possible. We expect that many courts that adjudicate commercial cases will continue to issue decisions on pending matters but it is likely that many of those decisions will be delayed as court staff are encouraged to stay home. Private arbitrators and mediators are also expected to continue to try to move proceedings, although depositions and other in-person proceedings are likely to be conducted via video or postponed.

Parties to litigation should consult counsel concerning scheduling matters on individual cases and strategic and tactical considerations associated with current court operations. Some members of the legal community have suggested that the statutes of limitation for various civil claims should be extended, but we are unaware of any widespread extension or tolling of statutes of limitation.

We will continue to monitor court closings and will post additional information to our [Coronavirus \(COVID-19\) Resource Center](#) as it becomes available.

Parties Have Started to File Litigation Related to COVID-19

While we anticipate that there will be substantial business litigation arising from economic disruption related to COVID-19, it is too early for most businesses to have turned to the courts. Nevertheless, here are some examples of the COVID-19-related lawsuits that have already been filed, which may give an indication of what will come in the future:

- **Securities Class Action Against a Bio-Tech Firm.** A shareholder of Inovio Pharmaceuticals, Inc. filed a proposed class action asserting violations of federal securities laws arising out of alleged inflation of the firm's stock price through purportedly false and misleading statements claiming that Inovio had developed a COVID-19 vaccine and was planning to soon start phase one human testing in the U.S. The shareholder plaintiff claimed to have purchased Inovio stock at an artificially inflated price after the purportedly false and misleading statements were made, but before Citron Research tweeted that Inovio's claims were "ludicrous and dangerous," causing the stock price to fall 71%. *McDermid v. Inovio Pharm., Inc.*, No. 2:20-cv-1402 (E.D. Pa.).
- **Securities Class Action Against a Cruise Line.** A shareholder of Norwegian Cruise Lines filed a proposed class action asserting violations of federal securities laws arising out of alleged inflation of the company's stock price through purportedly false or misleading statements about the COVID-19 outbreak. The lawsuit points to the company's recent securities filings and press releases that it says presented a misleading positive outlook, as well as news reports that featured leaked internal communications and anonymously quoted Norwegian employees who said managers had pressured sales agents to mislead potential customers and provided scripted answers containing false reassurances about the growing pandemic. *Douglas v. Norwegian Cruise Lines*, No. 1:20-cv-21107 (S.D. Fla.).
- **Passengers' Negligence Lawsuit Against a Cruise Line.** Two elderly Florida residents have filed a lawsuit asserting negligence claims against Princess Cruise Lines Ltd. The plaintiffs were passengers on the February Grand Princess cruise that made world-wide headlines when it was refused permission to land in San Francisco because of fears that passengers were suffering from a COVID-19 outbreak. The plaintiffs claimed that Princess exposed them to an unreasonable risk of harm. They claimed Princess allowed them to board the ship after its previous voyage, which had included at least two passengers who had symptoms of COVID-19. Further, Princess allegedly allowed 62 passengers from the previous voyage to join the plaintiffs' voyage, failed to warn them before they boarded that they risked potential exposure and did not properly screen the passengers for COVID-19. *Weissberger v. Princess Cruise Lines Ltd.*, No. 2:20-cv-2267 (C.D. Cal.).
- **Class Action Against a Foreign State.** A putative class action was filed in Florida federal court against the People's Republic of China and other Chinese government entities on behalf of similarly situated American individuals and businesses injured by the defendants' conduct. The named plaintiffs allege that the defendants knew the virus "was dangerous and capable of causing a pandemic, yet slowly acted, proverbially put their head in the sand, and/or covered it up for their own economic self-interest." The

complaint asserts that the named plaintiffs “have or are virtually certain to suffer physical illness or death, as well as emotional distress, and its physical manifestations, from the effects of the outbreak, and other damages.” *Alters v. People’s Republic of China*, No. 1:20-cv-21108 (S.D. Fla.).

- **Price Gouging Class Action Against Amazon.** A plaintiff filed a class action against Amazon.com, Inc. after allegedly paying Amazon \$99 for 36 rolls of toilet paper and \$199 for two 1-liter bottles of hand sanitizer—items that normally sell for a fraction of the price. “Unfortunately, retailers, such as the Defendant here, are preying upon the public’s fear of a surging epidemic and using COVID-19 as an opportunity to pad profits by way of unlawful price increases” states the complaint filed in the Eleventh Circuit Court in and for Miami-Dade County, Florida. Florida Governor Ron DeSantis declared a state of emergency on March 9, and according to the complaint, it is illegal under the state’s Deceptive and Unfair Trade Practices Act to charge “unconscionable” prices after such a declaration. *Armas v. Amazon.com, Inc.*, No. 2020-5653 (Fla. Cir. Ct.).
- **False Advertising Claims Against a Hand Sanitizer Manufacturer.** A putative class action was filed against Vi-Jon Inc., which manufactures Germ-X hand sanitizer. The plaintiffs claim that in ads the company “affirmatively—and falsely—claims that Germ-X provides ‘Coronavirus/Flu Prevention.’” Yet, the named plaintiffs allege that as a previous FDA Warning Letter issued to Purell “has confirmed, there are no ‘adequate and well-controlled studies’ supporting a representation that alcohol-based hand sanitizers produce a clinical reduction in infection or disease of the flu or other viruses.” *David v. Vi-Jon Inc.*, No. 20-cv-0424 (S.D. Cal.).
- **Restaurant Seeks Insurance Coverage For Business Interruption.** On March 13, 2020, the Governor of Louisiana banned gatherings of 250 or more people, and on March 15, the Mayor of New Orleans ordered restaurants to cease operations at 9 p.m. and to restrict their capacity. A French Quarter restaurant then filed suit against Certain Underwriters at Lloyd’s of London seeking a declaration that its insurance policy does not contain an exclusion for a viral pandemic, covers future civil authority shutdowns due to the coronavirus and provides business income coverage “in the event that the coronavirus has contaminated the insured premises.” *Cajun Conti LLC v. Certain Underwriters at Lloyd’s London* (Civ. Dist. Ct. Orleans Parish La.).

More suits are expected in the future.

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