

Mini Kapoor Co-Authors Article in The Advocate: 'Innovative Tort Claims in the Wake of COVID-19'

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PRACTICES Labor and Employment, Litigation

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Introduction

Shelter-in-place or stay-at-home orders have kept some individuals and businesses busy, and these same orders have already put litigators and courts to work across the nation. As COVID-19 prompted executives to shut businesses down and then gradually re-open them, Plaintiff's lawyers quickly developed innovative and interesting tort claims, and these cases are likely just the tip of the iceberg. Meanwhile, defense lawyers are already gearing up for counterarguments to these newly-created claims and theories.

I. Negligent Transmission

Plaintiffs' Perspective:

As the number of cases of the virus multiply, it is increasingly clear that in order to avert the damages of COVID-19, or at least mitigate harm, people must rely on one another to do their part to try to help slow the spread. Expectations for cleanliness, social distancing, wearing masks, and the execution of state and federal guidelines are the epicenter of debate across the country. As these expectations are interpreted to be legal duties according to federal and state mandates, breaches of such duties serve as the foundation for negligence claims against those who willfully or haphazardly transmit COVID-19 to others.

To establish a cause of action for negligence, a plaintiff must prove that: (1) there is a duty owed by the defendant; (2) that duty was breached; (3) a causal connection between the defendant's conduct and the harm incurred to the plaintiff exists; and (4) the plaintiff sustained damages. The negligent transmission of diseases other than COVID-19 has long been recognized as a cause of action by courts and have been allowed based on both actual and constructive knowledge, imposing liability on individuals who have harmed others.

For example, six local businesses in the southern province of Jeju Island of South Korea filed a lawsuit in March against two travelers who tested positive for COVID-19 after a five-day trip to the island. The plaintiffs argue that despite having symptoms of COVID-19 and despite the fact that their daughter tested positive for COVID-19, the defendants still traveled to Jeju. As a result, 90 residents were quarantined, and more than 20 businesses were forced to close temporarily.

As individuals and businesses are confronted by the ramifications of people's actions, causes of action for negligent transmission of COVID-19 are sure to encounter the dockets of courts across the country.

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