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## Tidal Wave of COVID-19 Lawsuits on the Way

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**As the "new normal" sinks in with social distancing and government-imposed shutdowns, some businesses are struggling to stay afloat. Now, many are about to be slammed with a tidal wave of litigation as consumers and injured parties seek compensation for COVID-related losses. A recent flurry of class action and other mass filings gives us a hint of what lies ahead – and they appear to be only the tip of the iceberg. This article will summarize the developing litigation landscape and provide guidance for businesses that may find themselves in the crosshairs.**

### Consumer Class Actions

In the past week or so there have been a host of consumer class actions filed against businesses that continued charging dues and membership fees even though their business operations substantially shut down or curtailed services because of the pandemic. Across the country, numerous suits alleging breach of contract and consumer protection violations have been filed against gyms and sporting clubs in particular. *Jason Blank v. Youfit Health Clubs LLC*, No. CACE2006161 (Broward Circuit, Fla.) involved allegations of deceptive trade practices when the defendant gym continued to charge the plaintiff and other members monthly gym fees despite its facilities being closed due to the novel coronavirus outbreak. *See also Delvercchio v. Boston Sports Clubs*, No. 20-cv-10666 (D. Mass.); *Jampol v. Blink Holdings*, No. 20-cv-02760 (S.D.N.Y.); and *Namorato v. New York Sports Clubs*, No. 20-cv-02580 (S.D.N.Y.). Although gyms and sports clubs primarily have been targeted, the theory advanced by plaintiffs' lawyers in these suits applies to any business that continues charging fees or dues without providing some or all of its normal services. For example, in *Hunt v. Vail Corp.*, 4:20-cv-02463 (N.D. Cal.) the plaintiff alleges Vail Resorts "made the unconscionable decision to retain its millions of

customers passholder fees while closing 100% of its mountain resorts" on March 25. Plaintiff sued under the California Consumer Legal Remedies Act alleging unfair competition, false advertising, breach of contract, fraud and unjust enrichment.

## **Failure to Warn or Protect from COVID-19 Exposure**

Several recent suits pursue another common theme – that the defendant businesses allegedly failed to protect employees or patrons from the virus. The allegations include failure to adequately clean and sanitize the premises, to provide protective equipment, to warn of employees who tested positive for COVID-19, to screen workers for the virus, and generally failure to warn of the risks of infection based on particular circumstances known only to the business owner. *Evans v. Walmart, Inc.*, No. 2020L003938 (Cook County, Ill.) is a wrongful death case brought by the family of a deceased Walmart employee alleging the store failed to take steps to protect its workers. The suit, filed in Cook County Circuit Court, also alleges that Walmart failed to cleanse and sterilize the store, failed to provide employees with personal protective equipment, and failed to promote and enforce social distancing and follow other CDC directives. In a statement, Walmart defended its response to the pandemic, including additional cleaning measures, installing sneeze guards at registers, placing social distancing decals on the floors, limiting the number of customers in a store at a given time, providing employees masks and gloves, and screening associates for the virus. Similarly, in *Archer v. Carnival Corporation, et al.*, No. 20-cv-02381 (N.D. Cal.) passengers of the Grand Princess who had to be quarantined at Travis Air Force Base just north of San Francisco last month filed a class action against the cruise line's operators demanding \$5 million in damages. They claim that when the Grand Princess left for Hawaii on February 21 with 2,000 passengers on board, Carnival Corp. and Princess Cruise Lines Ltd. were already aware of the escalating health crises on sister ships abroad. A fellow Carnival cruise liner, the Diamond Princess, was docked in Japan by early February, and two of her passengers had died as a result of COVID-19 before the Grand Princess pushed off, according to the complaint. The companies also allegedly knew about COVID-19 cases on board its Australia-New Zealand cruise liner, the Ruby Princess, by mid-February, but chose instead to operate the second voyage that left port with a new set of passengers weeks later, the plaintiffs say. Aboard the Grand Princess, officials allegedly delayed cabin-based quarantine and the cancellation of large events, and waited too long to start increased sanitation procedures. The plaintiffs say this allowed the disease and panic to spread, causing their physical and emotional injuries. This same theme – inadequate response to the COVID-19 pandemic – could play out in a host of scenarios as injured individuals and their families cast blame for contracting the virus.

## **Securities Class Actions**

Given the pandemic's immediate impact on the stock market, securities class actions have already been filed. For example, Norwegian Cruise Line Holdings Ltd. was hit with a lawsuit claiming

that the company made public statements promoting the company's financial performance at the outset of the crisis that artificially inflated the company's stock price. *See Douglas v. Norwegian Cruise Lines*, No. 1:20-cv-21107 (S.D. Fla.). Plaintiffs in another securities class action, *McDermid v. Inovio Pharmaceuticals*, No. 2:20-cv-01402 (E.D. Pa.), alleged that a pharmaceutical company induced investors to acquire stock at artificially inflated prices resulting from misleading statements by the company's CEO that the company had developed a vaccine for COVID-19. Similar suits may arise as companies make difficult decisions about how to address the impact of the crisis in public filings and through accounting decisions.

## Financial Services Litigation

The pandemic's economic disruptions are also likely to spawn lawsuits based on financial service providers' handling of loans. In *Shuff v. Bank of America*, No. 5:20-cv-00184 (S.D. W. Va.), for example, homeowners facing foreclosure sought injunctive relief on behalf of a class, arguing that the public auctions allegedly required by the parties' contracts and West Virginia law could not be conducted because of the coronavirus outbreak. Several lawsuits have also been filed alleging that banks were discriminatorily prioritizing current accountholders for extensions of loans under the Paycheck Protection Program.

Servicing of loans is also likely to be an area for potential class claims. The CARES Act provides an automatic suspension of principal and interest payments on federally-held student loans through September 30, 2020 and gives homeowners who are experiencing a financial hardship due to the COVID-19 emergency a right to forbearance for federally-backed mortgages. Class suits may arise based on claims that servicers failed to apply these requirements appropriately. The crisis is also likely to exacerbate ongoing trends of suits under statutes such as the Fair Credit Reporting Act and the Fair Debt Collection Practices Act.

## Recommended Best Practices

With the federal government, states, municipalities and regulatory bodies issuing new directives and guidance on a daily basis, businesses must stay focused and be ready to adapt quickly to this changing environment. It is imperative for businesses to follow best practices and directives from the CDC and local government authorities for managing the pandemic and dealing with employee and customer safety. Baker Donelson has developed a set of [resources](#), including a [state-specific guide](#), to help keep clients informed about the latest government directives and on top of potential problems. Tracking and addressing consumer complaints may also help quell costly litigation by identifying problems before they turn into bigger issues. Finally, any business that has recurring charges for its clients and customers must assess whether value is still being provided in light of limited business operations.

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