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August 23, 2021

Unprecedented: COVID-19 Litigation Insights, Volume 2, Issue 15

As we all know, the COVID-19 situation is ever-changing. However, our commitment to bringing you current and useful information remains steadfast.

As such, we would like to introduce our new co-editors of *Unprecedented* - [Joseph A. \(Jay\) Ford](#) and [James E. Simon](#). Both Jay and James have been highly involved in the publication of this e-newsletter. They have their fingers on the pulse of litigation in this arena and will bring their knowledge and insight to you.

In addition, we are moving to a monthly publication schedule. This will allow us to better spot trending litigation and provide you the most current, useful information possible.

As always, if you would like us to address certain topics or have any other suggestions, please [let us know](#).

Thank you for reading.

[COVID-19 Task Force](#)



[What Does the Black Widow Lawsuit Mean for COVID-Era Movies?](#)

"According to sources, Johansson feels she should have earned around \$70 million from Black Widow — and that the film's less-than-stellar performance damaged her brand equity (as the type of box-office draw who can even demand as much as \$70 million per role)."

Why this is important: Scarlett Johansson alleges Disney has breached its contract by failing to guarantee Black Widow a "wide theatrical release." Instead, Black Widow was released in theaters and simultaneously on Disney+. Within days, Black Widow became the most pirated movie of the pandemic era, and Johansson alleges that Disney executives have prioritized Disney+'s subscription base while cheating her out of back-end salary bonuses payable upon the movie's blockbuster box-office performance. Disney's expected defense is to invoke force majeure and excuse Black Widow's release on its streaming service due to the COVID-19 pandemic. Hollywood stars should play close attention to Johansson's case as COVID-19 infections continue to persist. It's important for all parties to know what is expected during the pandemic and the effects it may have on movie releases and stars' compensation. --- [Victoria L. Creta](#)

U.S. Supreme Court Declines to Take Up Maine Church's Lawsuit Over COVID Restrictions

"Lawyers for the church argued that any restrictions aimed at preventing spread of the virus that curtailed religious worship would violate parishioners' constitutional and statutory rights."

Why this is important: Having previously tried and failed to obtain an injunction against COVID-19 restrictions in May 2020, a church in Maine recently has lost a second, similar attempt. Citing concerns that certain statements made by public health officials may indicate that new restrictions are incoming, the church filed a new lawsuit and moved for an injunction against the state. Although Justice Breyer denied this request without comment, it is likely fair to speculate that, among other things, this lawsuit was simply too premature. Injunctions against the state are hard enough to obtain, and reach the level of near-impossibility when the state action one is seeking to oppose has not even occurred yet. --- [James E. Simon](#)

Rutgers Faces Lawsuit Over COVID Vaccine Mandate for Students

"A nonprofit group, which has been a vocal critic of all children's vaccines, and 14 students filed a lawsuit in federal court challenging Rutgers University's mandate that students be vaccinated against COVID-19 before they can start school."

Why this is important: Rutgers University was the first college in the nation to require students taking on-campus classes to be vaccinated for COVID-19. Last week, a nonprofit group and 14 students filed a lawsuit in federal court challenging the vaccine mandate. The lawsuit is similar to a recent challenge to Indiana University's vaccine mandate, which was upheld by the U.S. Court of Appeals for the Seventh Circuit, citing a 1905 Supreme Court case that permitted Massachusetts to impose a penalty on individuals who declined smallpox vaccinations. Although the plaintiffs in that lawsuit filed an emergency appeal with the Supreme Court, Justice Amy Coney Barrett rejected their request for emergency relief. Given the Court's treatment of vaccine mandates, it seems likely that mandates at Rutgers and elsewhere will continue to be upheld. --- [Joseph A. \(Jay\) Ford](#)

Landlords File Lawsuit Against Detroit Court for Halting Evictions

"The Centers for Disease Control and Prevention earlier this month enacted a new, targeted moratorium on residential evictions through Oct. 3 in counties with heightened levels of coronavirus transmission."

Why this is important: As the ongoing saga between landlords and governmental entities over eviction moratoria continues, certain landlords in Detroit have filed suit directly against a judge and the 36th District Court. According to the lawsuit, the landlords have two complaints against the court: first, that the eviction moratoria constitute unlawful deprivation of property, and second, that the court's administrative adjournment of all eviction hearings—regardless of merit—violates the Constitution. Given that same or similar claims are being actively brought across the country following the CDC's reinstatement of its own moratorium, it will be interesting to see how lower courts handle these issues, and whether their opinions match the Supreme Court's eventual decision. --- [James E. Simon](#)

NYC Hotel Used Pandemic to Terminate Older Workers, Says Lawsuit

"A boutique hotel in Manhattan has been hit with a proposed class action accusing it of using a temporary closure triggered by the COVID-19 pandemic to terminate older, experienced employees and replace them with younger, lower-paid workers."

Why this is important: Darci Fernandez Penalosa, a 64-year-old former housekeeper, who had worked at the Kimberly Hotel for 25 years, alleges that the hotel capitalized on the pandemic to terminate older and higher paid employees. Ms. Penalosa believes that she and about 40 other employees were terminated and replaced by younger, lower paid employees. The complaint sets forth discrimination claims under the Age Discrimination in Employment Act, the New York State Human Rights Law, and the New York City Human Rights Law. However careful employers may think they are in protecting vulnerable populations from COVID-19, Ms. Penalosa's allegations, along with more than 200 other complaints filed since May 2020, highlight the necessity for employers to ensure their hiring or firing policies are void of any discrimination. --- [Victoria L. Creta](#)

Hospitals Across Texas and the U.S. Mull Vaccine Mandates in Wake of Houston Methodist Lawsuit

"In the past week alone, hospitals in Houston, San Antonio and Dallas have followed Methodist's lead."

Why this is important: Following a federal judge's dismissal of a lawsuit against Houston Methodist Hospital's COVID-19 vaccine mandate for workers, more hospitals across the country are imposing similar mandates. The plaintiffs alleged that because the vaccines had not yet received full approval from the U.S. Food and Drug Administration, they amounted to "experimental treatment" and that requiring employees to get vaccinated was a violation of federal law. The U.S. District Court disagreed, finding that "every employment includes limits on the worker's behavior in exchange for remuneration." The ruling is likely to pave the way for all types of employers to implement vaccination policies of their own. --- [Joseph A. \(Jay\) Ford](#)



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