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Unprecedented: COVID-19 Litigation Insights, Volume 2, Issue 13

Welcome back from a brief vacation-related hiatus to the 13th issue of the 2021 edition of *Unprecedented*. Americans are dining out and traveling in increasing numbers, including to destinations that have been off limits for much of the past 18 months, and COVID-19 increasingly appears to be over in large parts of the country. But the virus itself seems determined not to go out without a fight, with the more-contagious Delta variant even prompting some to call for a return to face covering requirements. Whether the outward vestiges of the COVID-19 pandemic ever fully disappear, however, the associated litigation over everything from employment disputes to price gouging complaints continues to work its way through the courts. Join us this week as we discuss these issues and more.

[Joseph V. Schaeffer](#), Editor of *Unprecedented*

[COVID-19 Task Force](#)



NYC DA Employees Weren't Paid OT While Working from Home

"Case discovery analysts in New York City's district attorneys' office were forced to put in long hours while working from home during the COVID-19 pandemic, but were unlawfully deprived of overtime pay, according to a proposed collective action."

Why this is important: A proposed collective action has arisen in New York City that, if successful, could mean the city's decision to adjust certain workers' schedules was a costly one. According to the complaint, case discovery analysts for district attorneys' offices in several boroughs claim they were forced to work extra hours during the pandemic without the benefit of overtime pay. The crux of the matter appears to be the city's decision to transition these workers from fixed eight-hour shifts to variable shifts revolving around how many cases were being completed. The plaintiffs claim this shift scheduling change forced them to go from working 40 hour weeks to up to 73 hour weeks with no increase in overtime compensation. If the allegations are true, this scheduling decision may end up hurting the city more than it benefited. --- [James E. Simon](#)

Disney Sued by Insurer in Hollywood's Latest COVID-19 Coverage Dispute

"Fireman's Fund Insurance Co. filed a complaint in Los Angeles County Superior Court asking the court to rule in the dispute over the claims, which include \$10 million in insurance coverage for delays that came after productions were allowed to start again."

Why this is important: A new wrinkle has arisen in the entertainment industry regarding pandemic-related insurance coverage disputes. Walt Disney Co.'s insurer has filed a complaint seeking resolution of a dispute between it and Disney regarding "first wave" and "second wave" COVID-19 claims. In short, the insurer has been providing coverage for "first wave" claims, which are based on business interruption damages and other losses directly relating to 2020's government-mandated shutdowns. However, the insurer is contesting whether coverage exists for "second wave" claims, which are not related to government-mandated shutdowns but rather caused by tangential events (film shooting stopping on set because a director was exposed to an infected person, for example). If the insurer's suit is successful, this first and second wave distinction could be a valuable line of demarcation for limiting coverage as the pandemic continues to decline. --- [Victoria L. Creta](#)

Iowa Insurer not Required to Cover COVID-19 Losses, Court Rules

"The initial lawsuit against Cincinnati Insurance Co. came after it refused to compensate Oral Surgeons for nonemergency procedures that were canceled because of pandemic restrictions."

Why this is important: The Eighth Circuit Court of Appeals delivered a major victory for insurance carriers on July 2 when it issued the first federal appellate decision resolving coverage disputes over COVID-19 related business interruptions. The Eighth Circuit, which covers much of the Midwest, held that the policy language requiring direct physical loss of property was not triggered, since the underlying business interruptions were caused by pandemic restrictions. Given that most business interruption policies contain similar language, the Eighth Circuit's decision will make it much harder for plaintiffs to bring viable COVID-19 coverage disputes in the federal district courts within its territory. It will also put plaintiffs at a disadvantage in the federal courts in the other appellate circuits, as they will have to explain why those courts should part ways with their colleagues on the Eight Circuit. --- [Joseph V. Schaeffer](#)

CDC Appeals Overturning Florida's Cruise Ship Lawsuit

"Florida sued the CDC because it felt the CSO unfairly singled out one industry and was hurting Florida's economy, and a judge agreed with Florida."

Why this is important: No doubt stinging from its loss to Florida in the ongoing cruise ship litigation, the CDC has chosen to appeal a recent federal ruling against it. Back in June, Florida successfully sought and obtained a preliminary injunction against the CDC's "conditional sailing order" that effectively throttled the vacation cruise industry that brings millions of tourism dollars to Florida every year. The CDC is now seeking to stay and overturn the injunction, claiming that the public interest of preventing future COVID-19 breakouts outweighs any harms Florida might suffer. Given the increasing relaxation of COVID-19 regulations, however, it will be interesting to see if the CDC's arguments are more persuasive to the Eleventh Circuit than they were to the federal district court. --- [James E. Simon](#)

Lawsuit Accuses Amazon of Price Gouging During COVID-19 Pandemic

"The expanded lawsuit accuses Amazon of engaging in 'unconscionable' and unlawful price increases during the COVID-19 pandemic, inflating prices for essential goods by upwards of 1,800%."

Why this is important: A class action lawsuit has been brought against Amazon claiming that drastic price increases for essential goods constituted unconscionable and unlawful price gouging. The examples raised in the lawsuit are certainly eye-opening: the prices of many essential items such as food or PPE allegedly rose anywhere from 400 to 1800 percent on Amazon's website during the height of the pandemic. Although there are no federal laws against price gouging, it is telling that Amazon itself asked Congress to codify price gouging on the federal level--apparently recognizing the dilemma of extreme supply and demand issues, and seeking to create a framework in which it could stay and avoid liability. Although this lawsuit was filed last year, the plaintiffs' attorneys recently announced that they will seek to expand the class to include Amazon customers nationwide. It will be interesting to see how this class expansion plays out, particularly given the lack of uniform law in this area across the United States. --- [Victoria L. Creta](#)

Harvard Wins Dismissal of Lawsuit Seeking Covid-19 Tuition Refund

"A federal judge has dismissed a lawsuit against Harvard University brought by three students who demanded - on behalf of themselves and other students - a partial tuition refund after Harvard moved classes online during the coronavirus pandemic."

Why this is important: Last month, college students seeking tuition refunds for last year's switch to online learning were dealt another blow. A federal judge dismissed a proposed class action lawsuit brought by three Harvard University students who alleged that it was unfair for Harvard to charge full tuition for online classes. The students alleged that "the online learning option Harvard offered following the termination of its in-person services is subpar in practically every respect..." The federal judge, however, rejected the students' argument, finding that they failed to show Harvard had contractually promised that they would receive in-person instruction and access to on-campus facilities during the spring 2020 semester. While many students have filed similar lawsuits against colleges and universities over the last year, few have been successful. --- [Joseph A. \(Jay\) Ford](#)



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