

PANDEMIC + HURRICANE PART 3

Emerging Issues for Property Insurance Coverage, Litigation and Legislation

Webinar will start momentarily



PANDEMIC + HURRICANE - PART 3

Emerging Issues for Property Insurance Coverage, Litigation and Legislation



Katie Webb

Shareholder
Colodny Fass,
Governmental Consulting

AGENDA

- **Jeff Brandes**, Senator - Florida Senate
- **William W. Large**, President - FL Justice Reform Institute
- **Matthew Scarfone**, Shareholder - Colodny Fass

Speaker: Jeff Brandes



Jeff Brandes
Senator - Florida Senate

Jeff Brandes is a lifelong resident of St. Petersburg, a Veteran, and a local businessman. After serving in the Army from 1999 to 2006, he joined his grandfather in the family lumber business. He was first elected to the Florida House of Representatives in 2010. He was elected to the Florida Senate in 2012, then reelected in 2014, 2016, and 2018. He has chaired the Senate committee on Transportation, the Appropriations Subcommittee on Transportation, Tourism and Economic Development, and currently he serves as chair of the Senate Appropriations Subcommittee on Criminal and Civil Justice. He is nationally recognized as a policy leader in the areas of autonomous vehicles and mobility, flood insurance, and criminal justice reform. Senator Brandes and his wife, Natalie, have four children: Charlotte "Lottie," Elizabeth "Lizzie," Colin, and Conor.

Speaker: William W. Large



William W. Large
President - FL Justice Reform Institute

William W. Large is a passionate advocate for legal reform and an experienced attorney who led Gov. Jeb Bush's fight to reform medical malpractice rules to cap damage awards. As president of the Florida Justice Reform Institute (FJRI), Mr. Large is responsible for the daily operations of FJRI, which is a lobbying organization in Tallahassee, FL. Prior to serving as president, Mr. Large served as Governor Bush's deputy chief of staff and was responsible for coordinating and advancing Governor Bush's vision from the governor's executive office to several state agencies, including: the Agency for Health Care Administration; the Agency for Persons with Disabilities; the Department of Health; the Department of Children and Families; the Department of Elder Affairs; the Department of Veteran Affairs; and the Department of Business and Professional Regulation.



Pending Litigation May 15, 2020

Restoring Fairness, Equality and Justice



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

CAFE INTERNATIONAL HOLDING
COMPANY LLC, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CLASS ACTION

CHUBB LIMITED and WESTCHESTER
SURPLUS LINES INSURANCE COMPANY,

JURY TRIAL DEMANDED

Defendants.
_____ /

CLASS ACTION COMPLAINT

Plaintiff Cafe International Holding Company LLC, individually and on behalf of all others similarly situated, files this class action against Defendants Chubb Limited and Westchester Surplus Lines Insurance Company, and in support states the following:

INTRODUCTION

1. Plaintiff Cafe International Holding Company is the owner and operator of IT Italy, a fine dining restaurant located at 500 East Las Olas Boulevard in downtown Fort Lauderdale, Florida.

2. To protect the restaurant and the income from operation of the restaurant, Plaintiff purchased a property insurance policy with policy number FSF15184188001 (the "Policy").

3. The Policy was issued by Defendant Westchester Surplus Lines Insurance Company ("Westchester"). Defendant Chubb Limited ("Chubb") is Westchester's parent company. Under the Policy, Chubb is responsible for receiving and managing claims and loss

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com
RICHARD J. DOREN, SBN 124666
rdoren@gibsondunn.com
DEBORAH L. STEIN, SBN 224570
dstein@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel.: 213.229.7000
Fac.: 213.229.7520

ROBINSON & COLE LLP
STEPHEN E. GOLDMAN
sgoldman@rc.com
WYSTAN M. ACKERMAN
wackerman@rc.com
Motions for pro hac vice admission forthcoming
280 Trumbull Street
Hartford, CT 06103
Tel.: 860.275.8200
Fac.: 860.275.8299

Attorneys for Plaintiff Travelers Casualty
Insurance Company of America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAVELERS CASUALTY
INSURANCE COMPANY OF
AMERICA,

Plaintiff,

v.

GERAGOS & GERAGOS, A
PROFESSIONAL CORPORATION,

Defendant.

CASE NO. 2:20-cv-03619

COMPLAINT FOR DECLARATORY
JUDGMENT AND DEMAND FOR
JURY TRIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

RURAL COMMUNITY WORKERS ALLIANCE
and JANE DOE;

Plaintiffs,

v.

SMITHFIELD FOODS, INC. AND SMITHFIELD
FRESH MEATS CORP.,

Defendants.

CIVIL ACTION NO:

COMPLAINT

INTRODUCTORY STATEMENT

1. Supplying the nation with food during the COVID-19 crisis is an essential task.
2. Equally essential is the need for businesses engaged in the production and sale of food—including large corporate meat and poultry processors like Defendants Smithfield Foods, Inc. and Smithfield Fresh Meats Corp. (collectively “Smithfield”)—to ensure the safety and protection of their critical workforce, the communities within which they operate, and the public generally
3. In the last month, America has seen how an employer’s failure to protect its workforce can result in disaster. Thousands of workers employed in the food supply chain around the country have fallen ill with COVID-19. They have gone on to infect family members and community members and their illnesses have strained our healthcare infrastructure. Many workers and their family members have died as a consequence of infections that have spread at workplaces in our Nation’s food supply chain.
4. Workers employed by Smithfield are all too familiar with this phenomenon.
5. Smithfield is one of the largest and most profitable meat producers in the United States.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

DYLAN EGLESTON, Individually And On Behalf
Of All Others Similarly Situated,

Plaintiff,

v.

UNIVERSITY OF FLORIDA BOARD OF
TRUSTEES, AS THE PUBLIC BODY
CORPORATE OF UNIVERSITY OF
FLORIDA,

Defendant.

Case No.:

1-20-cv-106-A
6

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Dylan Egleston ("Plaintiff"), alleges on personal knowledge against Defendant University of Florida Board of Trustee, as the Public Body Corporate of University of Florida ("Defendant") as follows:

NATURE OF THE CASE

1. This is an action for breach of contract and unjust enrichment against the Defendant.
2. Specifically, as set forth more fully below, Plaintiff and the putative Class members contracted with Defendant for certain services and paid for those services in the form of tuition and other fees. As a result of limitations Defendant has imposed, Defendant has not delivered the services that Plaintiff and the putative Class contracted and paid for.
3. As a result, Plaintiff and the putative Class are entitled to a refund on tuition and fees paid for services, facilities, access and/or opportunities not delivered.

NORTH CAROLINA

ROWAN COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2020 APR 28 A 9:46 No. 20-cvs-728

THOMAS DEL MARSHALL, by and through)
Attorney-in-Fact MELISSA STIREWALT, and)
ROBERT LEROY WHITLATCH, by and)
through Attorney-in-Fact LORETTA HAIR,)

Plaintiffs,

v.

ACCORDIUS HEALTH LLC,)
ACCORDIUS HEALTH AT SALISBURY,)
LLC, d/b/a The Citadel Salisbury,)
THE PORTOPICCOLO GROUP, LLC,)
SIMCHA HYMAN, NAFTALI)
ZANZIPER, KIMBERLY MORROW, and)
SHERRI L. STOLTZFUS,)

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF
PURSUANT TO G.S. § 131E-123

Plaintiffs THOMAS DEL MARSHALL, by and through Attorney-in-Fact MELISSA STIREWALT, and ROBERT LEROY WHITLATCH, by and through Attorney-in-Fact LORETTA HAIR (collectively "Plaintiffs"), by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. This lawsuit, filed pursuant to G.S. § 131E-123, requests injunctive relief to preserve the status quo and to ensure that The Citadel Salisbury ("The Citadel"), a licensed nursing home in Rowan County, North Carolina, complies with the North Carolina Nursing Home Patients' Bill of Rights ("Bill of Rights"), G.S. § 131E-115, *et seq.*

FLORIDA'S HEALTH CARE PROVIDERS AND FACILITIES
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

March 26, 2020

The Honorable Ron DeSantis
Governor, State of Florida
PL 05 Capitol
400 South Monroe Street
Tallahassee, Florida 32399

Re: Medical Professional Liability Protections

Dear Governor DeSantis:

The undersigned and listed organizations appreciate the recent actions you have taken to assist physicians, hospitals, and other health care providers on the frontlines of the COVID-19 pandemic. We understand the need to conserve the resources necessary to treat those infected with the virus while being able to continue care for those with other medical conditions, all balanced against the need to protect the health and safety of health care providers. Your recent Executive Order No. 20-72, which suspends the provision of non-essential elective medical procedures, will help to accomplish these objectives.

This order, however, will have unintended consequences. As a result of your directives in Executive Order No. 20-72, health care providers are required to make new and difficult decisions on which patients to see and treat immediately, and which patients can wait for care until the executive order is lifted. Those health care providers who decide to move forward with treatment may have to do so with inadequate resources, such as a lack of personal protective equipment. These providers risk exposing their staff, their patients, and themselves to infection from the virus.

It is not difficult to imagine the potential liability that health care providers will likely face based on the decisions they are forced to make during this crisis. The Governor of New York recently issued an executive order responding to a similar problem, suspending certain provisions of New York law to provide immunity to health care providers from civil liability "for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional."

Something must be done to ensure Florida's health care providers are able to make the hard, necessary decisions required by Executive Order No. 20-72 without fear of later having to defend themselves against lawsuits as a result of those decisions. We offer three potential solutions below, but welcome the opportunity to discuss these and other potential solutions.

Suspend certain provisions of the Good Samaritan Act by executive order. You, or the Director of Emergency Management as your State Coordinating Officer, may issue an executive order or emergency order temporarily suspending the effect of the following provisions of statute as these provisions would "prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency," Executive Order No. 20-52,

Section 2. Specifically, we ask you to consider suspending the application of the following language in section 768.13(2)(a), Florida Statutes:

- the clause "gratuitously and"; and
- the clause "where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances,"

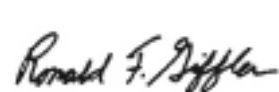
This would provide that any person, including those licensed to practice medicine, who in good faith render emergency care or treatment in direct response to a public health emergency, without objection of the injured party, would not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment. This will support the directives required by Executive Order No. 20-72 by encouraging health care providers to provide all necessary treatment and to postpone non-essential treatment without the fear of liability.

Limit liability by executive order. Another option would be to use your broad emergency management powers under section 252.36, Florida Statutes, and Executive Order No. 20-52 to provide that health care providers acting in compliance with Executive Order No. 20-72 are immune to civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such health care provider.

Extend sovereign immunity to health care providers acting in compliance with Executive Order No. 20-72. Alternatively, we ask you to consider issuing an executive order deeming all health care providers providing service in compliance with Executive Order No. 20-72 as doing so under the auspices of and as agents of the Department of Health, such that this conduct is subject to the immunity extended by section 768.28, Florida Statutes. We acknowledge that this may require additional action by the Department of Health or another state agency to ensure such state agency has the requisite control over health care providers acting pursuant to Executive Order No. 20-72 to entitle them to sovereign immunity. We would note that you appear to have done something similar in Executive Order No. 20-52, by authorizing health care providers licensed by states other than Florida to render medical services in Florida during the emergency under the auspices of the American Red Cross or the Department.

Please contact us if we can provide additional information. Jeff Scott, General Counsel for the Florida Medical Association can be reached at 850.224.6496; and William Large, President of the Florida Justice Reform Institute can be reached at 850.222.0170.

Sincerely,



Ronald F. Giffler, MD
President
Florida Medical Association



Eric A. Goldsmith, DO, FACOS
President
Florida Osteopathic Medical Association



William W. Large
President
Florida Justice Reform Institute

April 23, 2020

Governor DeSantis' Re-Open Florida Task Force Executive Committee

Lieutenant Governor Jeanette Nuñez (LtGovernorJeanette.Nunez@eog.myflorida.com)
Jimmy Patronis, Florida Chief Financial Officer (CFO.Patronis@MyFloridaCFO.com)
Ashley Moody, Florida Attorney General (ashley.moody@myfloridalegal.com)
President Bill Galvano, President, Florida Senate (galvano.bill.web@flsenate.gov)
Speaker Jose Oliva, Speaker, Florida House of Representatives (jose.oliva@myfloridahouse.gov)
Senator Wilton Simpson, President-Designate, Florida Senate (simpson.wilton@flsenate.gov)
Representative Chris Sprowls, Speaker-Designate, Florida House of Representatives
(chris.sprowls@myfloridahouse.gov)
Commissioner Richard Corcoran, Commissioner of Education (Commissioner@fldoe.org)
Jamal Sowell, President & CEO, Enterprise Florida, Inc. (jsowell@eflora.com)
Mayor Carlos Gimenez, Mayor, Miami-Dade County (mayor@miamidade.gov)
Mayor Dale Holness, Mayor, Broward County (dholness@broward.org)
Mayor David Kerner, Mayor, Palm Beach County (dkerner@pbcgov.org)
John Couris, President & CEO, Tampa General Hospital (jcouris@tgh.org)
Josh D'Amato, President, Walt Disney World Resort (josh.damato@disney.com)
Todd Jones, CEO, Publix Super Markets (todd.jones@publix.com)
Syd Kitson, Chairman, Board of Governors for the State University System (skitson@kitsonpartners.com)
Paul Reilly, Chairman & CEO, Raymond James Financial (Paul.Reilly@RaymondJames.com)
Alex Sanchez, President & CEO, Florida Bankers Association (asanchez@floridabankers.com)
Eric Silagy, President & CEO, Florida Power & Light Company (eric.silag@fpl.com)
John Sprouls, CEO, Universal Orlando Resort, Executive Vice President, Universal Parks & Resorts
(john.sprouls@universalorlando.com)
Patrick Sunderlin, Vice President, Global Supply Chain, Lockheed Martin Corporation
(patrick.s.sunderlin@lockheedmartin.com)
Joe York, President, AT&T Florida and Caribbean (jy0365@att.com)

Dear Executive Committee Members:

The undersigned organizations thank you for your service on the Governor's Re-Open Florida Task Force Executive Committee in advising the Governor as to the timely but thoughtful reopening of Florida's economy in the wake of the COVID-19 pandemic.

Moving forward, one essential part of that effort will be making sure that Florida's health care providers—serving at the frontlines of the pandemic and bearing the brunt of its effects—are protected from liability resulting from health care decisions made in connection with this public health emergency. We renew the request we made in our March 26, 2020 letter to the Governor (a copy of which is attached) and ask that the committee advise the Governor to issue an executive order as soon as possible affording that liability protection.

It is imperative that Florida's health care providers are protected from lawsuits that may result from their response to the public health crisis. That response includes not only treatment of patients with COVID-19, but also the numerous decisions health care providers have been forced to make under the Governor's Executive Order No. 20-72, which suspends "non-essential," "non-urgent or non-emergency" procedures and surgeries. While this order was important in ensuring the State maintained adequate health care resources to respond to the crisis, the order has also required health care providers to make difficult decisions on what is, and what is not, elective or non-urgent medical treatment—all at the risk of future liability from a patient or his or her family who disagrees with that decision. Even for essential treatment, some health care providers are forced to work with inadequate

resources, such as a lack of personal protective equipment. These providers risk exposing their staff, their patients, and themselves to infection from the virus.

As the U.S. Secretary of Health and Human Services reminded all the nation's governors in his March 24, 2020 letter regarding essential steps to assist the nation's health care providers, "[f]or health care professionals to feel comfortable serving in expanded capacities on the frontlines of the COVID-19 emergency, it is imperative that they feel shielded from medical tort liability." At least 10 other states' governors have answered the call, issuing executive orders providing liability protection for health care providers, including Arizona, Arkansas, Connecticut, Georgia, Illinois, Michigan, Mississippi, New Jersey, New York, and Vermont.

Governor DeSantis should follow the lead of the 10 states listed above and issue an executive order that states that a "health care provider" as defined in section 766.1115, Florida Statutes, shall be immune from suit for any injury or death resulting from the health care provider's actions undertaken in good faith while providing health care services in support of the State's COVID-19 response. Importantly, this statutory definition does not include—and the requested immunity would not extend to—long-term care facilities or nursing homes.

Our organizations wholeheartedly agree that Florida's economy should be reopened in a timely and measured way. But in doing so, the committee and the Governor should not neglect the health care providers that put their lives and livelihoods on the line to respond to the crisis and facilitate the conditions that allow for any reopening. We request that you include health care provider liability protection in your recommendations to the Governor. Thank you for your consideration, and please contact us if you require additional information.

Sincerely,



Ronald F. Giffler, MD
President
Florida Medical Association



Eric A. Goldsmith, DO, FACOS
President
Florida Osteopathic Medical Association



William W. Large
President
Florida Justice Reform Institute



GEORGIA DEPARTMENT OF LAW

CHRISTOPHER M. CARR
ATTORNEY GENERAL

40 Capitol Square SW
Atlanta, Georgia 30334-1300

www.law.ga.gov
(404) 656-3300

May 11, 2020

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Diane Feinstein
Ranking Member
Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

Re: State Attorneys General on COVID-19 Pandemic Liability Protections

Dear Chairman Graham and Ranking Member Feinstein,

As Attorneys General, it is our responsibility to protect the interests of the residents of our states. Notably, it is the role of the Attorney General to help maintain a stable legal and regulatory environment. It is tragic that the COVID-19 pandemic has caused widespread loss of life, and it is also tragic that people have lost their jobs, been forced to shut down their businesses and had to completely abandon traditional activities in their daily lives and places of work. To avoid even greater damage to our economy and people's lives, it is important that we are able to restart our free enterprise system, safely and appropriately.

As we reopen our economies, the need for a stable, predictable legal environment has never been greater. The COVID-19 pandemic is likely to create a surge in civil litigation targeting well-intentioned businesses for taking pandemic mitigation measures; therefore, this country is in need of a common-sense framework to provide liability protections for much-needed goods and services while still ensuring victims are able to seek legal redress and compensation where appropriate.

On the one hand, our economy will only recover if customers and employees have the confidence to return to the marketplace, and, on the other, businesses need clearly defined expectations for the safe and appropriate continuance of operations while being protected from devastating civil liability litigation concerning baseless COVID-related claims.

States across the country have recognized the need for timely, targeted and tailored civil liability protections in light of the pandemic - to date 23 states have enacted liability protections for first responders and healthcare workers. In the wake of this unprecedented crisis, the extension of appropriate post-pandemic liability protections is needed at both the state and federal levels for businesses, manufacturers of personal protective equipment, first responders, healthcare workers, healthcare facilities, and members of law enforcement, among others.

The undersigned state Attorneys General, representing 21 states, are joining together to urge Congress, with insight and assistance from groups like the U.S. Chamber of Commerce (and its Institute for Legal Reform) and the President's Congressional Economic Task Force, to enact specific liability protections that help mitigate the threat of frivolous COVID-related litigation and address pandemic protections that are not currently covered in federal law, such as the SAFETY Act and PREP Act. Civil liability protections should not, however, be extended to businesses engaging in willful misconduct, reckless infliction of harm or intentional infliction of harm. We believe criminal penalties, regulatory fines and agency oversight should be able to capture bad actors and civil lawsuits should be available for any citizens hurt by a business or individual acting with disregard for safety during the COVID-19 pandemic.

In doing so, we request that these federal liability protections set a foundation for states to build upon. Any federal legislation must preserve states' autonomy and ability to add additional state-tailored protections against frivolous litigation, through state legislation and executive order, based on each one's unique circumstances. Additionally, these civil liability protections should be extended to all businesses and non-profit organizations, without regard to size or for-profit or not-for-profit status, that work in good faith to comply with guidance provided by government authorities and consistent with industry best practices as our states move to restart their economies.

We are confident your efforts will lead to meaningful results for our states, and we look forward to supporting the implementation of this type of legislation in any way we can.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Carr".

Christopher M. Carr
Georgia Attorney General

Public Support for Coronavirus Lawsuit Protections

61% support
30% strongly support
31% somewhat support

27% oppose
8% strongly oppose
19% somewhat oppose

Restoring Fairness, Equality and Justice



Potential Legislation

Restoring Fairness, Equality and Justice



1 A bill to be entitled
2 An act relating to airborne respiratory disease;
3 creating s. 768.38, F.S.; stating that there is no
4 common law right of action for wrongful transmission
5 of an airborne respiratory disease; abrogating any
6 common law action; creating an exception allowing for
7 criminal restitution; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 768.38, Florida Statutes, is created to
12 read:

13 768.38 Airborne respiratory disease.--

14 (1) There is no recognized common law tort for, or related
15 to, the wrongful transmission from one individual to another of
16 an airborne respiratory disease. To the extent that such a tort
17 may have existed in the common law, it is hereby abrogated.

18 (2) Nothing in this section shall bar or limit an award
19 under s. 775.089.

20 Section 2. This act shall take effect upon becoming law.

121 respiratory disease from the premises;
122 (d) Enforce social distancing or other rules of behavior;
123 (e) Furnish or require personal protective equipment or
124 anti-bacterial or anti-viral cleaning supplies; or
125 (f) Close the business or substantially impact business
126 operations merely because of the general danger that individuals
127 may contract a communicable respiratory disease while on such
128 premises.

129 (2) A business establishment may be liable for
130 transmission of a communicable respiratory disease occurring on
131 the premises only if the injured party proves by clear and
132 convincing evidence that the transmission actually occurred on
133 the premises to the exclusion of any other reasonable means of
134 transmission, that the property owner had actual knowledge of
135 infection in the affected person prior to the transmission to
136 the injured person, that the premises owner had an affirmative
137 duty to prevent such transmission, that transmission did not
138 occur by another means, that the premises owner had a legal
139 ability to exclude the infected individual from the premises
140 prior to the time of transmission, that it is unlikely that the
141 injured party would have contracted the communicable respiratory
142 disease by other means, and that the injuries sustained are a
143 direct and proximate cause of the transmission. This subsection
144 is intended to define and control over any related or similar
145 common law action regarding transmission of a communicable
146 respiratory disease.

94 (b) Arranging for or providing care or treatment of an
95 individual impacted by the health care facility's or health care
96 professional's decisions or activities in response to or as a
97 result of the COVID-19 outbreak or COVID-19 emergency rules; and

98 (c) The health care facility or health care professional
99 is arranging for or providing health care services in good
100 faith.

101 (3) The immunity provided in subsection (2) shall not
102 apply if the damage was caused by an act or omission
103 constituting gross negligence, recklessness or conduct with an
104 intent to harm by a health care facility or health care
105 professional providing health care services, and shall not apply
106 to consumer protection actions brought by the Attorney General,
107 or to false claims actions brought by or on behalf of the state.

108 (4) Notwithstanding any general or special law to the
109 contrary, a volunteer organization shall be immune from suit and
110 civil liability for any damages occurring in or at the volunteer
111 organization's facility where the damage arises from use of the
112 facility for the state's response and activities related to the
113 COVID-19 emergency, unless it is established that the damages
114 were caused by the volunteer organization's gross negligence,
115 recklessness, or conduct with an intent to harm.

43 (3) To the extent that common law premises liability can
44 be defined to include to transmission of a communicable
45 respiratory disease occurring on the premises, the injured party
46 must prove by clear and convincing evidence all of the following
47 additional elements of the cause of action:

48 (a) The transmission actually occurred on the premises to
49 the exclusion of any other reasonable means of transmission;

50 (b) The premises owner had actual knowledge of infection
51 in the affected person prior to the transmission to the injured
52 person;

53 (c) The premises owner had the legal authority and actual
54 ability to exclude the known infected individual from the
55 premises prior to the time of transmission;

56 (d) It is unlikely that the injured party did or would
57 have contracted the communicable respiratory disease by other
58 means; and

31 as authorized by and defined by a COVID-19 executive order.

32 (d) "Health care provider" means any person providing
33 health care services or selling or leasing health care goods and
34 supplies, whether for-profit or not.

35 (2) Notwithstanding any general or special law to the
36 contrary, except as provided in subsection (3), an essential
37 worker or health care provider shall be immune from civil
38 liability with respect to claims from any customer, client,
39 patient or employee for any injuries or death alleged to have
40 been caused as a result of the customer, client, patient or
41 employee contracting COVID-19 while interacting with the
42 essential worker or health care provider.

43 (3) The immunity from civil liability provided in this
44 section shall not apply if the injuries or death were caused by
45 an act or omission constituting gross negligence, reckless
46 misconduct, or intentional infliction of harm. The immunity
47 provided in this section does not preclude an employee from
48 seeking an appropriate remedy under Chapter 440 for any injuries
49 or death alleged to have been caused as a result of the employee
50 contracting COVID-19.

Florida Justice Reform Institute
210 South Monroe St.
Tallahassee, FL 32301
Email: william@fljustice.org
Website: www.fljustice.org



Speaker: Matthew Scarfone



Matthew Scarfone
Shareholder - Colodny Fass

Matt Scarfone, a Shareholder in the Colodny Fass Litigation Division, focuses his practice on insurance and commercial matters. He assists the firm's clients in all aspects of residential and commercial property insurance claims, including best practices counseling, fraud investigations and litigation. Mr. Scarfone has litigated a wide array of insurance related matters, including cases involving residential and commercial claims, liability insurance coverage and bad faith. Mr. Scarfone is admitted to practice law in the states of Florida and Michigan, and in the US District Courts for the Southern, Middle and Northern Districts of Florida. He is certified by the FL Division of Insurance Agent and Agency Services as a Continuing Education Instructor in Adjuster Law and Policy.

Insuring Provision

SECTION I – PERILS INSURED AGAINST

A. Coverage A – Dwelling And Coverage B – Other Structures

1. We insure against risk of direct loss to property described in Coverages **A** and **B** only if that loss is a physical loss to property.

“Although Source Food's beef product in the truck could not be transported to the United States due to the closing of the border to Canadian beef products, the beef product on the truck was not—as Source Foods concedes—physically contaminated or damaged in any manner. To characterize Source Food's inability to transport its truckload of beef product across the border and sell the beef product in the United States as direct physical loss to property would render the word ‘physical’ meaningless.”

Source Food Tech., Inc. v. U.S. Fid. & Guar. Co., 465 F.3d 834, 838 (8th Cir. 2006)

**BROWARD COUNTY ADMINISTRATOR'S
EMERGENCY ORDER 20-03
Directing Shelter-in-Place: Safer at Home Policy**

* * *

WHEREAS, this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time;

“First Liberty urges us to incorporate into the insurance policy the relatively narrow definitions of ‘structural’ as set forth in the Florida Building Code (2004) and ‘structural damage’ as ‘clarified’ by the 2011 amendment to Florida Statutes § 627.706. But we must determine the plain meaning of the term ‘structural damage’ utilizing the procedure required by Florida law. *See Garcia v. Fed. Ins. Co.*, 969 So.2d 288, 291–92 (Fla. 2007) (stating that insurance contracts are construed according to their plain meaning and that, when doing so, courts may consult dictionary definitions).”

Hegel v. First Liberty Ins. Corp., 778 F.3d 1214, 1222 (11th Cir. 2015)

F. Additional Coverages

2. Reasonable Emergency Measures

- a. We will pay up to the greater of \$3,000 or 1% of your Coverage **A** limit of liability for the reasonable costs incurred by you for necessary measures taken solely to protect covered property from further damage, when the damage or loss is caused by a Peril Insured Against.

627.7152 Assignment agreements.—

* * *

(2)(c) If an assignor acts under an **urgent or emergency circumstance** to protect property from damage and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage to the property, **an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or 1 percent of the Coverage A limit** under such policy. For purposes of this paragraph, the term “urgent or emergency circumstance” means a situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage.

Loss of Use

E. Coverage D – Fair Rental Value

1. If a loss to covered property described in Coverage **A**, **B** or **C** by a Peril Insured Against under this Policy makes that part of the Described Location rented to others or held for rental by you **unfit for its normal use**, we cover its:

Fair Rental Value, meaning the fair rental value of that part of the Described Location rented to others or held for rental by you less any expenses that do not continue while that part of the Described Location rented or held for rental is not fit to live in.

1. Additional Living Expense

If a loss covered under SECTION I makes that part of the “residence premises” where you reside **not fit to live in**, we cover the Additional Living Expense, meaning:

- a. **Any necessary increase in living expenses** incurred by you so that your household can maintain its normal standard of living.

12. Ordinance Or Law

- a. You may use up to 25% of the limit of liability that applies to Coverage **A** for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:
 - (1) The construction, demolition, remodeling, renovation or repair of that part of a building covered under Coverage **A** damaged by a Peril Insured Against; or

Halsey Beshears, Secretary

Ron DeSantis, Governor

FREQUENTLY ASKED QUESTIONS

RELATED TO BARBERSHOPS AND COSMETOLOGY SALONS

PURSUANT TO EXECUTIVE ORDER 20-120 AS ISSUED MAY 9, 2020

EXECUTIVE ORDER 20-120 IS EFFECTIVE ON MONDAY, MAY 11, 2020, AT 12:01 A.M.

Are any other measures expected of barbershops or salons? Are any other measures recommended?

Yes. Barbershops and salons should be thoroughly cleaned and disinfected prior to reopening, and disinfection practices should be repeated, at minimum, between each day of operation. All surfaces, tools, and linens should be disinfected, even if the items were cleaned before the barbershop or salon was closed.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

* * *

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

Liability Coverage

A. Coverage E – Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence"

Duties to Invitees, Licensees and Trespassers

- Business invitees –
 - Reasonable care in maintaining a safe condition
 - Warn of latent or concealed perils that are known or should be known
- Licensees –
 - Refrain from wanton negligence or willful misconduct
 - Avoid intentionally exposing licensee to danger
 - Warn of dangerous conditions that are not open to ordinary observation
- Trespassers –
 - Limited duty to prevent reckless or intentional injury
 - If discovered, trespasser must be warned of known dangers that are not open to obvious observation

THANK YOU

QUESTIONS?

Katie Webb, kwebb@colodnyfass.com | 850-577-0398

For a recording of this presentation as well as the slides, visit

ColodnyFass.com/Webinars on Monday.



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