

**FHMS COVID-19 Resource Center:**

**CA COURT HOLDS THAT FEAR OF GETTING COVID-19 IS NOT A VALID CLAIM**

In a COVID-19 exposure case, a California Court held that fear of getting COVID-19, by itself, is not a valid claim. See *Weissberger v. Princess Cruise Lines, Ltd.*, No. 2:20-cv-02267-RGK-SK, 2020 U.S. Dist. LEXIS 123743, at \*8 (C.D. Cal. July 14, 2020). By way of background, passengers on the Grand Princess were forced to quarantine in their cabins while the ship was in San Francisco's harbor at the onset of the pandemic. The purpose of the quarantine was to prevent the infected passengers from spreading the virus. Many of the quarantined passengers sued the cruise lines, seeking compensation for the fear, anxiety, and emotional distress they experienced while on the ship.

The cruise line moved to dismiss the cases, arguing that the plaintiffs could not recover because they did not contract COVID-19 or show symptoms. The court agreed with the cruise line. Notably, the court construed the plaintiffs' causes of action as claims for negligent infliction of emotional distress ("NIED") based on the allegations and not the "negligence" and "gross negligence" labels the plaintiffs ascribed to their causes of action.

The court held that fear of contracting COVID-19, by itself, fails as a NIED claim. The court's analysis was based on federal maritime law because the plaintiffs were on a cruise ship. However, the court's holding that a plaintiff "cannot recover for NIED based solely on their proximity to individuals with COVID-19 and resulting fear of contracting the disease" is instructive for cases not governed by maritime law. Notably, the court relied on an asbestos case holding that a plaintiff cannot recover for NIED based on fear of contracting asbestos.

Interestingly, the court rejected the plaintiffs' argument that they could recover based on a "near miss" with COVID-19. In some situations, a plaintiff may make a claim for emotional distress because the plaintiff was close to something that could have caused injury. This "zone of danger" test often applies in situations where a plaintiff can see an accident and anticipate being injured but avoids injury. The court held that this type of claim was not available in a COVID-19 case where the plaintiffs did not actually get COVID-19 or show symptoms. The court reasoned that this rule was necessary to prevent "a flood of trivial suits."

FHMS continues to monitor COVID-19 exposure cases and stands ready to defend them. Updated information on the exposure cases and efforts to obtain immunity can be found on our [FHMS COVID-19 Resource Center](#). Please let us know if you have any questions or would like a copy of the court's opinion in *Weissenberger*.

**Fowler Hirtzel McNulty & Spaulding, LLP**

*Casualty Litigation Department*

Gregory S. Hirtzel, Esquire  
[ghirtzel@fhmslaw.com](mailto:ghirtzel@fhmslaw.com)  
717-553-2601

Jacqueline E. Campbell, Esquire  
[jcampbell@fhmslaw.com](mailto:jcampbell@fhmslaw.com)  
215-789-4844

Benjamin P. Novak, Esquire  
[bnovak@fhmslaw.com](mailto:bnovak@fhmslaw.com)  
717-696-0551

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