

***FHMS COVID-19 Resource Center:***

**UPDATE: COVID-19 EXPOSURE CLAIMS**

***July 20, 2020***

FHMS has been actively monitoring the lawsuits alleging COVID-19 exposure from a business. Recommendations for defending those claims, efforts to obtain immunity, and more, can be found in our [FHMS COVID-19 Resource Center – Premises Liability](#). Below is an update on the cases that have been filed; the new information is highlighted in yellow. Let us know if you would like a copy of the complaints or any documents filed in these cases.

***Illinois: Evans v. Walmart, Inc., et al., Cir. Ct. of Cook Cnty. Ill., No. 2020-L-003938 (filed April 6, 2020)***

On April 6, 2020, Toney Evans filed a wrongful death complaint on behalf of his brother, Wando Evans, a 51-year old man who died of complications of COVID-19 on March 25, 2020. Wando Evans worked at the Walmart Supercenter in Evergreen Park, Illinois as an overnight stock and maintenance associate. The complaint was filed against his employer, Walmart, Inc., and against the commercial leasing agency that owned the property that houses the Supercenter, J2M-Evergreen, LLC.

The suit alleges that, even though management knew that several employees were exhibiting COVID-19 symptoms, they failed to take adequate measures to protect workers. Specifically, it is alleged that the company acted negligently and committed willful and wanton misconduct when it failed to promote and enforce guidelines for social distancing issued by federal and state governments, failed to implement mandatory safety procedures recommended by the U.S. Department of Labor and the Occupational Health and Safety Administration (OSHA) to maintain a healthy and safe work environment, and failed to follow any guidelines or recommendations published by the Centers for Disease Control and Prevention (CDC) regarding employees who reported symptoms of the virus. The suit also alleges negligence against J2M-Evergreen for failing to close its commercial center as the pandemic escalated, for failing to inspect or clean the exterior of the Walmart building, for failing to implement procedures for Walmart to follow, for failing to implement social distancing policies, and for failing to follow CDC guidelines. *The case has been continued due to COVID-19 court closures.*

***Missouri: RCWA v. Smithfield Foods Inc., et al., U.S.D.C. W.D. Missouri, No. 5:20-cv-06063 (filed April 23, 2020)***

On April 23, 2020, the Rural Community Workers Alliance, a non-profit advocacy group, filed a lawsuit against Smithfield, claiming that Smithfield failed to properly protect workers from COVID-19 at its meat processing plant in Milan, Missouri. The complaint contained claims for public nuisance and breach of duty to provide a safe workplace. The plaintiffs alleged that Smithfield provided insufficient personal protective equipment (PPE), forced workers to work shoulder to shoulder, scheduled workers so that there were crowded hallways and restrooms, provided inadequate hand washing opportunities, discouraged the use of sick leave, and failed to implement a plan for testing and contact-tracing workers exposed to the coronavirus. The plaintiffs sought only declaratory judgments; monetary damages were not requested. None of the employees have been diagnosed with COVID-19.

The plaintiffs immediately moved for a temporary restraining order and preliminary injunction requesting that Smithfield be forced take various actions to correct the issues raised in the complaint. In support of the motion, the plaintiffs provided declarations from an employee, the advocacy group's executive director, a senior lobbyist with another non-profit group, an attorney who interviewed several Alabama poultry-plant workers and authored a 2013 report about modern industrial slaughterhouse workers, an occupational-medicine specialist, and a professor of environmental health.

Smithfield moved to dismiss the action, asserting that the U.S. Department of Agriculture (USDA) had jurisdiction over the case pursuant to the President's executive order under the Defense Production Act. In support of its motion, Smithfield provided a declaration from the plant's general manager, photographs of the plant, copies of the plant's COVID-19 policies and procedures, and a declaration from the head of OSHA from 2001-2003. The plaintiffs' requested relief was subsequently narrowed because Smithfield implemented new policies and procedures after the lawsuit was filed.

*On May 5, 2020, the court granted Smithfield's motion and dismissed the case without prejudice.* Referring to the primary-jurisdiction doctrine, the court found that OSHA was in a better position to determine if Smithfield was in compliance with its guidance and that only deference to OSHA / USDA would ensure uniform national enforcement of the guidance. Additionally, the court found that the plaintiffs had not met their burden of proving that an injunction was justified. Notably, the court stated that the plaintiffs were not likely to prove that Smithfield breached a duty, because it appeared that Smithfield was complying with the guidance from the CDC and OSHA.

**Texas: *Parra, et al. v. Quality Sausage Company, LLC*, No. DC-20-06406 (filed April 30, 2020)**

On April 30, 2020, Esther Parra and Pablo Dominguez filed a wrongful death action on behalf of Hugh Dominguez, a 36-year old man who died of complications of COVID-19 on April 25, 2020. Mr. Dominguez was a forklift operator at Quality Sausage Company, LLC's meat processing plant in Dallas, Texas. The suit alleges that, even though employees, including Mr. Dominguez, began exhibiting symptoms of the virus as early as April 8, 2020, they were told to continue to report to work or be laid off. The complaint contains causes of action for direct and proximate negligence against the company for failing to provide PPE and failing to implement safety measures, such as social distancing, as recommended by the CDC. Unlike the Evans suit, this action does not allege that the plant should have closed when the pandemic escalated. No counsel has entered on behalf of Quality Sausage. ***An order dismissing the case for non-pros was entered on June 26, 2020.***

**Pennsylvania: *Benjamin v. JBS S.A., et al.*, PCCP No. 200500370 (filed May 7, 2020)**

On May 7, 2020, Ferdinand Benjamin filed a wrongful death suit on behalf of his father, Enock Benjamin, a 70-year old man who died on April 3, 2020 of respiratory failure related to COVID-19. Mr. Benjamin worked as a union steward at a beef processing plant in Souderton, Pennsylvania until March 27, 2020. The complaint names several JBS entities, including the U.S. and international parent companies. The suit alleges that, despite knowing the risks COVID-19 posed to its employees, the defendants failed to provide PPE, forced workers to work in close proximity to one another, discouraged employees from taking sick leave, and failed to provide proper testing for those who may have been exposed to the virus.

The defendants filed a petition to remove the case to federal court asserting fraudulent joinder of parties to defeat diversity of citizenship and federal question grounds. The defendants assert that the only Pennsylvania defendant was Mr. Benjamin's employer and his claims against that entity are barred by the Workers' Compensation Act. If the claims are barred, then the court should not consider its citizenship for purposes of diversity. The defendants also asserted that there is a federal question at issue in the litigation, namely the question of how meat processing plants are to balance the safety of their workers with the need to feed the American population during a national emergency. The petition references the President's executive order regarding the operation of meat processing plants during the COVID-19 pandemic, as well as federal policies surrounding the nation's food supply, security, and economy. The defendants argue that the foregoing places federal questions at the center of the litigation that also make the case ripe for removal.

On June 16, Defendants filed a Motion to Dismiss for Failure to State a Claim and Lack of Personal Jurisdiction. Plaintiffs filed a Motion to Remand the case to state court on June 29 and a response to Defendants' Motion to Dismiss on July 7. *Both motions are currently pending before the Honorable John Padova.*

**Texas: *Dodson v. Regency IHS of West Oaks, LLC, et al.*, No. D-1-GN-20-002630 (filed May 13, 2020)**

On May 13, 2020, Florence Dodson filed a wrongful death action on behalf of her son, Maurice Dotson, a 51-year old man who died of complications from COVID-19 on April 17, 2020. Mr. Dotson was a Certified Nursing Assistant at the West Oaks Nursing and Rehabilitation Center in South Austin, Texas. He was hospitalized for nine days prior to succumbing to the virus. The complaint alleges that Mr. Dotson's employer is liable for his death for failing to provide PPE and failing to notify the appropriate authorities of the outbreak in the nursing facility and hire qualified professionals to train staff and/or provide care for patients with COVID-19. Specifically, the complaint alleges that the defendant violated OSHA standards 1910.132, 1910.134, and 1910.138 relating to PPE, Respiratory Protection, and Hand Protection, as well as other unspecified violations of regulations set forth by the Texas Health and Human Services Commission and the Centers for Medicare and Medicaid Services. Defendants filed an Answer to the Complaint on June 22. *The case is ongoing.*

**Utah: *Flores et al. v. Built Brands LLC*, No. 200400681, Utah Dist., Utah Co. (filed May 13, 2020)**

On May 13, 2020, three women filed a personal injury lawsuit against a nutritional supplement company, Built Brands, LLC, doing business as Built Bar, for contracting COVID-19. While *only one of the plaintiffs, Juana Victoria Flores, worked for the defendant*, all three claim their illnesses were directly attributable to Built Bar's workplace environment. The complaint alleges that Ms. Flores worked on the production floor at the manufacturing plant in close proximity to others and without PPE under threat of termination. Ms. Flores states that several employees became ill or stopped coming to work, but that management ignored pleas for better sanitation. Ms. Flores began exhibiting symptoms of COVID-19 and received a positive test result for the virus on April 13, 2020; however, she had already passed the virus to the other two members of her household. Her roommate and co-plaintiff, Griselda Escobar, also tested positive for the virus and was able to self-quarantine. Ms. Flores' daughter, Andrea Sanchez, was hospitalized with the virus as of April 9, 2020. All three plaintiffs allege negligence, willful misconduct, reckless infliction of harm, and gross negligence. They seek damages for past and future medical bills and emotional trauma.

This is the first COVID-19 exposure case that asserts a claim for exposure to persons who were not at the defendant's facility. Also, this is the first case filed in a state that has passed a law providing immunity from civil liability for damages or injuries resulting from such exposure, although the Utah statute does not immunize actors from willful misconduct or reckless infliction of harm. No counsel has entered on behalf of defendants. *This case is ongoing.*

**Illinois: *Massey v. McDonald's Corp., et al.*, Cir. Ct. of Cook Cnty. Ill., No. 2020 CH 04247 (filed May 19, 2020)**

On May 19, 2020, a group of five McDonald's employees and four family members filed a *class action for injunctive relief* against the fast food company for public nuisance and negligence. The suit alleges that the company forced employees to work in close proximity to one another and to the public without adequate PPE or safety guidelines. According to the complaint, the restaurants failed to comply with federal and state government recommendations, including those from the CDC, OSHA, and the Illinois Department of Health. Only one plaintiff has tested positive for COVID-19; one tested negative, one had symptoms but was unable to get tested, and the other six experienced no symptoms. The suit demands that restaurants be required to provide adequate PPE, stop forcing workers to reuse unsafe PPE, supply hand sanitizer for employees and customers, establish mandatory face mask policies, monitor employees and inform others of possible exposure, and provide basic information and safety training to stop the spread of the virus.

On June 24, 2020, following four days of testimony, the court partially granted the plaintiffs' emergency motion for injunctive relief. The court found that the stores at issue had provided sufficient PPE, including hand sanitizer, masks, and gloves; appropriately monitored infections among employees; and properly educated workers about how the virus spreads. However, they were not doing enough to train employees about the how to correctly use masks or about social distancing as required by the Illinois governor's executive order regarding same. Citing evidence that workers stood within six feet of each other without wearing masks, the court found that the governor's order was not being followed and that same increased the health risk for employees and the public. Notably, the court found that the plaintiffs had viable public nuisance claims, but that the negligence claims were unlikely to have merit due to the speculative nature of causation and injuries.

**New York: *Palmer v. Amazon.com Services, LLC*, U.S.D.C. E.D.N.Y. No. 1:20-cv-02468 (filed June 3, 2020)**

On June 3, 2020, six plaintiffs filed a complaint against Amazon.com Services for public nuisance and breach of duty to protect the health and safety of employees as required under New York labor law. Three plaintiffs are employees at Amazon's JFK8 facility, and three plaintiffs are household family members who believe they are at high risk of infection due to living with the employees. It appears that only one of the plaintiffs tested positive for the virus.

The complaint alleges that the company concealed COVID-19-positive cases at the JFK8 facility, discouraged employees from taking quarantine leave, failed to follow even minimum public health standards, prevented workers from engaging in personal hygiene tasks and social distancing, failed to comply with basic requirements of contact tracing, and failed to properly sanitize high-touch surfaces. The suit requests changes to attendance policies, better communication with employees, and implementing better sanitization procedures when an employee notifies a supervisor about symptoms or a positive test. To address their immediate safety concerns, plaintiffs filed a motion for a preliminary injunction seeking relaxed productivity requirements and assurances that workers would not be penalized for taking breaks to attend to personal hygiene.

The case is attracting a lot of attention, with Motions for Leave to Appear Pro Hac Vice and as Amici Curiae filed by several French union organizations, the Retail, Wholesale and Department Store Union (RWDSU), Uni Global Union, the Open Society Policy Center, and 16 Members of Congress. On July 14, plaintiffs filed a motion to withdraw their motion for preliminary injunction, citing a press release from Amazon that worker productivity metrics were temporarily suspended. Judge Brian Cogan reprimanded plaintiffs in his order granting the motion, stating, "A press release was not required to advise the Court that plaintiffs are withdrawing their motion, and defendants are directed not to respond in kind." A pre-motion conference on defendants' as yet unfiled motion to dismiss is scheduled for July 21, 2020. *The case is ongoing.*

**California: *Hernandez v. VES McDonald's, et al.*, Cal. Super. Ct. Alameda Cty., No. RG20064825 (June 16, 2020)**

On June 16, 2020, four McDonald's employees and the lead plaintiff's 10-month old baby filed a complaint asserting claims for public nuisance, unfair and unlawful business practices, violations of paid sick leave laws, and injunctive relief. Three of the employee-plaintiffs allege that they contracted the virus at a McDonald's in Oakland, CA. The fourth employee alleges that he fears becoming infected from having worked in close proximity with the other employees. According to the complaint, 11 workers and six of their family members tested positive for COVID-19 since mid-May; they claim that at least 25 people contracted the virus from that outbreak.

The plaintiffs claim that employees were instructed to continue working despite having COVID-19 symptoms; the store failed to adopt and enforce social distancing measures; the employees were not provided with sufficient PPE, claiming that they were given unused dog diapers and coffee filters to wear as masks; the store was not regularly or adequately sanitized; symptomatic workers were not instructed to self-quarantine with sick pay for 14 days; and the store failed to notify other employees when a co-worker tested positive and failed to conduct basic contact tracing. One week after the lawsuit was filed, the court ordered the McDonald's to remain closed and issued a rule to show cause why the preliminary injunction should not be granted; the **hearing is scheduled for August 13, 2020.**

**Pennsylvania: *Sherod v. CHMS Group, LLC, et al.*, Allegheny County CCP No. GD-20-007319 (July 1, 2020).**

On July 1, 2020, Vanessa Sherod filed a wrongful death action on behalf of her mother, Elizabeth Wiles, a 69-year old woman who died of complications from COVID-19 on May 10, 2020. Ms. Wiles worked as a housekeeper at the Brighton Rehabilitation and Wellness Center in Beaver, Pennsylvania. The complaint alleges that Ms. Wiles' employer is liable for her death for maintaining unsanitary conditions, a lack of PPE, an absence of infection control practices, and withholding information about COVID-19 infections in the facility. The complaint further alleges that the Brighton Center experienced substantial spread of the virus among its residents and staff, including at least 476 positive cases and 80 deaths. No counsel has entered on behalf of Defendants. *The case is ongoing.*

**Fowler Hirtzel McNulty & Spaulding, LLP**

*Casualty Department*

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

Zoe A. Otway  
[zotway@fhmslaw.com](mailto:zotway@fhmslaw.com)  
267-570-3400



***Jacqueline E. Campbell*** is a partner in the firm's Casualty Department who focuses her practice on defense of commercial vehicle, construction accident, and premises liability cases. Her experience includes the representation of insured and self-insured commercial entities in cases with questionable liability and catastrophic injuries. She has coordinated numerous post-accident investigations and handles all aspects of litigation from initial pleadings through jury trial and appeal. For questions, please contact her directly at **215-789-4844**.

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