

# THE PROLIFERATION OF CLASS ACTION LAWSUITS AMID THE COVID-19 PANDEMIC

By: Bill Klein

---

The COVID-19 pandemic has drastically disrupted all businesses, employers and government entities. Indeed, virtually the entire global economy has been affected. Shutdowns, the need for social distancing and efforts to contain the spread of the virus has led to the closing of businesses and the cancellations of services and events. Such disruption has led to a tsunami of class actions lawsuits directly related to the pandemic with more on their way. To date, the filed class actions fall into a variety of categories: (a) consumer protection; (b) educational institutions; (c) failure to protect consumers or employees from the virus; (d) business disruption insurance; (e) other employment issues; (f) securities; and (g) government-related claims. Each will be considered below.

## CONSUMER PROTECTION

### 1. Failure to Refund

Not surprisingly, there have been a host of consumer class actions filed against various businesses. Many of these suits have targeted businesses that have not refunded prepaid fees despite COVID-19-related cancellations and postponements. Consumers have filed class action suits attacking the refund policies of many businesses, generally demanding monetary refunds rather than credits or rain checks.

- Class actions have been filed against virtually all major and some minor airlines in connection with refunds for cancellations of flights. Defendants in these suits include: American Airlines, United Airlines, Southwest Airlines, Delta Airlines, Spirit Airlines, Frontier Airlines, Hawaiian Airlines, Norwegian Air Shuttle, and Concesionaria Vuela Compania de Aviacion.
- Major ticketing services StubHub, Ticketmaster, SeatGeek and Vivid Seats have also been targeted for allegedly changing refund policies after the pandemic caused events to be cancelled or postponed.
- Similarly, consumers have filed class action lawsuits against Major League Baseball, Six Flags, Vail ski resorts, TurnKey Vacation Rentals, music festivals South by Southwest and Lightning in a Bottle, a single events club, and a wildlife service for refunds of prepaid fees.

### 2. Continued Collection of Recurring Fees

Government shutdowns have closed most gyms, which typically charge recurring, monthly membership fees. Class actions seeking refunds of such fees during the shut-down have been filed against Boston Sports Clubs, Town Sports International, Washington Sports Clubs and Philadelphia Sports Clubs, LA Fitness, Blink Fitness, and Fit Republic.

### 3. Consumer Fraud and Protection Claims

Consumers have already filed class actions against manufacturers and retailers under consumer protection statutes, including:

- Actions against manufacturers and retailers of hand sanitizers, which implicitly advertised to prevent the coronavirus and other ailments despite FDA warnings that there is insufficient evidence to support such claims. The defendants sued to date include Target for its in-house brand, and the manufacturers of Purell and Germ-X.
- Class action lawsuits have been filed against Whole Foods, Costco, Walmart, Trader Joe's, and other grocers that have allegedly tripled the price of eggs since the coronavirus outbreak.
- The use of Zoom Video Communications has exploded during the pandemic. With that increased use has come increased scrutiny. Since March 30, 2020, at least 11 class actions have been filed against Zoom. These suits allege violations of consumer protection laws and federal securities laws. While not addressing COVID-19 directly, the suits relate to alleged issues with the privacy and security of the Zoom platform highlighted during the pandemic, including when the platform was hacked. One of these suits also names Facebook as a defendant for allegedly mining Zoom user data.

### EDUCATIONAL INSTITUTIONS

The pandemic has closed most college campuses forcing instruction online. Students, however, have been charged tuition, room, board, and fees. Numerous student class actions have been filed for refunds, claiming that online courses are inferior to in person classes. Among the undergraduate institutions already sued are Arizona, Arizona State, Northern Arizona, Drexel, Liberty, Miami, Northeastern, Purdue, and University of Colorado Boulder.

### FAILURE TO PROTECT

Appropriately seeking to shield employees from the virus itself presents difficult decisions for employers and businesses, which will only increase as states re-open. Class action claims that employers and business have not adequately protected against the spread of the virus have already been filed, with many more expected. Such actions have, for example, been filed against cruise lines by both employees and passengers, and by the New York State Nurses Association alleging that the Montefiore Medical Center is not adequately protecting nurses.

### BUSINESS DISRUPTION INSURANCE

Businesses decimated by the COVID-19 pandemic have filed numerous federal and state class-action lawsuits against insurance companies for denial of business interruption claims. Many businesses purchased insurance to protect against business interruptions or disruptions outside of their control. These policies included business income coverage for losses due to necessary suspension of operations, allegedly including losses caused by viruses such as COVID-19, which led state and local governments to mandate

widespread business closures. As we previously addressed in our article, [Key Aspects of Business Interruption Insurance](#), in most cases, business interruption coverage is triggered when the insured's claim results from "direct physical loss of or damage to" to the insured's property. Whether COVID-19 causes "direct physical loss of or damage to" a business will be the critical issue in these lawsuits. Insurers already sued include CNA, Lloyd's of London, Liberty Mutual, Continental Casualty, Society Insurance, Owners Insurance, Topa Insurance, Oregon Mutual Insurance, and Aspen American Insurance. Interestingly, certain state legislatures have taken up this cause, and are in various stages of advancing bills that would require insurers to provide coverage for losses caused by the pandemic.

### OTHER EMPLOYMENT ISSUES

- Mass layoffs and other employment decisions due to the pandemic have led to class action suits. The Worker Adjustment and Retraining Notification Act (WARN) helps ensure advance notice in cases of qualified plant closings and mass layoffs. Employees at Florida Hooters restaurants have already brought claims alleging the chain violated the WARN Act as a result of mass layoffs.
- The American Federation of Government Employees, a union for federal workers, has filed a class action lawsuit against the federal government, alleging that workers should receive hazard pay for work done to manage the outbreak of COVID-19.
- Uber and Lyft face employment class actions involving COVID-19. Consistent with similar complaints against the companies, these actions allege Uber and Lyft misclassify drivers as independent contractors and therefore owe workers paid sick leave. The plaintiffs claim that the COVID-19 pandemic renders the failure to provide drivers with state-mandated sick leave particularly harmful.

### SECURITIES CLAIMS

The pandemic has affected the investment markets, which has led to class action securities claims, which are only expected to increase. Norwegian Cruise Lines was sued on behalf of investors who claim that the cruise line made false statements in its February Security and Exchange Commission filings touting the company's strong financial performance, despite the coronavirus outbreak and the company's confidence in its preventive measures to reduce exposure and transmission of the virus. Investors also filed a class action against Inovio Pharmaceutical, alleging they bought the company's stock at artificially inflated prices resulting from false statements that the company had developed a vaccine for COVID-19.

### GOVERNMENT RELATED CLAIMS

- At least three federal class actions have been filed against the People's Republic of China and Chinese governmental entities seeking to recover damages for China's failure to contain the coronavirus outbreak and to notify the international community about its dangers.
- Class actions have also been filed against the United States Government and lenders related to the Paycheck Protection Program. These actions allege that larger or existing customers were given preference over smaller or minority businesses in the administration of the government loan program.

It's clear that the COVID-19 pandemic has resulted in many class action lawsuits nationwide and there will be more to come. [Schoenberg Finkel Newman & Rosenberg, LLC](#) has decades of experience in defending class actions in Chicago and throughout the United States. We are committed to assisting our clients and will provide updates as more information becomes available. Please contact [Norm Finkel](#) or [Bill Klein](#) with any questions you may have about this subject matter.