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NAVIGATING THE NEXT.
COVID-19 Class Actions Year in Review
Franco A. Corrado, Charles L. Solomont,
Bernard J. Garbutt, III, Christina L. Chen,
Grant R. MacQueen, and Matthew M. Papkin
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Presenters

Franco A. Corrado

Charles L. Solomont

Bernard J. Garbutt III

Christina L. Chen

Grant R. MacQueen

Matthew M. Papkin

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COVID-19 CLASS ACTION GROUP

- Working group dedicated to tracking COVID-19 related class actions from start of the pandemic to present.

- Analyze allegations, asserted defenses, and decisions to determine implications and recommend strategy for pending and future COVID-19 related class suits.

COMMON CATEGORIES OF COVID-19 CLASS SUITS

Categories of class actions addressed in this presentation:

1. College Tuition/Private School Reimbursement Cases
2. Ticket and Membership Reimbursement Cases
3. Securities Fraud Class Actions
4. PPP Loan Application Prioritization
5. Cruise Lines' Alleged Mishandling of COVID-19
6. Price Gouging Actions

COMMON CATEGORIES OF COVID-19 CLASS SUITS

White paper on *The Evolving Landscape of COVID-19 Related Class Action Lawsuits*, tracking common categories of class actions filed.

- More articles from ongoing analysis of key case decisions and takeaways can be found here: https://www.morganlewis.com/our-thinking/publications-new.


HIGHER EDUCATION
TUITION REIMBURSEMENT
ACTIONS
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OVERVIEW OF COLLEGE TUITION REIMBURSEMENT CASES

- Scores of cases have been filed against colleges and universities arising from the shutdown of campuses and the move to online learning.
- Students allege they have been deprived of the in-person education for which they paid and that online classes are an inadequate substitute.
- Plaintiffs generally assert claims for breach of contract and unjust enrichment, and in some cases conversion.
- Plaintiffs seek damages in the form of refunds for some combination of tuition, room and board, meals, and fees for campus services.

INITIAL RESULTS

- Contract claims generally have survived motions to dismiss.
  - The terms of the relationship between a student and university may be found in university, catalogs, student manuals, and other university policies and procedures, which imply face-to-face instruction.
  - Courts have rejected arguments that online learning is a suitable substitute: "Following Defendant's logic, a theatergoer who paid to see Hamilton on Broadway would suffer no damages if the theater shut down, kept his money, and allowed him to watch a recording of Hamilton on Disney+." *Rhodes v. Embry-riddle Aeronautical Univ., Inc.*, 2021 WL 140708 (M.D. Fla. Jan. 14, 2021).
  - Defendants have had some success where students fail to identify specific language identifying promise of in-person education. *E.g.*, *Hassan v. Fordham University*, 2021 WL 293255 (S.D.N.Y. Jan. 28, 2021).

INITIAL RESULTS

- Unjust enrichment claims generally have survived motion to dismiss as an alternative to the contract claims.
- Nearly all conversion claims have been dismissed because a claim for tuition reimbursement is not "property."

DEFENSES

- Sovereign immunity and pre-suit notice.
  - Suit against public institutions barred by Eleventh Amendment because plaintiffs seek financial compensation. *Brandmeyer v. Regents of Univ. of California*, 2020 WL 6816788 (N.D. Cal. Nov. 10, 2020).
  - Dismissal because plaintiffs did not file a notice of claim. *Rosenkrantz v. Arizona Bd. of Regents*, 2020 WL 4346754 (D. Ariz. July 29, 2020).

DEFENSES

- Impossibility of performance, while a factual question, may be decided on the merits.
- Certain courts have accepted arguments that institutions are not liable for educational malpractice, but others have rejected the argument at motion-to-dismiss stage.
  - Courts reason that the claim is not that the institution failed to provide students with an adequate education, but that it failed to provide certain services as promised. *E.g.*, *Hiatt v. Brigham Young Univ.*, 2021 WL 66298 (D. Utah Jan. 7, 2021); *but see Lindner v. Occidental Coll.*, 2020 WL 7350212 (C.D. Cal. Dec. 11, 2020) (dismissal based on educational malpractice defense); *Gociman v. Loyola University of Chicago*, 2021 WL 243573 (N.D. Ill. Jan. 25, 2021) (same).

TAKEAWAYS/EXPECTATIONS

Scrutinize legal claims at motions to dismiss, particularly whether allegations identify any university policy, procedure, or publication creating expectation of in-person instruction.

Impossibility of performance and invocation of force majeure clauses may be grounds for summary judgment, depending on contractual relationship.

Predominance likely battleground at class certification.

- The question of whether or not online instruction is less valuable than in-person instruction likely depends on the student and the particular course of study.
- Likewise, the services that remain available to a particular student, whether the student incurred any harm from the absence of particular services, the identity of the actual payor of the challenged fees, and the amount of any damages likely vary from student to student.
- These factors may open the door to typicality and adequacy arguments as well.


TICKET REIMBURSEMENT
AND MEMBERSHIP
REIMBURSEMENT CASES
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OVERVIEW OF TICKET AND MEMBERSHIP REFUND CASES

Dozens of ticket purchasers have filed class actions against airlines, ticketing agencies, ticket exchange companies, sports teams, and entertainment venues for failing to offer adequate refunds for COVID-19-related cancellations.

Similarly, companies that charge membership fees, such as gyms and amusement parks, have been subject to class actions for recovery of fees paid during the period when such businesses were shut down.

Plaintiffs in these cases generally assert claims for breach of contract, unjust enrichment, conversion, and violations of state consumer protection laws.

INITIAL RESULTS – CONTRACT CLAIMS

- Dismissals where defendant provided a refund, but allegedly delayed.
  - Courts have rejected argument that airlines were required to issue refunds within 7 days pursuant to DOT regulation, where terms were not incorporated into agreement. *E.g.*, *Daversa-Evdyriadis v. Norwegian Air Shuttle ASA*, 2020 WL 5625740 (C.D. Cal. Sept. 17, 2020).
  - *But see, e.g.*, *Maree v. Deutsche Lufthansa AG*, 2021 WL 267853 (C.D. Cal. Jan. 26, 2021) (where a contract lacks an express payment deadline, a reasonable time for payment is implied and holding plaintiff has Article III standing because she allegedly lost interest during refund delay).

INITIAL RESULTS – CONTRACT CLAIMS

- Dismissals based on "no refund" provisions.
  - *E.g.*, *Ellenwood v. World Triathlon Corp.*, 2021 WL 62482 (M.D. Fla. Jan. 7, 2021) (in the context of outdoor sporting events, a "no refund" provision is fair and consistent with common sense); *Cahill v. Turnkey Vacation Rentals, Inc.*, 2020 WL 7349512 (W.D. Tex. Nov. 13, 2020) (agreement states defendant is not required to issue refunds outside of cancellation period).
- Dismissals for failure to allege satisfaction of condition precedent.
  - *E.g.*, *Bugarin v. All Nippon Airways Co.*, 2021 WL 175940, at *4 (N.D. Cal. Jan. 19, 2021) (plaintiff failed to satisfy condition precedent of requesting refund, even though she waited on hold for several hours with airline).

INITIAL RESULTS – FRAUD-BASED CLAIMS

- Dismissals for failure to identify actionable misrepresentation representation.
  - *E.g.*, *Kouball v. SeaWorld Parks & Entm't, Inc.*, 2020 WL 5408918 (S.D. Cal. Sept. 9, 2020) (failure to identify statement by SeaWorld proclaiming the alleged "unlimited access" to its parks).
- Dismissals for failure to allege reliance on any misrepresentation or omission.
  - *E.g.*, *Rothman v. Equinox Holdings, Inc.*, 2021 WL 124682 (C.D. Cal. Jan. 13, 2021) (no allegation of reliance on statement in membership agreement that if gym closes it will remain liable to member for a refund); *Ajzenman v. Office of Comm'r of Baseball*, 2020 WL 6647729 (C.D. Cal. Oct. 6, 2020) (plaintiffs purchased tickets before misrepresentation allegedly made).

POSSIBLE DEFENSES

- Consider the availability of a mechanism to force individual arbitration.
  - Several reimbursement matters have been sent to arbitration based on defendant's motion. *E.g.*, *Jampol v. Blink Holdings, Inc.*, 2020 WL 7774400 (S.D.N.Y. Dec. 30, 2020) (granting motion to compel individual arbitration); *Brooks v. Event Entm't Grp., Inc.*, 2020 WL 6882779 (S.D. Fla. Nov. 23, 2020) (same); *Fitzgerald v. Grand Circle, LLC*, 2020 WL 6152027 (E.D. Pa. Oct. 20, 2020) (same).
- Dismissals for impossibility of performance.
  - *E.g.*, *Daversa-Evdyriadis v. Norwegian Air Shuttle ASA*, 2020 WL 5625740 (C.D. Cal. Sept. 17, 2020) (travel ban); *Fitzpatrick v. Country Thunder Holdings, LLC*, 2020 WL 5947624 (C.D. Cal. July 24, 2020) (county order banning gatherings of over 200 people made music festival impossible).
- A force majeure clause may be a basis for dismissal on the merits.

TAKEAWAYS/EXPECTATIONS

Courts appear to be more inclined to grant dismissals based on impossibility of performance than in other contexts.

Scrutinize any contractual agreement and/or terms and conditions for contractual defenses to liability.

Companies considering refunds may want to evaluate whether it is necessary to offer other concessions, like interest, in order to ward off potential claims. If a suit has already been filed, defendants may also want to consider what steps, if any, could be taken under the applicable law to moot the claims of the named plaintiffs, and how that would impact class certification issues.

Should a case advance to class certification, variations in the steps customers took to obtain refunds, variations in the dollar value of refunds or credit provided, and variations in how each plaintiff values a voucher for future use may present individualized issues. In addition, choice of law issues and variations in state laws may create further manageability problems for any proposed multistate class.


COVID-19 RELATED
SECURITIES FRAUD
CLASS ACTIONS
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BACKGROUND ON COVID-19 SECURITIES FRAUD SUITS

- Alleged misstatements or material omissions relate in a significant way to COVID-19 and the pandemic, including their impact upon the defendant's business operations and/or financial condition, and/or a medical, pharmaceutical, and/or testing response thereto.
- After mid-March 2020, more than 70 such class actions filed (or amended complaints with new claims and allegations relating to COVID-19).
- Violations of Section 11 of the Securities Act of 1933 and Section 10 of the Securities and Exchange Act of 1934.
- Several industries and sectors implicated.
- Cases at various procedural stages; a handful of motions to dismiss, and two decisions.

CLAIMS AND THEORIES ALLEGED

- Allegedly false or misleading statements about the breadth and magnitude of the COVID-19 pandemic's impact upon the defendant's business operations and/or financial condition;
- Allegedly false or misleading statements about the defendant's ability to manage and respond to, and its state of preparedness for, COVID-19 or a pandemic like COVID-19;
- Allegedly false or misleading statements about the true state of the defendant's business operations and/or financial condition, which, pre-pandemic, were already in distress, and which problems were then revealed or exacerbated by the COVID-19 pandemic;

CLAIMS AND THEORIES ALLEGED

- Allegedly false or misleading statements about the true state of the defendant's business operations and/or financial condition, in which the defendant attempted to mask or hide problems by using the impact of COVID-19 as a scapegoat;
- Allegedly false or misleading statements concerning COVID-19 vaccines, treatments, preventative measures, tests, and/or other products designed to prevent, treat, and/or test for COVID-19, and their efficacy or readiness for widespread use and distribution; and
- Allegedly false or misleading statements concerning the defendant's receipt or use of government funds or loans in connection with COVID-19 related relief programs.

DEFENSES RAISED ON MOTIONS TO DISMISS

In addition to arguing no false or misleading statements:

- Challenged statements were unactionable opinions, puffery, and/or corporate optimism;
- Defendants disclosed risks of a COVID-19 like pandemic and made meaningful cautionary statements;
- Defendants could not have anticipated the COVID-19 pandemic or its effects;
- Impermissible fraud-by-hindsight; and
- Challenged statements were forward looking and accompanied by meaningful, cautionary language; plaintiffs failed to allege particularized facts showing that defendants knew that their future earnings, projections, estimates, and/or plans would not materialize as expected; and, therefore, the statements are protected by the PSLRA's safe harbor.

DEFENSES RAISED ON MOTIONS TO DISMISS

Practice Tip

Especially in the early days of the COVID-19 pandemic, there was unclear and sometimes conflicting guidance from governments, and healthcare officials and professionals, not only as to the transmission of, and preventative measures as to, COVID-19, but also how long the pandemic would last. Depending upon the timing of challenged statements, defendants should raise arguments that they had a reasonable basis for the challenged statements at the time they were made, especially for future earnings, projections, estimates, plans, and other forward-looking statements.

DEFENSES RAISED ON MOTIONS TO DISMISS (cont'd)

- The markets were already fully aware of the impact the COVID-19 pandemic would have upon companies' business operations and/or financial conditions, especially in certain industries and/or sectors; the facts allegedly omitted from challenged statements would already be reflected in stock prices; and, therefore, investors were not misled;
- Scienter was not alleged with the requisite particularity; and
- Loss causation was not adequately alleged, i.e., plaintiffs failed to allege that the fraud, as opposed to some other factor, actually caused their alleged losses.

DEFENSES RAISED ON MOTIONS TO DISMISS (cont'd)

Practice Tip

Most companies were affected adversely by COVID-19 and/or related government restrictions. Moreover, there were global market-wide declines and market volatility during these times. Defendants should consider arguing that any stock price decline was **not** caused by a fraud, but, rather, by independent, superseding, or intervening causes.

BERG V. VELOCITY FIN. (C.D CAL. JAN. 25, 2021)

- Section 11 and 15 ’33 Act Claims
- January 2020 registration statement for an IPO
- Plaintiff alleged that offering materials misleadingly touted favorable real estate market conditions that Velocity could seize upon, even though COVID-19 was about to break

BERG V. VELOCITY FIN. (C.D CAL. JAN. 25, 2021)

Dismissed: Statements were nonactionable puffery, defendants disclosed relevant risks, and no plausible inference that defendants actually anticipated the actual size of the increase of non- or -underperforming loans in the company's portfolio

- No plausible inference that defendants could have anticipated, prior to the IPO, that the rate of non- or under-performing loans in the company's portfolio would increase to the extent that it did, and there was a stronger, competing inference that the increase was actually due to COVID-19, which defendants could not have anticipated; and
- Defendants could not have known the extent of the pandemic, or even the presence of COVID-19 in the United States, at the time of the IPO, and, thus, there would have been no reason for defendants to make any related disclosures.

TAKEAWAYS

There could be another spike in COVID-19 cases, and a new strain could take hold in US, extending business impacts and government restrictions

Statements about COVID-19 and its effects will continue to be scrutinized by plaintiffs' law firms mining for potential new cases

Statements about COVID-19 should reflect the current state of knowledge of governments and healthcare officials and professionals

COVID-19 specific risk factors should be disclosed and made prominent

To the extent possible, statements about COVID-19 and its effects upon operations and financial condition should be framed as forward looking, and be accompanied by both the typical disclaimers and substantive and tailored cautionary language


PPP LOAN APPLICATION PRIORITIZATION AND NONPAYMENT OF APPLICANTS' AGENTS
Morgan Lewis

TWO PRIMARY THEORIES OF LIABILITY

1. Small businesses sued banks that processed loan applications under the Paycheck Protection Program (PPP) of the CARES Act. The plaintiffs allege that defendant banks allegedly represented they would process loan applications on a "first come, first served" basis, in accordance with their purported duties under the PPP, without regard to any other factors, but, instead, allegedly prioritized larger, more lucrative loan applications to the detriment of smaller businesses.

2. Businesses that served as agents to small businesses that applied for loans under the PPP, including accounting firms and attorneys, sued banks that processed those loan applications, alleging that, under the CARES Act, for PPP loans under $350,000, the federal government was obligated to pay up to 5% of the loan amount to the bank that processed the loan application as a processing fee, and, if the borrower engaged an agent to assist with the loan application, the bank was obligated to pay that agent up to 1% of the loan amount.

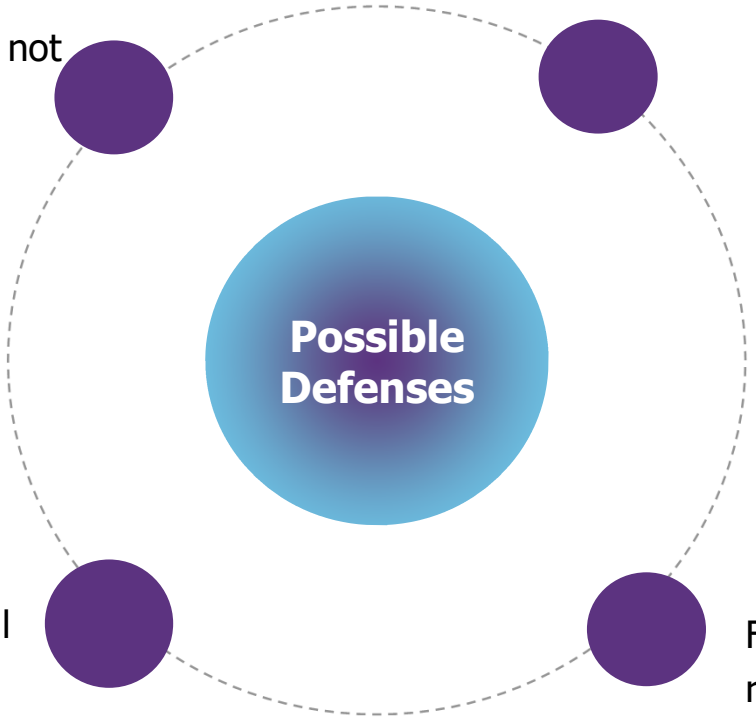
PPP LOAN APPLICATION PRIORITIZATION

- Plaintiffs filed putative class actions alleging this theory in several district courts, including the Northern District of California, the Southern District of California, the District of Colorado, the District of Maryland, and the Southern District of Texas.
- Certain plaintiffs moved for a TRO and preliminary injunction, seeking to enjoin the defendant lender from imposing eligibility requirements for loans beyond those in the CARES Act.

PPP LOAN APPLICATION PRIORITIZATION

- In *Profiles, Inc. v. Bank of America Corp.*, 453 F. Supp. 3d 742 (D. Md. Apr. 13, 2020), the court denied that motion and made many findings against plaintiffs:
  - Language of the CARES Act does not show congressional intent to create a private right of action;
  - The statutory language does not constrain banks such that they are prohibited from considering other information when deciding from whom to accept applications, or in what order to process applications it accepts; and
  - Given the voluntary nature of PPP, a ruling of the magnitude requested by Plaintiffs could disincentivize lenders from participating in the program altogether.

PPP LOAN APPLICATION PRIORITIZATION (Cont'd)



The CARES Act does not provide for a private right of action

No duty to process loan applications on a "first come, first served" basis under the CARES Act

Failure to plead with particularity an actual misrepresentation

Failure to plead reliance and damages

PPP LOAN APPLICATION PRIORITIZATION (Cont'd)

Possible Defenses to Class Certification

- Lack of commonality based upon class definitions' inclusion of all small business whose loan applications were denied without regard to timing of those applications

Many of these cases have been terminated.

- Certain of these cases were dismissed as moot following the named plaintiffs receiving loans under the PPP in subsequent rounds of funding.
- Other cases were sent to arbitration after defendants successfully invoked arbitration provisions in account agreements that were found to be incorporated into the agreements that plaintiffs entered into by submitting their applications.

PPP LOAN APPLICATION PRIORITIZATION (Cont'd)

- Certain plaintiffs filed motions to centralize litigation against bank defendants.
- In August, the US Judicial Panel on Multidistrict Litigation denied those motions on the basis that "individualized factual issues concerning the circumstances of each loan application will significantly diminish the potential efficiencies from centralization." *In re Wells Fargo Paycheck Protection Program Litigation*, 2020 WL 4673472, *1 (JPML Aug. 5, 2020).

PPP NONPAYMENT OF APPLICANTS' AGENTS

- Several courts have granted motions to dismiss these cases on several grounds.
- For example, in *Johnson v. JPMorgan Chase Bank, N.A.*, 2020 WL 5608683 (S.D.N.Y. Sept. 21, 2020), the court granted the defendants' motions to dismiss, based upon the following findings:
  - the CARES Act and its implementing regulations do not require lenders to pay agent fees absent an agreement to do so (the "language of the CARES Act does not create an independent entitlement for agent fees; rather, it simply imposes a limit on the amount of fees an agent is permitted to collect in the event of an agreement for agent fees"); and
  - the CARES Act, which created the PPP, does not create a private right of action.

PPP NONPAYMENT OF APPLICANTS' AGENTS (Cont'd)

- Congress clarified its intent in a way that undermined these lawsuits.
- The recently enacted Consolidated Appropriations Act, 2021 amended the Small Business Act to add the following: "If an eligible recipient [that is, the SBA loan applicant] has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent."
- The Act further provides that it is to be applied retroactively.
- In light of this clear statement, many plaintiffs have agreed to voluntarily dismiss these claims.

TAKEAWAYS

Courts may be reluctant to find a private right of action in COVID-19 relief legislation absent a clear expression of congressional intent to create one.

Courts may be reluctant to find a statutory duty in COVID-19 relief legislation absent a clear expression of congressional intent to create one.


SUITS ALLEGING CRUISE LINES' MISHANDLING OF COVID-19
Morgan Lewis

PLAINTIFFS' ALLEGATIONS IN CRUISE LINE CASES

- Frequent target of class action and individual lawsuits filed by passengers and crewmembers during the pandemic.

- Cruise companies knew or should have known about the risks aboard their ships by February 2020, when outbreaks occurred.
  - Long-haul and high-density voyages exposed passengers to heightened risks.
  - Owners and operators have additional attendant obligations.
  - Despite the heightened risks and obligations, cruise lines embarked on trips and endangered the health of passengers and staff.

CLAIMS AND DEFENSES IN CRUISE CLASS ACTIONS

- Plaintiffs have generally brought claims for:
  - negligence (breaching duties to medically examine passengers and crew and implement decontamination and screening protocols for boarding)
  - gross negligence (by continuing to operate ships even after passengers were known to have been exposed to individuals with symptoms, and hosting large gatherings without proper social distancing protocols or effective sanitization)
  - IIED (ignoring protocols and public health expert recommendations caused plaintiffs "severe emotional distress")
  - negligent infliction of emotional distress (emotional injuries in watching friends and family members become ill).

CLAIMS AND DEFENSES IN CRUISE CLASS ACTIONS

- Defendants have denied the allegations and challenged them as insufficiently pled.
- Defendants have also vigorously opposed class certification—failure to allege contraction of COVID-19, and to prove contraction due to Defendants' conduct.

EARLY DISMISSAL OF INDIVIDUAL CRUISE LINE SUITS

- In mid-July 2020, District Court Judge Gary Klausner (C.D. Cal.) dismissed two suits outright.
  - No damages for intentional distress because of mere fear of contracting the virus.
  - "Given the prevalence of COVID-19 in today's world, plaintiffs' proposed rule would lead to a flood of trivial suits, and open the door to unlimited and unpredictable liability[.]"[1]

- In mid-August 2020, District Court Judge Dale Fischer (C.D. Cal.) dismissed, with leave to amend, three individual lawsuits.[2]
  - Plaintiffs failed to allege the amount of time between exposure and onset of COVID-19 symptoms or receipt of a positive test result.
  - Inadequate allegations of fact to render causation plausible.

[1.] *Ronald and Eva Weissberger v. Princess Cruise Lines Ltd.*, C.D. Cal. Case No. 2:20-cv-02267.
[2.] Pamela *Wortman et al. v. Princess Cruise Lines Ltd.*, Case No. 2:20-cv-04169; *David Rumrill et al. v. Princess Cruise Lines Ltd.,* Case No. 2:20-cv-03317; and *Juishan Hsu et al. v. Princess Cruise Lines Ltd.,* Case No. 2:20-cv-03488.

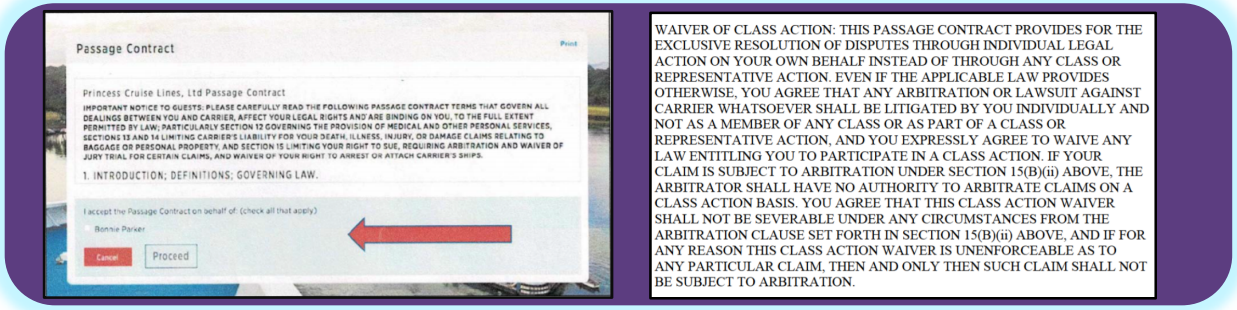
DISMISSAL OF CLAIMS AND DENIAL OF CERTIFICATION IN *ARCHER*

- In September 2020, Judge Klausner substantially reduced a proposed class action titled *Archer et al. v. Carnival Corp. and PLC et al.*[3]
  - Plaintiffs did not establish when they started experiencing symptoms after boarding their cruise ship.
  - Permitted plaintiffs' claim for Intentional Infliction of Emotional Distress.
- In October 2020, in *Archer,* Judge Klausner denied plaintiffs' class certification, ruling that a class action waiver in the passage contract was "sufficiently conspicuous" to satisfy the maritime contracts' "reasonableness communicative test."

[3.] *Archer et al. v. Carnival Corp. and PLC et al.*, C.D. Cal. Case No. 2:20-cv-04203.

LESSONS FROM JUDGE KLAUSNER'S DECISION IN *ARCHER*

- Class action waiver appears in multiple places accessible to passengers:
  - Email from Princess Cruises' automated booking system with a booking confirmation and PDF. PDF contains link to the terms of the passage contract that contain class action waiver.
  - "Cruise Personalizer" leads to login page where once passenger's contact information is filled out, a copy of the Passage Contract appears in a dialog box. Passenger cannot proceed to personalizer unless they accept terms:



- Provide well-communicated and conspicuous notice of terms of guest contract, and ample time for customers to review contract.


COVID-19 RELATED PRICE GOUGING SUITS
Morgan Lewis

OVERVIEW OF COVID-19 RELATED PRICE GOUGING SUITS

- Plaintiffs have alleged that e-commerce platforms and grocery stores are charging large markups on household goods, cleaning products, and personal care products.

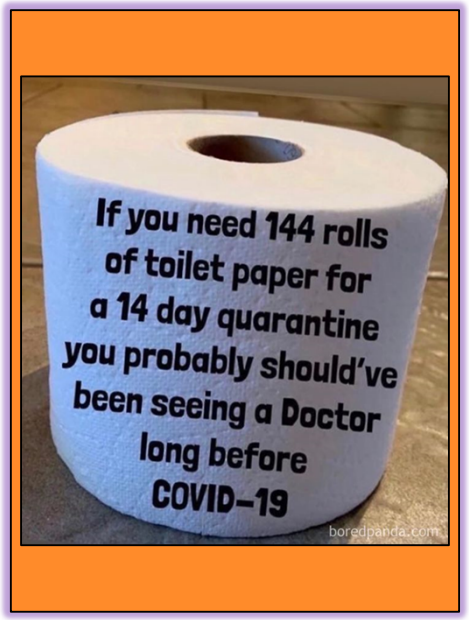
U.S. PIRG, *1 Year Later: Comparing Pre-Pandemic Prices to Today's on Amazon*, https://uspirg.org/blogs/blog/usp/1-year-later-comparing-pre-pandemic-prices-todays-amazon-0

[4.] *Adrienne Fraser, et al. v. Cal-Maine Foods Inc., et al.*, Cal No. Case No. 3:20-cv-02733.

PLAINTIFFS' ALLEGATIONS IN PRICE GOUGING SUITS

- Plaintiffs in suits against Amazon and eBay have alleged that some proposed class members are particularly at risk for the virus, are not able to leave home, and rely on online retailers.

- Plaintiffs have pointed to "secretive process of price-setting" that prevents gathering information on how defendants contributed to the issue.[4]



[4.] *Adrienne Fraser, et al. v. Cal-Maine Foods Inc., et al.,* Cal No. Case No. 3:20-cv-02733.

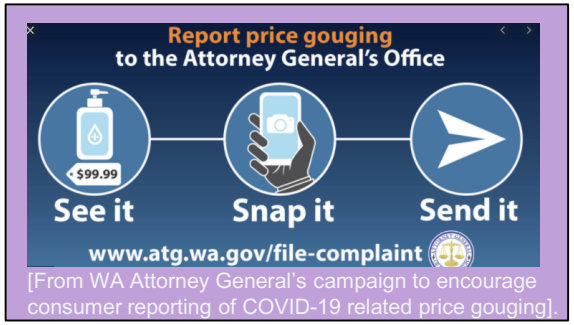
DEVELOPMENT OF PRICE GOUGING CLASS ACTIONS

- Defenses have included that price increases resulted not from gouging but from increased production and operational costs.
- E-commerce platforms, which have provided the market for online sellers, have asserted that claims are barred by the Communications Decency Act that immunizes content providers.
- Few substantive orders, but defendants have filed motions to compel arbitration and dismiss
- Defendants have argued that plaintiffs must resolve claims through individual arbitration, pointing out that lead plaintiffs agreed to arbitration clauses in registering for accounts.[5]
- Filings mostly made in March and April—new filings have tapered, likely because prices have stabilized and states have passed legislation to prevent excessive pricing.

[5.] *Mary McQueen, et al. v. Amazon Inc.*, N.D. Cal Case No. 4:20-cv-02782.

MATTERS INITIATED BY STATES AGAINST COMPANIES

- Several state attorneys general have initiated investigations and actions based on state consumer-protection statutes.



[From WA Attorney General's campaign to encourage consumer reporting of COVID-19 related price gouging].

- AGs have settled price gouging matters by the state against private companies.
  - E.g., Michigan AG settlement with face mask company that was subject of multiple consumer complaints.[6]
  - Vermont AG settlement with surgical mask company for purported PPE price-gouging scheme.[7]

[6.] https://www.michigan.gov/ag/0,4534,7-359-92297_47203-548009--,00.html.
[7.] https://ago.vermont.gov/blog/2020/12/21/attorney-general-donovan-resolves-price-gouging-case/

OTHER GOVERNMENT ACTIONS ADDRESSING PRICE GOUGING

- As of December 3, 2020, 37 states, three territories, and Washington DC currently have laws to address excessive pricing of items during national or state emergencies.
  - Various states have passed price gouging legislation specifically during the pandemic.
  - In light of the pandemic, 56 US states and territories currently have issued a public health or state emergency.
- President Biden issued an executive order on January 21, directing the HHS to recommend whether changes are needed to a previous order addressing hoarding and price gouging of pandemic response supplies.

Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

Morgan Lewis

To help keep you on top of developments as they unfold, we also have launched a resource page on our website at **www.morganlewis.com/topics/coronavirus-covid-19**

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to **subscribe** using the purple "Stay Up to Date" button.

Biography

Franco A. Corrado
Philadelphia
+1.215.963.5843
franco.corrado@morganlewis.com

Franco A. Corrado represents clients facing a broad range of lawsuits, with a particular focus on complex business disputes and class action defense. His clients span across multiple industries, including the technology, manufacturing, pharmaceutical, and insurance sectors. Franco defends clients against consumer class actions related to deceptive trade practices, false advertising, product liability, and warranty claims in state and federal courts across the United States. A member of the firm's Class Action Working Group, he is part of the Morgan Lewis team named a class actions and mass torts "Powerhouse" in *BTI's Litigation Outlook 2014 report.*

Biography

Charles L. Solomont
Boston
+1.617.951.8996
carl.solomont@morganlewis.com

Charles L. Solomont is a trial lawyer. He focuses on complex commercial litigation, real estate litigation, and bankruptcy. Carl has been handling complex litigation, class action and regulatory matters for a broad range of financial institutions, real estate developers, and other public and private companies for 20 years. He has successfully litigated high-stakes construction, creditors' rights, real estate, franchise and distribution, and intellectual property matters and has tried cases to juries, judges, and arbitrators in many jurisdictions across the country.

Biography

Bernard J. Garbutt III
New York
+1.212.309.6084
bernard.garbutt@morganlewis.com

Bernard Garbutt represents clients in class, derivative, and individual actions in the securities and investments area. Advising on securities law and claims of fraud, breach of fiduciary duty, and consumer fraud, among other matters, Bernie represents banks, broker-dealers, investment firms and advisors, and public and private companies. Currently, he represents large financial institutions in a variety of actions arising out of the mortgage loan crisis. Bernie is a member of Morgan Lewis's Class Action Working Group.

Biography

Christina L. Chen
San Francisco
+1.415.442.1381
christina.chen@morganlewis.com

Christina L. Chen serves clients in a wide variety of industries, with a focus on the financial services sector. Christina defends banks, asset-based lenders, and loan servicing companies from lender liability claims and other borrower litigation filed in state and federal court. She has experience advising and bringing litigation on behalf of plan administrators, liquidating trustees, and other fiduciaries charged with administering chapter 7 and chapter 11 bankruptcy estates.

Biography

Grant R. MacQueen
New York
+1.202.000.0000
mary.lawyer@morganlewis.com

Grant R. MacQueen represents clients in complex securities and commercial litigation, and government enforcement actions. Advising on claims of fraud, breach of fiduciary duty, consumer fraud, and antitrust violations, among others, Grant represents banks, trust companies, registered investment advisers, hedge funds, broker-dealers, public and private companies, and their officers and directors in civil litigation; and in investigations by the US Department of Justice (DOJ), Securities and Exchange Commission (SEC), self-regulatory organizations, and state securities regulators. Grant also counsels clients on sensitive internal investigations and a range of regulatory and compliance issues. He is a member of Morgan Lewis's Class Action Working Group, and has co-authored articles published in *Law360* and *Judicature*, a journal published by the Bolch Judicial Institute of Duke Law.

Biography

Matthew M. Papkin
Miami
+1.305.415.3392
matthew.papkin@morganlewis.com

Matthew M. Papkin represents clients in complex civil litigation and class actions before US federal and state courts. Prior to joining Morgan Lewis, Matt started his legal career at the Miami-Dade County Attorney's Office, where he defended the county in civil actions through trial. From 2018 to 2019, he served as a law clerk to Judge Beth Bloom of the US District Court for the Southern District of Florida.

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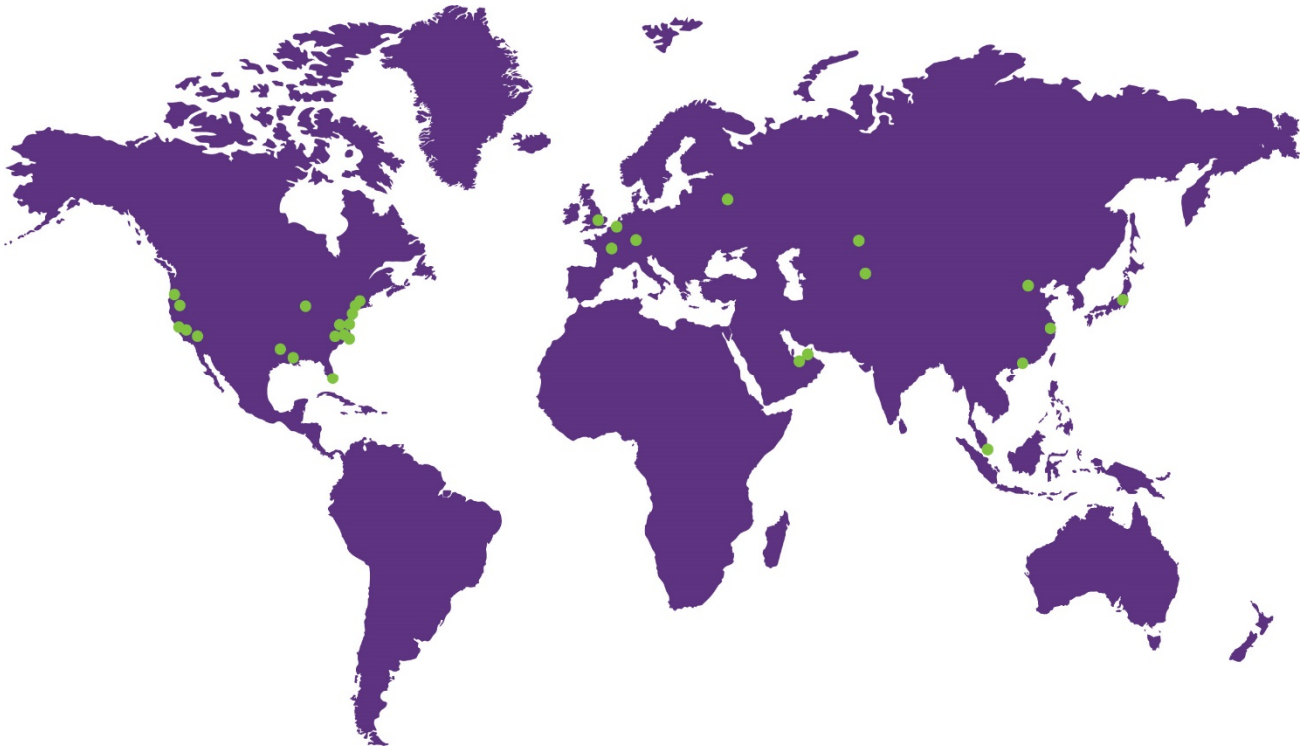

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