

Lawsuits And Other Scary Bedtime Stories

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There are those who are trying to take advantage of the COVID-19 disease in all kinds of creative ways. Some are the ordinary scam artists, promising instant cures or protection from the flu-like symptoms. Still others pedal stories about a dam ready to burst with a flood of lawsuits. Those who easily buy conspiracy theories and open spam mail, beware, because the truth is different than what is being claimed by the Cassandras.

There is absolutely no lawsuit avalanche with respect to the COVID-19. Healthcare facilities and practitioners will be guided by the ordinary principles of negligence which apply to all other medical care. If, for example, facilities are aware that someone has COVID-19 and nevertheless expose other patients to the disease, they certainly may face liability. There is nothing new about that, and hence the reason why, during the flu crisis of 2018, patients like my mother were quarantined in their hospital rooms on a special floor for flu patients.

The Governor has purported by Proclamation to grant healthcare practitioners working in the COVID-19 field immunity. That Proclamation has not been tested in the courts, but the Pennsylvania Constitution and the Seventh Amendment to the United States Constitution clearly protect the right to trial by jury and do not give the executive branch the right to do away with fundamental civil liberties.

What about employers whose workers contract COVID-19 from a co-worker? Employers are protected by the immunity of workers' compensation laws. An employee cannot sue his employer, insured for workers' compensation, due to COVID-19 or any other unintentional act.

There are school districts and organizations that organize sport competitions that claim a fear of lawsuits. Bunk. In 1978, the Pennsylvania Supreme Court decided the case of *Mayle v. PennDOT*. This decision abolished sovereign immunity. Prior to that time, the Commonwealth, like most states, was protected from lawsuits as the "sovereign". This was a doctrine that hailed from protection afforded the kings in England. After the court abolished the restrictive doctrine, the Pennsylvania legislature passed the Political Subdivision Tort Claims Act and the Commonwealth Immunity Act. The new law capped damages against municipalities and school districts at \$250,000 and the state at \$500,000. There are various other Draconian provisions of the law which cut down damages substantially. Most importantly, the law permits lawsuits only for certain specific listed items. Sports, sports supervision and the like absolutely would not give rise to any claim against municipal or state government. The PIAA can protect itself by common sense rules of health safety

Any public school district that refrains from having its students engage in sports because of fear of lawsuits is getting bad legal advice. In addition, many organizations are having

participants sign “waivers”. Pennsylvania has accepted knowing waivers of adults and parents in the now infamous *Camelback* case.

School districts and others should permit sports or other activities based upon health considerations and not the bogus unfounded fear of lawsuits. Social distancing, facemasks, handwashing and keeping students from drunken partying are more important than looking for legal boogeymen where none exist.

Even private schools and private businesses have little fear of lawsuits if they follow the COVID-19 rules. Just because a participant in a private school activity or in a business acquires COVID-19 does not mean that anyone is liable. There is some possibility that private nursing homes have disregarded the rules and permitted COVID-19 patients to mix with patients who did not have the disease, in disregard of the safety of its residents. Those situations may certainly result in lawsuits.

Finally, there are the civil rights laws. To bring a case against government based upon a civil rights claim because of COVID-19 is next to impossible. Among other things, someone suing the state or municipal government must show that they have a special relationship with the government or are the victims of deliberate indifference. In addition, public officials have both absolute and qualified immunity, depending upon the facts and circumstances.

Let us remember that, in Pennsylvania the Patient Safety Authority receives over 330,000 reports of incidents and serious events in a year, and yet the number of filed lawsuits is approximately 1,400 per year, at last count. Hardly is there any lawsuit crisis in Pennsylvania. Perhaps we should think about enhancing the rights of our citizens.

Schools and colleges that are canceling sports events or classes have done so because their students are not playing by the rules. The disease has spread in those institutions where partying is more important than safety to those in attendance. Maybe as parents we have an obligation to talk to our kids about how to behave in school and on the college campuses in order to protect themselves.

The state and the federal government are considering various immunities from lawsuits for all kinds of officials, healthcare provider schools and other institutions. None of this is necessary. There is a salutary purpose to permitting those with legitimate claims to file them, where the law permits. Today, there are so many restrictions against bringing even meritorious lawsuits that talk of additional hurdles makes little or no sense. Fear mongering does not serve the public interest, nor does it contribute to a thoughtful debate about how society can best protect itself against the virus.

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