

## Maryland Federal Court Limits Employer Liability to Third Parties in the Face of COVID-19

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On June 23, 2021, the U.S. District Court in Maryland dismissed a case in which a Southwest Airlines Co. (Southwest) flight attendant sued the airline for the wrongful death of her husband. In the case, *Estate of William Madden et al. v. Southwest Airlines Co.*, the flight attendant alleged that she contracted COVID-19 at a mandatory training during which Southwest failed to implement reasonable COVID-19 protocols. The flight attendant further claimed that she transmitted the virus to her husband, who later passed away from COVID-19.

As the claims were all based on legal negligence theories, the court identified and weighed various factors to address whether the airline owed a duty to its employee's husband. The court concluded that even though some factors may have weighed in favor of allowing the case to proceed, ultimately Southwest did not have a duty to the flight attendant's husband.

Of particular consideration to the court was the "broader societal consequences" imposing such a duty would create. The judge acknowledged that allowing this case to proceed would "open the floodgates" to similar cases, and was concerned that "finding a duty here would leave employers litigating countless COVID-19 third-party exposures simply by virtue of contact with their employees during the pandemic."

Even though the employee argued that she "practiced safe precautions," the court was not persuaded that such a consideration would limit the class of foreseeable third-party plaintiffs. As an example, the court considered the airline's liability if the plaintiff and her husband lived in an apartment building, asking:

"It may be necessary for a resident to walk through a common lobby, share an elevator, and pass other residents in narrow hallways. What distinguishes those encounters, unavoidable despite compliance with CDC guidelines, from Mr. Madden? Would Southwest be liable to everyone in Ms. Madden's hypothetical apartment building? What about essential outings like trips to the grocery store or, similarly, a bathroom break during Mr. and Ms. Madden's drive from BWI to Pennsylvania following the training?"

While the court dismissed the case without prejudice (meaning that the employee is allowed to refile her complaint to include additional material that would allow the case to proceed), the court cautioned that it would be “unlikely” for the plaintiffs to plead additional facts that create a duty for third parties under these circumstances.

This lawsuit’s dismissal highlights the hesitation of courts to hold employers liable for COVID-19 injuries to third parties, at least in Maryland. However, this case should still serve as a reminder that employers should implement and abide by robust safety policies to prevent lawsuits by their employees or other individuals to whom they owe a duty.

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