

In The News

CRE Tenants, Landlords Worry They Could Be Sued Over Coronavirus Infections

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Commercial property owners caught up in the international coronavirus pandemic fear the potential for lawsuits if a tenant or guest catches the virus on one of their sites.

As of Monday, there is no mandated federal shutdown of commercial properties other than strongly worded advisories and contemplation of curfews, but the fear of litigation is palpable among landlords, insurance claims and legal experts say.

A lawsuit has already been filed by a Princess Cruise Lines guest, who claims gross negligence against the cruise line for allowing passengers to board a departing ship when it already knew other ships had been contaminated by the coronavirus, Law.com reports.

"The Princess case is our best live example of the problems that can come up for [businesses]," Munsch Hardt attorney and shareholder Michael Huddleston said.

Huddleston said the case spells out for premises owners and operators the fall-out that can occur when a business fails to establish clear virus protocols and follow them explicitly in this type of health crisis.

"If there are other businesses similarly situated and somebody came up with a good idea [for handling the virus], then the liability angle is going to be, 'well, you could have done this,'" Huddleston said.

The Princess case does have some unique aspects that most property owners likely won't have to deal with — cruise ships are closed-in environments with limited room for social distancing, and the cruise line allegedly knew that two people on board had symptoms but failed to tell the other passengers, and held people in quarantine without testing them, Huddleston said.

Still, commercial real estate owners across all property types are bracing for a COVID-19 fallout and asking their attorneys and insurance brokers for help in navigating possible risks.

"It is certainly a question that has been coming up. We have been getting calls all week with our clients who have that question," insurance brokerage HUB International Chief Sales Officer and Executive Vice President James Stuart said late last week.

"I think one of the biggest concerns that was brought up recently was the duty to disclose that there is somebody with an illness and being proactive [about it]," said Grant Pruitt, president and co-founder of CRE brokerage and advisory company Whitebox Real Estate. "It's uncharted territory."

The concern of building owners and insurers is whether property owners can be held financially liable if a plaintiff — perhaps a tenant, a visitor or a patron — claims they were infected by the novel coronavirus while visiting or working inside a landlord's premises.

Such a case would likely turn on the owner's exact conduct and whether a general commercial liability insurance policy is deemed penetrable enough for a plaintiff's attorney to consider the financial fight worthwhile, Stuart said.

Stuart has decades of experience in claims and risk management, and played key roles in handling commercial insurance claims during the Los Angeles Riots and the Northridge California Earthquake.

While he believes most insurance policies contain enough strongly worded exclusions, contractual terms and valid legal defenses to stifle COVID-19 negligence claims and laborious lawsuits, he isn't entirely ruling out the possibility.

"If the attorneys decide to take advantage of these situations and go after landlords, probably the most easy route ... is through general liability [policies] seeking damages for the virus," he said.

Tenants or guests might claim the building was unclean, too crowded or maybe it had sick people in it, Stuart speculated.

"Now, how is that the building owner's fault?" Stuart asked. "Well, that remains to be seen, but the general liability insurance will be triggered because they are touching on bodily injury ... [by saying] the person was hurt."

It then becomes a laborious process of attorneys, insurance companies and the courts hashing out what the general liability policies cover and whether or not viruses are excluded from certain insurance coverage altogether.

The question of what to do when COVID-19 cases are found on-site is circulating throughout the industry, prompting law firms like Holland & Knight; Cox, Castle & Nicholson; and DLA Piper to put out advisories on how to handle everything from sanitization to managing reported cases and private medical information.

With plaintiffs attorneys more likely to seek out cases where the owner's negligence or lack of care is more pronounced and obvious, the best course of conduct is to stave off claims through responsible behaviors, experts say.

"If a claimant brings a suit, ultimately it's going to be their burden to prove they are injured to establish negligence, so that is where the risk management piece comes in," said Chris Dunlap, HUB International real estate vice president and senior risk consultant.

The key is to be proactive before and after your building has a suspected case.

Dunlap's team recommends closing down infected areas, disinfecting all spaces multiple times a day and gathering detailed information about cases that emerge on-site, including all contacts the patient had with the building and other people inside.

Dunlap also is advising clients to increase building cleanings on a daily basis and to follow all Centers For Disease Control and Prevention guidelines laid out for commercial landlords. While none of this is a safe harbor for landlords, it greatly undercuts the risk of prolonged litigation.

"This is kind of an unprecedented thing with the pandemic," Dunlap said. "But if you are a landlord who is doing everything in your power to prevent and manage the issue, a lawsuit is going to be much less successful if you have done all of this versus if you have done nothing — then it's going to be up to the courts to decide."

Stuart believes at least a few attorneys will search for ways to sue landlords for COVID-19 outbreaks, but he agrees the best defense is a good offense.

"If you have done what a reasonable landlord would do and you follow the precautions outlined by civil authorities and take common sense precautions, then it makes it very difficult for someone to present a lawsuit."

This alone could discourage litigation, Stuart said.

"If they are trolling for lawsuits, if they are looking to make money off of this, they just may go on to the next building."

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