

Stephanie Otts:

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Zachary Klein:

Ahoy there, welcome back to season two of the National Sea Grant Law Center's Law on the Half Shell Podcast. As I mentioned in last week's episode, I'm one of the Law Center's, Ocean and Coastal Law Fellows, Zachary Klein. And I'm delighted to be your host this season. For those of you who are new to the podcast, season one of the Law on the Half Shell podcast was about aquaculture permitting. When it comes to this season, however, there is perhaps no more appropriate place to start our deep dive into COVID's impact on coastal communities than the U.S. Cruise industry. After all, the saga involving the Grand Princess cruise ship in March 2020 off the coast of California is what put coronavirus on the proverbial map for many Americans for the first time. But as the Law Center's Director, Stephanie Showalter Otts will reveal to us over the course of today's episode, COVID was hardly the cruise industry's first rodeo.

Zachary Klein:

There is a long rich history leading to cruise lines and pandemics that has much to teach us about how the U.S. Legal system approached coronavirus. Not to mention a few fascinating stories from over the years. Along the way will be joined for an interview by Chris Robinette, professor of law at Southwestern Law School, who will share his insights in to the nature and the outcomes of COVID-related lawsuits that had been filed against cruise lines since the pandemic first arrived on the scene nearly two years ago. Without further ado, let's set sail for the legal intersection of COVID and the U.S. Cruise industry.

Stephanie Otts:

My name is Stephanie Otts. I'm the director of the National Sea Grant Law Center. I'm not an avid cruiser. I've only been on one cruise in my life, and that was for work. One of my very first presentations as a newly hired staff attorney for the National Sea Grant Law Center was to the Gulf Oyster Industry Council who was holding their annual meeting on a Caribbean cruise. I got to bring a plus one and my best friend from law school and I had a great time. I knew at that moment that this was definitely the right job for me. While I worried a bit about storms and mechanical failures, never once on that trip did I worry about being trapped on board because of a contagious disease. I suspect that was true for many, if not all, of the 2,666 passengers aboard the Diamond Princess when Princess cruise lines announced on February 4th, 2020, that there were 10 confirmed cases of COVID 19 and the ship was to remain under a 14-day quarantine in Yokohama.

Stephanie Otts:

Thousands of passengers in crew members across the globe were trapped on cruise ships that were turned away from ports or held for quarantine as fears of the coronavirus grew in early 2020. Although this turn of event seemed shocking to me at the time all of these cruise ships passengers are being held hostage on these ships, it really shouldn't have. Disease outbreaks on ships have caused panic and fear, for hundreds of years. Port officials have used quarantine to protect their cities from disease outbreaks since the Middle Ages. Plague was carried by rats on merchant ships through the trade routes of Europe. According to an article on history.com by David Ruse, the Adriatic port of Ragusa in modern day

Dubrovnik was the first to pass legislation requiring the mandatory quarantine of all incoming ships and trade caravans in order to screen for infection. On July 27th, 1377, the city's major council passed the law, which stipulates that those who come from plague infested areas shall not enter Ragusa or its district, unless they spend a month on the islet of Markan or in the town of Cavet for the purposes of disinfection.

Stephanie Otts:

And I should have apologized at the beginning for my likely horrible pronunciations. Ships arriving in Venice from plague infested ports were required to sit at anchor for 40 days before landing. In 1900, a ship arrived in Honolulu, Hawaii with a deceased crew member. The ship was quarantined after the sailor was diagnosed with the plague, which is shocking to me that there was plague cases diagnosed in Hawaii in 1900. Unfortunately the rats onboard the ship did not get the memo regarding the quarantine and proceeded to disembark and carry the deadly disease to Honolulu's Chinatown. Things went from bad to worse when the board of health decided to burn buildings where plague had been found only to start a fire that grew out of control and burned almost 40 acres of the city.

Stephanie Otts:

The plague outbreak, eventually claim dozens of victims. And probably the most well known or notorious disease with respect to ships was cholera. Cholera left 19th century steamships anchored off coasts, denying them entry to port or forcing them to dock with afflicted passengers on board. The response of the officials and the public to the arrival of a cholera infested ship to New York in 1892 has a surprising number of parallels to events in 2020. So when I started researching about this issue with ships, I ran across what has become known as the Fire Island hotel saga. Have you ever heard of Fire Island?

Zachary Klein:

Fire Island? Is that where they held the Fyre festival?

Stephanie Otts:

No. Was that in the Caribbean somewhere? Fire Island is actually in New York off the coast of New York, I believe. It now a national seashore but it has been a recreational destination spot as a beach community for a long time. More relevant to the topic of our podcast with coronavirus is that there is actually this crazy incident related to ships arriving from Germany that were suspected of carrying cholera. And it became quite controversial, resulted in a riot along with other things. And so it made me think that maybe our response to COVID 19 was not as bad as it could have been in the past.

Zachary Klein:

We've stayed mostly riot free, at least in terms of COVID related riots for now. So we should pat ourselves on the back.

Stephanie Otts:

Exactly. None of our dock areas for cruise ships were rioted, but this happened in August of 1892, five ships sailed from Hamburg, Germany. Many of the passengers were refugees from Russia, fleeing famine and political strife seeking new life in America. And so actually I think that the experience of these passengers would actually be the stuff of my nightmares, that it really is a tragic story. And the

one ship was named the Moravia and it set sail on August 17th. Once they left port,, a small boy became sick. He passed away followed by later by a nine month old child, another, a girl, five more children passed away. By the end of their 10-day voyage, 22 of the 358 passengers had been buried at sea - victims of cholera. And so there was an outbreak of cholera in Germany at the time, but it had not been declared until a couple days after the ship set sail. So it was this horrible timing where the ship left and really didn't know that they had passengers that were infected by cholera.

Zachary Klein:

Just how bad was the outbreak in Germany, if by chance, you know?

Stephanie Otts:

Yeah. So it was actually, I think one of the larger outbreaks that they had, I think it ended up being very bad. I don't know like how many individuals actually were infected or passed away during that time. But it was one of the larger cholera outbreaks in Germany at the time. Unbeknownst to the crew and the passengers of the Moravia and the four other ships, because this was obviously before phones and social media, is that the news was breaking that the cholera outbreak was now raging in Germany. It turns out, I do know the answer to your question. It was estimated that over the course of about six weeks in August and September 1892, 10,000 people died. The crew and the passengers didn't know about this, but word was spreading in the United States that this outbreak was happening and that these vessels were on their way.

Stephanie Otts:

And so when the Chief Officer of the New York State Commission of Health received word from the German consulate of the cholera outbreak, he ordered all the vessels to quarantine, right? Just you're going to quarantine. That was not uncommon at the time. Quarantine was used frequently as a way to prevent the spread of diseases from ships. Actually, this was a bit of a fun fact that I stumbled upon, although I don't know how true it is that the term yellow fever may have actually come from the fact that ships that were quarantined or were carrying diseases were required to fly a yellow flag. So although yellow fever victims also got jaundice and could have like yellowing of their skin. And so there's some thought that yellow fever was named after that, but then there's another competing theory that yellow fever was actually called that because of the yellow flag that ships had to fly.

Zachary Klein:

Oh, wow. How neat.

Stephanie Otts:

So anyway, so the state of New York is getting ready for these passengers. They're requiring the quarantine, they're going to set up some tent facilities, but they didn't really know what to do with what we would now say asymptomatic passengers, right? Like if they were sick, they could move them to hospitals or tent facilities. But if they're not sick, what are we going to do with them? And the quarantine facilities usually used by the port weren't going to be able to handle passengers from five different ships, right? They just didn't have that.

Stephanie Otts:

And so the ship arrived at the end of August, the sick were moved to hospital tents. But those that were without symptoms were just ordered to stay on board for their quarantine. But probably as no surprise to anyone, the people who were not sick were the wealthier passengers that did not want to stay on board. So they started protesting and arguing against their confinement on the ship. And this is where I think the story gets really crazy because we enter the Surf Hotel, which was on Fire Island. And the Governor of New York and the state health officer came up with a plan to buy this rundown hotel, to service a quarantine facility. The governor put down \$50,000 of his own money and the hotel was purchased on September 10th.

Zachary Klein:

Oh my.

Stephanie Otts:

Yeah, the life of me, I can't figure out why the governor would want to put his own money in to buy a hotel that would then be used to house wealthy passengers during their 10-day quarantine. So, anyway, so that was the plan. They were going to transfer the passengers who weren't sick to this hotel, they could spend the rest of their quarantine period in a resort and then they could go about their business. Things did not go as planned because there was a riot at the dock where they were disembarking the passengers. About 100 citizens and baymen, so individuals that made their living from harvesting fish or oysters, came to protest - riot - the passengers being moved to Fire Island. The baymen were particularly concerned because cholera is water born. And that could contaminate the bay. That they were concerned that they maybe wouldn't be able to sell their catch or there would be some kind of ripple effects from disembarking the passengers.

Stephanie Otts:

And so what should have been a trip of several hours and some small boats for the passengers to be transferred from the steam ships over to fire island ended up taking nearly three days. So I can only imagine the complaints of these passengers who didn't think the conditions on the steamship were good enough to then be trapped for three days on a boat that was just meant to carry them across the bay. But eventually the governor was able to disperse the mob by threatening to bring in the military reserves. And then an injunction that had been issued to try to prevent the ship from landing was dissolved by a higher court ruling. And the State Board of Health's authority was ultimately upheld that they did have the authority to move the passengers around, quarantine the vessel. But it did take troops going to Fire Island to make sure that the passengers were allowed to arrive at the resort.

Stephanie Otts:

And the Surf Hotel served as quarantine headquarters until early October of 1892. The takeaway which maybe also as relevant to COVID 19 is there were actually only two documented cases of illness on Fire Island during the time. And they were not cholera. And so I think, again, it reveals that we don't know that much at times about the spread of disease in cholera was really fearful in the late 1800s. And so there was a lot of concern about moving these passengers, but once they were off the boats in Fire Island, there were no documented cases of cholera. So one, it may have been a bit of an overreaction to quarantine the vessels, but also from the people in the area.

Zachary Klein:

I would say that's anti climactic. But as is so often the case, maybe the real excitement here was the journey along the way. Yeah. It wasn't even the cholera payout. It was just all the excitement over the very thought of it out in Fire Island, New York.

Stephanie Otts:

Yeah. And I think it's a good reminder that what we might think of as new legal situations or new legal arguments, aren't really new. The town board was claiming a right to legislate on matters affecting public health in their county. And they wanted to protect their citizen from this perceived threat of cholera. But there was a larger issue at play that the state of New York had to consider, which was to facilitate passenger traffic from Europe and enabling people to move around. And that they also had to deal with disease outbreaks and make decisions on a much larger level than the local government. And so that tension and interplay between local and state, state and federal, federal and international has been with us for a long time.

Zachary Klein:

It sure has. Although I highly doubt that many of the other players involved whether it's at the state level or the federal level have paid money out of their own pocket in order to create a hotel or some other outbreak related venture that they might be able to benefit from. So we have the governor of New York to thank for that nugget of inspiration, if anyone needs any ideas for working during the COVID economic stretch.

Stephanie Otts:

Yeah. And in my research, I did not find any evidence that the Surf Hotel stayed open after it was used as a quarantine facility. So I don't think that the Governor of New York's investment maybe paid out in the long term.

Zachary Klein:

Maybe that's the real lesson here to elect people who are so rich that they can throw money, their own money, at problems and not even worry about getting that investment back on the other side. And so I'm curious both Florida and elsewhere, how do did COVID impact the cruise line industry in the U.S.?

Stephanie Otts:

I think you could just say it paralyzed it. First, there were outbreaks on cruise lines and then those ships were not able to dock, but once they were able to get their cruise ships docked and out of the water, then the cruise line was basically shuttered for the first probably year, almost of the pandemic. That it just wasn't safe for the cruise lines to operate. And so that obviously resulted in significant losses to the cruise lines and the cruise companies. It also affected jobs for all of the individuals that worked on those cruises, but then also the local port communities.

Stephanie Otts:

And so if you've ever been on a cruise, you get a chance to get off the boat at different places. And that generates economic revenues, but also for the ports where crews are coming and going, people come stay a couple extra days, do touristy things in those areas. And so not having those cruises come and go really resulted in significant economic losses to the industry. I think the Cruise Line Industry Association

estimated that there was a loss of \$50 billion in economic activity, over 300,000 jobs, and \$15 billion in wages.

Zachary Klein:

So backing off from the economic side of things for a second, how did cruises deal with public health issues in the past? Did they deal with public health issues in the past? Was COVID something that they were not really prepared for? And what about cruises in particular seemed to create such an uproar or cause such controversy over COVID being present there in particular?

Stephanie Otts:

It was kind of surprising to me in hindsight, that it seemed initially at the beginning of the COVID 19 pandemic, that it seemed shocking that cruises would be in this situation. Because maybe it's not for everyone, but if you kind of follow the news, I'm sure many of our listeners have heard, you'd get a cruise ship that had a neurovirus outbreak or there would be a case of food poisoning. And so you'd hear these news stories over the years about one particular vessel that is having a disease outbreak and maybe they are coming back to port early or just something has changed with the way that they're operating. Another disease that was frequently mentioned on cruise ships is Legionnaire's disease, which is caused by a bacteria Legionella that arises in water systems. Like if your water is not treated properly or it's allowed to kind of sit for too long in water systems, that bacteria can thrive.

Stephanie Otts:

And so cruise ships by their very nature involve cramming hundreds or thousands of people into this very limited amount of space where they are there for days or weeks at a time. And that's very conducive to spreading diseases that may have accidentally come on board with the passengers or arise on board because of just the nature of the operation of water systems and food preparation when that many people are in confined spaces. But I think COVID proved to be so challenging because it affected the entire industry all at once, right? It wasn't just one ship in a fleet that might have a norovirus problem and needs to come in and be completely disinfected. It was every passenger was potentially a vector for coronavirus. And so I think it just presented a whole different level of challenge.

Zachary Klein:

It's funny because on the one hand, it sounds like a whole new level of challenge. And yet on the other hand, it doesn't sound so different from what we were talking about with Fire Island, not too long ago, treating every passenger as a potential vector for contamination in order for spreading the disease. And so I'm curious once it was clear that there was COVID in the U.S. And that it was aboard these cruise ships, how did the government or the industry respond? What actions did they take in order to ensure that the disease wasn't spreading on cruises?

Stephanie Otts:

Yeah, so the cruise lines tried to take care of the passengers on board of them. Of course, they have medical officials on board. They can do a little bit of care, but they work to try to get passengers off and with federal governments, but the United States actually very quickly in March of 2020 issued a no sail order. And so that meant that no cruise ships were allowed to sail, disembark with passengers, from US ports and that no sail order was renewed multiple times over the course of the pandemic. Eventually by October of 2020, the CDC knew a lot more about COVID 19, how you might implement safety measures, like social distancing or mask requirements and different things on board. And so, on October 30th, the

Center for Disease Control issued a framework for a conditional sailing order that started to put out the framework for, okay, like if we want to resume cruising, here are the conditions under which the United States would allow that to happen. New phases of that conditional sailing order were released in April and May of 2021.

Zachary Klein:

Joining us now is Professor Christopher Robinette, a professor of law at Southwestern Law School in Los Angeles. Chris maintains a torts-related blog on the law professor blog's network, where he has been following COVID-related suits against cruise ships. Since the pandemic started. Before we get into exactly the nature of the lawsuits that have been proceeding against these cruise lines, let's first take a step back. I mentioned that you are a professor of torts, and that's what your blog is primarily concerned with. Can you briefly explain to our audience what torts are?

Christopher Robinette:

Sure. Tort is a civil wrong. So a basic idea is that you have done something or failed to do something that has resulted in injury to another. I think a lot of people are very familiar with criminal law where people can be arrested, put in jail, even put to death in extreme cases for violation of public laws. But this is a civil case towards a civil case, almost always over money damages.

Zachary Klein:

Perfect. Thank you so much for that. And in that same vein, can you describe just a little bit what the nature of the lawsuits that have been filed against the cruise lines generally alleges? So we understand there are torts that the cruise line has presumably been accused of doing something, not doing something that has put the plaintiffs in these suits in danger. Can you please illustrate the nature of these suits a little more?

Christopher Robinette:

The allegations tend to be that you should have taken more precaution to protect me from COVID. You should have been monitoring cases better, kept people who had COVID away from me better, those type things, perhaps clean better, et cetera. And because you didn't do that, I ended up having some repercussions, actually all the cases don't allege that the plaintiffs ended up getting COVID just that they were worried about getting COVID.

Zachary Klein:

Wow, that's a little striking, especially by modern perceptions of COVID and what people are usually afraid of when they think of it. Is that something that people are normally able to recover for the mere fear of something, or was that unusual?

Christopher Robinette:

It's very rare that you are able to recover for the fear of a disease. And that is indeed what the courts held here. They dismissed those cases pretty quickly.

Zachary Klein:

Understood. It's also understood as people look at the headlines, that there are some very serious consequences of COVID of course. And I'm curious, have any lawsuits been filed against cruise lines that

are related to some of the more serious medical concerns that people might be hearing about related to COVID?

Christopher Robinette:

Yes, they have. Once the original cases, the alleging emotional distress were dismissed, and those were actually among the first cases filed back in March of 2020. Once those were dismissed, a number of cases have been filed that do allege that we actually got COVID and some of them include even cases involving death.

Zachary Klein:

Wow. And so you mentioned that in the cases that merely involved emotional distress, that the court ended up throwing that case, or those cases out. For the cases that involved say death, or some of these other more serious consequences of COVID, how have those suits fared so far?

Christopher Robinette:

Even those cases have not fared particularly well. Almost half of the cases filed against cruise lines have been dismissed and no case has yet to get all the way to trial. A handful of those cases have been settled, but of course we don't know what terms of those were, but in general, the cases against cruise lines are not faring terribly well.

Zachary Klein:

Wow. Especially given a lot of the fear around COVID that might seem surprising to some. Would you be able to explain how and why these cases haven't been particularly successful so far? Has there been any common theme about the failures or successes of the cases that it had ended up going one way or another?

Christopher Robinette:

The biggest problem seems to be causation, that when you are alleging negligence against somebody, you have to prove that they had a duty to you, that they breached that duty and the breach of the duty caused damages. And so it's the causation, the linking of any kind of alleged breach to the damages that has been troublesome for plaintiffs. And that makes sense if you think of all of the different ways that you might be able to get COVID a lot of them are not going to have anything to do with the negligence of someone else.

Zachary Klein:

Sure. That's a very good point. Ultimately, something that's come up throughout the pandemic, both in more academic spaces and more popular spaces that people have to take responsibility for themselves. That's why we wear a mask ultimately to protect others from us in case we have COVID as opposed to just protecting us from the COVID that might be had by others around us. So I'm curious though, when it comes to why people have been suing these cruise lines and exactly what has been considered as they look towards whether cruise lines are doing everything that they can, or at least everything that they're legally required in order to protect passengers from COVID, what have courts considered and what have these lawsuits generally, what points have been raised and how well have they been taken by the courts?

Christopher Robinette:

In terms of what the cruise ship should have been doing?

Zachary Klein:

Exactly.

Christopher Robinette:

A lot of that has to do with things like monitoring. The original case that was filed against, I believe it was Princess Cruises alleged that there were people on an earlier cruise that then remained on the next leg of a cruise and they weren't segregated or anything like that. And they were just thrown together with the new passengers and that allowed the disease spread amongst the new people. So monitoring, cleaning, segregating, these type things are a lot of the allegation.

Zachary Klein:

That's very interesting in part, because while it's generally been understood that there are certain steps that we can take to prevent the spread of COVID since the beginning of the pandemic, our understanding of the disease or of the virus, I should say, and how to prevent the spread of the virus has changed over time. How has the standard that these lawsuits have invoked, how has that changed over time? Whether they're expecting more of cruise lines, whether they're expecting less and generally, whether it's the cruise lines, whether it's the courts, how have they generally adapted at least when it comes to these lawsuits as the pandemic has wore on.

Christopher Robinette:

I mean, that's a great point and it demonstrates the idea that negligence is supposed to be flexible, right? That you are supposed to act as the reasonable person under the circumstances. And of course the circumstances change constantly, as we know, more, you're expected to do more. We're we're seeing a lot of cases that were filed towards the beginning of the pandemic. And we have not seen a whole lot recently of cases that have the benefit of the extra knowledge. It'll be interesting to see if things change as they go forward.

Zachary Klein:

It certainly will be. Now with cruise lines once again, having resumed after the CDC briefly suspended all operations, the confluence or the convergence, I guess I should say, both of cruise lines resuming and the spread of the Delta variant in particular, I would imagine has brought a new chapter, opened a second chapter in terms of cruise ship cases that are involving COVID. Has the new round of Delta variant, has the resumption of cruise lines within the last couple months, has that seen an increase in the number of suits. Have people been deterred from filing these suits in light of the lack of success that you've already highlighted? How has the second chapter compared to the first chapter so far?

Christopher Robinette:

So I'm not aware that the Delta variant has had a lot of impact, and that may be because there was this pause that you have talked about. As I understand it, and I don't follow cruises generally, but if you read what they're doing now, a lot of the cruise lines are taking this opportunity to upgrade their ships since they're not as frequently out on cruises. And I get the sense that they're kind of getting ready for the

post-pandemic era, because I understand that bookings are going to be very strong for them once this passes.

Zachary Klein:

Sure. And returning to a point that you mentioned before that this fits into a broader backdrop of the basic principles and concepts that are involved in tort law, for example, that the concept of negligence and standards of negligence are flexible and that they change over time. How do you see the outcomes of the COVID cases so far, the nature of how COVID has changed cruise ship operations, even if not, without getting into the nitty gritty per se, but just as you alluded to the fact that they're cleaning them more often, or that they're changing the filters more frequently, because these ships aren't going out as much. Do you think that has affected standards that will be used or that the cruise lines will be held against moving forward? Is this a watershed moment for the standard that cruise lines are held to, or is this more or less a blip on the map that is unlikely to be repeated?

Christopher Robinette:

It'll be interested to see, and I always like to watch how discreet events affect the standard. And I don't know. I think there are two possibilities. One is that once this is over, the very specific things that we're worried about are going to go back the way they used to be. And that's probably the way I see this going. The other would be that something about the changes, enhanced cleaning, et cetera, becomes part of the standard and cruise ships have to behave in just a little bit more careful way. In my mind, I think like COVID is so specific that a lot of the things that we do to deal with COVID are specific to COVID and once it's gone will not necessarily be expected anymore.

Zachary Klein:

That's a very important distinction there, right? That there's the fork in the road and it could go the one way or the other. And so based on that observation, and I know I'm putting you on the spot here just a little bit, but when it comes to some of the other black swan events that have occurred in the past, especially those that are related to illness, whether it's outbreaks of cholera or previous disease outbreaks in the past that have required mass quarantine, stuff like that, did they generally end up sort of being accounted for and having the standard adjusted to them, or did they tend to be these one off events and the standard tended to fall back to the norm after the threat had passed, how did it work in the past?

Christopher Robinette:

I think to the extent that you get change based on events like the flu of 1918, et cetera, it's much more likely to come indirectly in the sense that because the medical profession was able to deal with of things in a different way, that in and of itself raised the standard. So, in that sense, perhaps the indirect effect is to raise the standard.

Zachary Klein:

Fair enough. And to follow up on that point, that is a matter of raising the standard over time. There's also over the course of COVID at least been the issue of the standard being lowered. And perhaps I'm not phrasing that particularly eloquently, but I'm specifically referencing some of the extralegal protections that states have afforded businesses, including cruise lines related to any COVID related lawsuits. Would you be able to speak to those a little bit for our audience?

Christopher Robinette:

Sure. There are about 30 states that have passed COVID protection measures that tend to essentially require plaintiffs, and I'm speaking broadly now they don't, some of the states do things a little bit differently. But they tend to require plaintiffs to prove not just negligence, but gross negligence, a fairly substantial amount of negligence. And there are a few that even use willful and wanting, which of course is even stronger. So that is designed to protect people from lawsuits. In general, I don't think they're really needed because we have talked here about the idea of the cruise ship cases not doing particularly well based on causation. And if you can't prove causation, when you're on a cruise ship for two or three weeks, proving causation when you go into a grocery store to pick up a can of beans for 20 minutes is going to be even all the more difficult.

Zachary Klein:

That's a great point. What are some of the big takeaways that you've found are emerging, whether it's in terms of the kind of plaintiffs that are emerging, the kind of claims that are being raised. Any particularly interesting, I don't know whether stories is the right word, but particularly surprising outcomes of cases. Is there anything that you feel as though our audience should know about that we haven't touched on yet?

Christopher Robinette:

One thing I found interesting, and this is I have not spoken to plaintiff's lawyers about this in several months, but several months ago I was talking to a number of plaintiff's lawyers and they were telling me that really they needed serious, serious damages to make it worth it, to bring a COVID suit. That, I mean, frankly, a lot of them several of them said to me, it's going to take a death for us to take this case. And so it's interesting, and that may change as things go on, but it's interesting that a lot of people, including me at the beginning of the pandemic thought that we would be inundated with COVID suits. At least so far, that doesn't seem to have happened. And I don't think it was happening even before the gross negligent statutes were passed. So that's part of what I have found interesting is the need for a lot of damages to make it worth taking one of these cases, and causation is part of that. It's just so difficult to try to establish causation that it makes these cases very difficult.

Zachary Klein:

Do you expect that standard of causation and the difficulties improving causation may ease up or otherwise change moving forward?

Christopher Robinette:

The problem is the way we live, right? Because if people are going to go out and be exposed to the virus, they are likely to be exposed to the virus in multiple ways. They are likely not just to take one trip to a grocery store, right? They're going to go to the grocery store then they're going to go to the CVS. They're going to go perhaps even to a gym or a movie theater. And so it's really difficult to disentangle that. And so I don't necessarily see a lot that could help with causation. The one thing I have heard is that some defense firms are actually suggesting that, especially with the variants we try to get into, well you seem to have been exposed to the COVID version A whereas we only have in our store right now, germs from COVID version B. So it is possible that some of the science will make it a little more specific. Although frankly, in this defense case, that's even making it more difficult to prove causation. It's just getting a little more sophisticated.

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Zachary Klein:

That's a wrap on season two, episode two of the National Sea Grant Law Center's Law on the Half Shell podcast. A huge thank you from all of us at the Law Center to Professor Chris Robinette for his time and his insights in today's episode. To learn more about the cruise tort lawsuits that we've discussed with Chris in this episode, or to learn more about tort law, more generally, check out Professor Robinette's blog at <https://lawprofessors.typepad.com/tortsprof/>.

Zachary Klein:

On another note, next week's episode will delve into COVID's impact on the US seafood industry. This can't miss episode includes interviews with Josh Stoll professor of marine policy at the University of Maine, as well as Jamie Doyle and Angee Doerr of Oregon Sea Grant, and the Law Center's own Catherine Janasie. You can find out as soon as season two, episode three is released by subscribing to Law on the Half Shell on Apple Podcasts, Spotify, or wherever you listen to podcasts. In the meantime, follow the Law Center, or give us a like on Facebook, Twitter, and LinkedIn to find out more about our work and what we're up to. Until next week, everyone. Thanks for joining us.