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## ESTES VS. LTL CARRIER LAWSUIT FORESHADOWS COVID-19 LITIGATION

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A federal district court COVID-19-related action entitled *Watts v. Estes Express* was recently filed by Plaintiff Jamaal Watts against his employer. That action just one of the many outstanding lawsuits filed here across the country by workers against their employers over a coronavirus-related dispute or claim can be seen as a potentially typical lawsuit that may be filed against trucking companies around the country in the coming weeks and months.

In his action, Mr. Watts, a dockworker at the Joliet, Illinois depot of LTL carrier Estes Express, alleges that, in late April, 2020, he learned that two of his co-workers had contracted COVID-19. Notwithstanding the fact that the two employees no longer worked on the premises, Mr. Watts was concerned about a possible infection of his work site. As a result, Mr. Watts asked his employer that he not be required to come to work “while his other co-workers who were exposed remained contagious,” according to his Complaint filed in United States District Court for the Northern District of Illinois. “Watts’ supervisor at Estes denied that request and ordered the plaintiff to return to work the next day,” according to the Complaint filed in the action. Watts did go back to work as instructed but he requested to work just eight hours “to minimize risk from the first shift employees because of his exposure the day before to the infected employees.” After making that request, when Watts came to work the following day “he was told to leave the premises” by his employer. As a result of his employer’s alleged unlawful actions, Mr. Watts is seeking damages totaling \$75,000, plus court costs. While that is not a great sum in and of itself, if you multiply that damages claim by hundreds of actions, the overall costs of litigation and any financial recoveries by plaintiff employees can add up to a potential significant exposure for the trucking industry.

The action filed by Mr. Watts also raises the issue of the proper forum for the handling of COVID-related claims. In early November, 2020, a similar action filed by several workers at an Amazon distribution center in Staten Island, New York, was dismissed by a federal district court judge. The Court determined that the administrative process of the Occupational Safety & Health Administration, which is typically the forum where a trucking firm would prefer to have such a case decided, was the proper means by which the action should be adjudicated. That federal district court decision was considered a victory for Amazon.

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One part of the opinion written by District Court Judge Brian Cogan seems particularly relevant to the issue of whether the court system or administrative process of OSHA or a workers compensation board should adjudicate COVID-19 related employee-employer disputes. The Court stated: “[Plaintiffs] would have me analyze how Amazon’s employment practices and policies impact transmission of a poorly understood disease ... and determine whether those policies create an unsafe workplace or otherwise violate state and federal guidance and standards, and implement and oversee new workplace policies.” Cogan further stated that: “[c]ourts are not experts in public health or workplace safety matters and they lack the training, expertise and resources to oversee compliance with evolving industry guidance.” Most importantly, Cogan [stated: “Plaintiffs’ claims and proposed injunctive relief go to the heart of OSHA’s expertise and discretion.”

In light of the above recent developments and the lack of any binding legal precedent at this time for employee COVID-19 related actions, should a trucking or transportation company be served with such an action, it is important for that company to seek immediate legal counsel. In this fashion, the defendant company will be able to not only timely respond to that action but also be able to preserve its ability to not only defend itself on the merits but be in a position to file a motion to dismiss the action and have it transferred to an OSHA or workers compensation administrative process if appropriate where the action may be more favorably adjudicated for the company.

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