

ALABAMA'S COVID IMMUNITY ACT – A BROAD INTERPRETATION¹

Like many states, Alabama passed a COVID-19 Immunity Act during the COVID-19 pandemic. The primary feature of the Alabama COVID-19 Immunity Act (ACIA) is to grant immunity to entities on negligence claims arising from or related to the Coronavirus. The ACIA is expansive, defining covered entities as business entities, health care providers, educational entities, churches, governmental entities, and cultural institutions, as well as their officers, directors, trustees, managers, members, employees, and agents. Ala. Code § 6-5-791(a)(4).

The ACIA provides:

a covered entity shall not be liable for any damages, injury or death suffered by any person or entity as a result of, or in connection with, a **health emergency claim** that results from any act or omission of the covered entity.

Ala. Code § 6-5-792(a) (bold added).

The ACIA defines a “health emergency claim” as:

Any claim that arises from or is related to Coronavirus. All such claims, no matter how denominated, shall be considered a health emergency claim for purposes of [the ACIA]. The term includes, but is not limited to, any cause of action that is related in any manner to either or both of the following:

- a. The actual, alleged, or feared exposure to or contraction of Coronavirus from the premises of a covered entity or otherwise related to or arising from its operations, products, or services provided on or off premises.
- b. The covered entity’s efforts to prevent or delay the spread of Coronavirus, including, but not limited to, any of the following:
 1. Testing.
 2. Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating exposures or other information.
 3. Using or supplying precautionary equipment or supplies such as personal protective equipment.

Ala. Code § 6-5-791(a)(13).

The Supreme Court of Alabama released a significant decision on January 26, 2024, applying a broad interpretation of the scope of immunity granted by § 6-5-792(a) of the ACIA. In *Ex parte Triad*, Triad of Alabama, d/b/a Flowers Hospital, was providing monoclonal-antibody-infusion (“MAI”) therapy at Triad to patients infected with COVID-19. According to Triad, it directed COVID patients receiving the therapy to enter the hospital through a preexisting entrance designated as the “infusion entry” to help isolate patients infected with COVID-19 from the hospital’s general population. This entrance preexisted the COVID-19 pandemic and had been frequently used by hospital employees and patients to enter and exit the hospital since its creation. Triad had not made any modifications to the entrance or the small ramp leading up to it since their creation.

Around September 21, 2021, Mrs. Voncille Askew was diagnosed with COVID-19 and scheduled for MAI therapy at Triad. After entering the hospital through the designated entrance and undergoing the MAI therapy for approximately two hours, Mrs. Askew was discharged and told to exit through same “infusion entry” she had used to enter Triad. According to the Askews, as Mrs. Askew exited the hospital, her foot caught the edge of the concrete ramp causing her to fall and sustain serious injuries.

The Askews sued Triad on May 10, 2022, alleging claims of negligence, negligence per se, wantonness, and loss of consortium. Triad raised the affirmative defense of civil immunity under the ACIA, specifically §§ 6-5-792(a) and 6-5-794(a)ⁱⁱ of the ACIA. The Askews moved to strike Triad’s affirmative defense, asserting the immunity provisions had no applicability to their claims because their claims “ar[ose] from the hospital’s negligence in maintaining a safe premises and [its] failure to comply with key safety codes.” They contended their claims were not “health emergency claims” for which Triad could be afforded immunity under § 6-5-792(a). The trial court agreed with the Askews and entered an order striking the defense, without providing any rationale for its ruling.

Triad petitioned the Supreme Court of Alabama for a writ of mandamus, contending the trial court erred in striking its affirmative defense of civil immunity. The Supreme Court granted the mandamus review.

Triad argued because Mrs. Askew was at the hospital receiving treatment for COVID-19, the plaintiffs’ negligence claims “ar[ose] from or [were] related to Coronavirus,” resulted from Triad’s actions, and were “health emergency claims.” Triad maintained because the Askews’ claims were “health emergency claims,” it was entitled to civil immunity under the ACIA.

The Askews argued Triad was not entitled to ACIA immunity because, although Mrs. Askew had come to the hospital to receive MAI therapy for COVID-19, her injury occurred because of an alleged premises defect. The Askews contended “health emergency claims” are only those either

related to exposure to or contraction of COVID-19 or arising from a covered entity's efforts to prevent or delay the spread of the virus.

The Supreme Court noted both sides agreed (1) Triad was providing MAI therapy to COVID-19 patients, and (2) Triad directed patients receiving the treatment to enter and exit through the designated "infusion entry." The Supreme Court reasoned, "[f]actually, then, [Mrs. Askew] suffered an injury in connection with her seeking treatment for COVID-19 when Triad directed her to enter and exit through a specific entrance devoted exclusively for patients seeking [MAI] therapy for COVID-19."

While the Askews had argued such an interpretation would create too broad of an interpretation of the statute based on the examples listed in § 6-5-791(a)(13)ⁱⁱⁱ, the Supreme Court referred to the statute itself, which states that a "health emergency claim includes, but is not limited to," the listed examples. As a result, the Court rejected the Askews' argument and recognized the "sweeping breadth" of the statute's language under § 6-5-791(a)(13) holding **the statute imposes no limitations on the chain of causation or on the relation between a claim and Coronavirus outside of those limitations inherent to the words "arises from" or "is related to."**

With this expansive interpretation, the Supreme Court of Alabama granted the writ and directed the trial court to vacate its order striking Triad's affirmative defense under the ACIA. The Court further held that based on the plain language of the ACIA, immunity was mandated as to all negligence claims.^{iv}

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ⁱⁱ Section 6-5-794(a) is not quoted as the ASC made its ruling based on § 6-5-792(a), pretermittting any discussion of § 6-5-794(a).

ⁱⁱⁱ The Askews essentially asked the Court to apply the doctrine of *ejusdem generis* to the statute, which states that "where general words or phrases follow or precede a specific list of classes of persons or things, the general word or phrase is interpreted to be of the same nature or class as those named in the specific list." *Ex parte Mitchell*, 989 So. 2d 1083, 1091 (Ala. 2008). However, as noted by the Court, the rule applies "only if the provision in question does not express a contrary intent." *Cintech Indus. Coatings, Inc. v. Bennett Indus., Inc.*, 85 F.3d 1198, 1202 (6th Cir. 1996).

^{iv} While granting immunity on the negligence claims, the Askews' wantonness claims remained.