

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD O. KLING, M.D., BRENDA SUTTON,
SHIRLEY MORTON, KENYA TUCKER,
HAROLD WIMBUSH, SIMON ALLISON, PATRICIA
HULL, Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

Civil Case No.
7:20-cv-03124 -CS

-against-

THE WORLD HEALTH ORGANIZATION,

Defendant.

SECOND AMENDED CLASS ACTION COMPLAINT

RICHARD O. KLING, M.D., BRENDA SUTTON, SHIRLEY MORTON, KENYA TUCKER, HAROLD WIMBUSH, SIMON ALLISON, PATRICIA HULL, Individually and On Behalf of All Others Similarly Situated, (collectively “Plaintiffs”) by and through their attorneys, BLAU LEONARD LAW GROUP, LLC, as and for their Second Amended Complaint against THE WORLD HEALTH ORGANIZATION, allege upon personal knowledge and upon information and belief as to all other matters, as follows:

NATURE OF THE CLAIMS

1. This is a class action brought against the WORLD HEALTH ORGANIZATION [“WHO”] for the substantial damages suffered by Plaintiffs and Class Members, proximately resulting from WHO’s gross negligence in failing to timely declare Coronavirus [COVID-19] a public health emergency of international concern (“PHEIC”); in failing to properly monitor the response to the Coronavirus pandemic in China generally and within Hubei Province and the City of Wuhan; in failing to timely promulgate the correct treatment guidelines to its members;

in failing to timely and properly issue appropriate guidance to its members on how they should respond to the Coronavirus pandemic emergency, including travel and trade restrictions; and in negligently failing to act as a global coordinator, shepherding scientific data and experts to where they were most needed.

2. WHO negligently mishandled and mismanaged the response to the discovery of the coronavirus by negligently assenting to the assertions of the Chinese government that insisted human transmission was impossible, long after doctors in Wuhan had concluded human transmission was ongoing, and despite the suspicions and contrary opinions of other outside health experts.

3. WHO'S negligent and reckless conduct/actions caused and/or contributed to the subsequent spread of the coronavirus all over the world, including to the United States of America and the State of New York.

4. The negligent commissions and omissions of WHO have proximately caused injury and incalculable harm to Plaintiffs and Class Members. Such injuries and harm are continuing in nature and will multiply exponentially for the indefinite future, causing additional personal injuries and deaths, as well as progressive economic damages.

THE PARTIES

5. RICHARD O. KLING, M.D. is a resident of New Rochelle, New York who has been injured and damaged by WHO's negligent conduct and actions as described herein.

6. BRENDA SUTTON is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid-19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.

7. SHIRLEY MORTON is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid-19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.
8. KENYA TUCKER is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid-19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.
9. HAROLD WIMBUSH is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid-19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.
10. SIMON ALLISON is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid-19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.
11. PATRICIA HULL is a resident of Mount Vernon, New York who has been diagnosed, and treated for Covid -19 and sustained damages as a proximate result of WHO's negligent conduct and actions as described herein.
12. The WHO is a specialized agency of the United Nations responsible for international public health.
13. The WHO is part of the U.N. Sustainable Development Group, a consortium of 36 United Nations funds, programs, specialized agencies, departments and offices that play a role in development. It was created by the Secretary-General of the United Nations in order to improve the effectiveness of United Nations development activities at the country level.
14. The WHO maintains offices at the United Nations, 1 Dag Hammarskjold Plaza 885 Second Avenue, New York, New York 10017.

JURISDICTION AND VENUE

15. Article III, Section 2 of the United States Constitution extends the judicial power of federal courts to “all Cases ... between a State, or the Citizens thereof, and foreign States.”

16. This Court has jurisdiction of this matter under 28 U.S.C. §1330, which provides for jurisdiction over foreign states.

17. The International Organizations Immunities Act [Public Law 79-291] (“IOIA”) is a United States federal law enacted in 1945. Congress enacted the IOIA to provide certain privileges and immunities to international organizations, their officers, and employees. See Pub. L. No. 79-291, 59 Stat. 669 (22 U.S.C. 288, et seq.).

18. IOIA defines “international organization” as “a public international organization in which the United States participates” pursuant to a treaty or an Act of Congress, and which is designated by the President in an Executive Order “as being entitled to enjoy the privileges, exemptions, and immunities” provided by the Act. 22 U.S.C.288; see, e.g., Exec. Order No. (EO) 9698, 11 Fed. Reg. 1809 (1946).

19. WHO is a public international organization entitled to enjoy certain privileges, exemptions, and immunities under the IOIA. [World Health Organization, Ex. Ord. No. 10025, Dec. 30, 1948, 13 F.R. 9361].

20. In *Jam v. International Finance Corporation*, 138 S. Ct. 2026 [2018], the United States Supreme Court ruled that an international organization’s immunity is not absolute, but must be decided with reference to the current law of foreign sovereign immunity.

21. In *Jam*, the United States Supreme Court ruled that like foreign governments, international organizations such as WHO, could be sued under The Foreign Sovereign Immunities Act (FSIA) of 1976.

22. FSIA is a United States law, codified at Title 28, §§ 1330, 1332, 1391(f), 1441(d), and 1602–1611 of the United States Code, that establishes the limitations as to whether a foreign sovereign nation (or its political subdivisions, agencies, or instrumentalities) may be sued in U.S. federal or state courts.

23. This court has subject matter jurisdiction because the WHO has impliedly waived its immunity under FSIA by violating the jus cogens norms of international law condemning human rights health violations in connection with global communicable disease surveillance and governance.

24. In the alternative, this Court has jurisdiction over WHO under the tort exception to the FSIA, 28 U.S.C. § 1605(a)(5), which provides:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case — ... (5) not otherwise encompassed by [the commercial activities exception], in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment.

25. Plaintiffs and the putative Class seek monetary damages against WHO for personal injuries and death or damage to or loss of property, occurring in the United States and caused by the tortious acts or omissions of WHO officials and/or employee within the scope of their office or employment in connection with the Covid-19 pandemic.

26. Specifically, for purposes of the non-commercial tort exception of 28 U.S.C. § 1605(a)(5), each of the counts enumerated below are torts occurring in the County of Westchester, State of New York.

27. There is no “discretionary acts” exception to jurisdiction under the FSIA, as WHO has acted clearly contrary to and in violation of conduct prohibited by the tenets of international

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