

# Defendants' Perspective of COVID-19

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# Covid-19 Enters the Picture:

- March 10, 2020, Governor Roy Cooper declares a State of Emergency and implements measures to reduce the spread of Covid-19 in NC
- March 11, 2020, the World Health Organization characterizes Covid-19 as a pandemic
- March 13, 2020, President Donald Trump declares Covid-19 a national emergency
- March 13, 2020, the NCIC continued, with limited exception, all Deputy Commissioner level hearings and moved all Full Commission hearings to telephonic participation
- Effective July 1, 2020, Deputy Commissioner level hearings returned via Webex, with limited exception for in-person hearings with safety measures implemented to reduce the spread of Covid-19

# Covid-19 Changes the Picture:

Temporary business closings

Remote working

Virtual school

Executive Order 118 – unemployment benefits

# Covid-19 – Compensable or not?

IBA v Occupational Disease

Occupational Disease is the more probable theory of compensability

House Bill 1057

“Catch all” provision – NCGS 97-53(13)

# N.C. Gen. Stat. § 97-53(13)

An employee seeking to utilize the catchall provision will need to prove that their development of COVID-19 was due to **causes or conditions peculiar to their particular job**, that it was the **characteristic of and peculiar to their specific trade, occupation, or employment**, and that it is **NOT an ordinary disease of life to which the public is equally exposed**.

# Increased Risk

An increased risk must be proven by showing that the disease is a “(1) **characteristic** of persons engaged in the particular trade or occupation in which the claimant is engaged; (2) **not an ordinary disease of life** which the public is generally exposed with those engaged in that **particular trade or occupation**; and (3) there must be a **casual connection** between the disease and the [claimant’s] employment.”

*Rutledge v. Tutltex Corp.*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983).

# Increased Risk

## Characteristic

A disease is a characteristic of a profession when there is a **recognizable link between the nature of the job and an increased risk of contraction of the disease in question.**

*Booker v. Duke Medical Center*, 297 N.C. 458, S.E.2d 189 (1979).

## Peculiar to the Occupation

To be peculiar to the occupation means the **conditions of the employment must result in a hazard, which distinguished it** in character from the other occupations and the general public.

*Kelly v. City of Wilmington Police Dept.*, 65 N.C. App. 675, 309 S.E.2d 543 (1983) *cert. granted* 310 N.C. 625, 315 S.E.2d 690 (1984).

# Increased Risk

The first two elements of the *Rutledge* test are satisfied if, as a matter of fact, the employment exposed the worker to a greater risk of contracting the disease than the public generally.

*Rutledge v. Tultex Corp.*, 308 N.C. 85, 93, 301 S.E.2d 359, 365 (1983).

To meet the first two prongs of the *Rutledge* test, **expert medical testimony** is required to establish that the **employment has placed the claimant at a greater risk of contracting the injury.**

*Briggs v. Debbie's Staffing*, \_\_\_\_\_ N.C. App. \_\_\_\_\_, 812 S.E.2d 706, 715 (2018).



# Increased Risk . . . to all?

Community spread

Asymptomatic carriers

Contact tracing

# What about causation?

Case law on infectious diseases – limited

Sole causative factor versus significant causal factor

Causation  $\neq$  increased risk

# Case-by-Case Analysis

Healthcare workers

Childcare providers

Frontline workers

Questions?

# Thank You!

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