

United States District Court
for the
Southern District of Florida

Kevin Collazo, Plaintiff,)
)
v.) Civil Action No. 20-25302-Civ-Scola
)
Progressive Select Insurance)
Company, Defendant.)

Order Cancelling Specially Set Trial

This automobile accident case is currently specially set for trial beginning on February 7, 2022. On January 18, 2022, during a hearing on pre-trial motions, the Court explained its current, COVID-19 trial procedures. The Court advised counsel that all parties seeking to participate in the forthcoming trial, including counsel and the parties, must be fully vaccinated or provide a negative COVID-19 PCR test within 24-hours before the first day of trial. Additionally, in light of the recent Omicron surge of COVID-19 cases in Miami-Dade County, the Court advised counsel that all members of the prospective jury panel must be vaccinated. Counsel for the Plaintiff did not object to the Court’s procedures. Defense counsel, claiming they did not want to exclude unvaccinated jurors from the trial, objected to the Court’s use of only fully vaccinated prospective jurors.

All of us who participate in the justice system have a shared obligation to protect those who enter the courthouse. This grave obligation is particularly pronounced as to jurors and witnesses, who are present only under legal compulsion. *See* 28 U.S.C. § 1866(g).

Just as the Court and the legal profession have an obligation to protect those who enter the courthouse, all of us have an obligation to consider the safety and well-being of our community. The vast majority of adults in Miami-Dade County have met this obligation. Over 94% of Miami-Dade County adult residents have been vaccinated. *See* Miami-Dade County COVID-19 Daily Dashboard, dated January 17, 2022, available at www.miamidade.gov/information/library/2022-01-17-covid-dashboard.pdf. It is the Court’s belief that the vast majority of the unvaccinated adults are uninformed and irrational, or—less charitably—selfish and unpatriotic. The Court believes that these individuals have given a distorted meaning to the COVID-19 vaccine, rather than recognize the vaccine for what it is—an effective and safe means of minimizing transmission and illness.

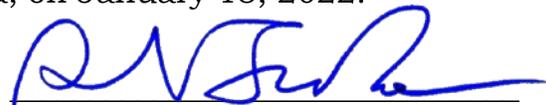
Whether uninformed and irrational or selfish and unpatriotic, no citizen is excused from considering their obligation to the health and well-being of their community. Else, the health, welfare, and safety of society would be subordinated to a substantial minority. Over one-hundred years ago, the Supreme Court upheld a State's compulsory vaccination program and noted that nothing in our democracy grants an "absolute right in each person to be . . . wholly freed from restraint." *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 26 (1905). The Court held that individuals may be called upon, and even compelled, to protect their community, whether by means of vaccination or by conscription. *Id.* at 29. "[O]rganized society could not exist" otherwise. *Id.* at 26.

In a way, the jury is a microcosm of organized society. It "lies at the very heart of the jury system" that "those eligible for jury service are to be found in every stratum of society." *Thiel v. S. Pac. Co.*, 328 U.S. 217, 220 (1946). Old and young, disabled and immunocompromised, all are called to jury service. The Court will not abdicate its duty and obligation to ensure the protection of these witnesses and jurors by exposing them to risks, particularly when those risks are heightened by the Omicron variant. While the Court does not believe that excluding unvaccinated jurors in the middle of a pandemic is legally impermissible, it nonetheless does not want to create an appellate issue.

The specially-set jury trial beginning on February 7, 2022 is **cancelled**.

Accordingly, this action is reset for trial during the two-week trial period beginning on **May 9, 2022**. Calendar call will be held at **9:00 a.m.** on the preceding **Tuesday, May 3, 2022**, at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 N. Miami Avenue, Courtroom 12-3, Miami, Florida.

Done and ordered in Miami, Florida, on January 18, 2022.



Robert N. Scola, Jr.
United States District Judge