



COVID-19 Liability

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Litigation in the Time of COVID-19

As Americans and businesses of all sizes are working together to get through the COVID-19 health crisis, plaintiffs' lawyers have already begun filing COVID-19-related lawsuits.

Limiting litigation abuse is essential to making available the tools and resources needed to combat the virus, and ultimately to spurring economic recovery once the immediate health crisis has been resolved.

This is not to say, however, that litigation is unwarranted against truly bad actors. But Congress, the administration, state legislatures, and governors each have an important role to play to ensure that businesses and healthcare workers can focus on fighting COVID-19, rather than having to defend against opportunistic, lawyer-driven lawsuits.

The litigation tsunami is starting to form, with cases filed in areas such as negligence, contract, employment, data privacy, financial services, consumer protection, and securities. Based on the current movements of the plaintiffs' bar, as well as the actions they have taken during past crises, litigation in several other areas is expected to develop.

Additional *ILR Briefly* editions will be released over the coming weeks that take a more in-depth look at some of these specific issue areas, including those that warrant a federal solution, common law issues, public nuisance, and data privacy.

This edition of *ILR Briefly* is intended to provide a summary of the current and anticipated types of litigation arising out of the COVID-19 pandemic, including the following categories:

COMMON LAW

(including negligence, public nuisance, contract claims, and product liability)

LABOR AND EMPLOYMENT

THE FALSE CLAIMS ACT

DATA PRIVACY

(including virtual meetings, health information, and big data)

FINANCIAL SERVICES

CONSUMER CLAIMS

(including the Telephone Consumer Protection Act, false advertising and deceptive marketing, and price gouging)

SECURITIES

This edition also explores early trial lawyer advertising trends and third party litigation funding activity in the context of COVID-19.

Common Law Claims

NEGLIGENCE LAWSUITS

The Issue: Negligence suits against businesses are likely to comprise a large portion of the wave of litigation brought by plaintiffs' lawyers capitalizing on the COVID-19 pandemic. The opening salvo of negligence lawsuits was filed against cruise line operators, initially targeting the much-covered Grand Princess cruise ship that was quarantined off the coast of California. The suits include similar allegations that cruise ships did not follow Center for Disease Control (CDC) guidelines or take the precautions and safety measures necessary to protect passengers from COVID-19.¹

These industry-specific lawsuits are likely to continue and expand. Additionally, wrongful death lawsuits have been announced against nursing homes in Washington State and Tennessee,² and the family of a Walmart employee recently filed a wrongful death lawsuit against the company and the retail complex the specific store is located in, alleging the defendants failed to take appropriate measures to protect the deceased employee from contracting the virus.³

These are just some of the first suits, and the prospect of negligence litigation is cause for concern for all businesses and services that remain open during the crisis, as well as for businesses that reopen in the future. Unfortunately, medical

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providers, such as hospitals and clinics, and the healthcare workers and volunteers who are on the front lines during the pandemic, could also be the targets of negligence litigation.

Some policymakers are already taking steps to address the threat of litigation in the medical space. These measures are designed to allow paid and volunteer healthcare workers to devote their efforts to saving those who have contracted Coronavirus and preventing its further spread, rather than worrying about future liability. Other measures are also intended to allow equipment manufacturers to answer the call

for desperately needed supplies of medical and health countermeasures by limiting their potential exposure to negligence or product liability lawsuits.

For example, Congress has extended liability protections for the manufacturers of respirators recommended by the CDC and for volunteer healthcare providers at overstressed medical institutions.⁴ And the Secretary of the Department of Health and Human Services (HHS) provided limited negligence liability protection to those

developing treatments and vaccines, as well as those administering these covered countermeasures.⁵

Individual states are also taking action. As of this writing, the governors of at least ten states have issued executive orders that include or clarify liability protections of varying scope for healthcare providers, and some of these orders also include protections for medical facilities.⁶ Going further, New York recently passed legislation that covers all healthcare providers during the COVID-19 emergency, recognizing the strain on the healthcare system that is affecting the medical profession



more broadly.⁷ Alaska⁸ and Kentucky⁹ passed legislation which protects healthcare providers as well as providers of personal protective equipment (PPE). More states are likely to address liability protections in the coming weeks.

Look Out For: Suits against medical providers and facilities are likely to surge, and they will not be the only targets of the trial bar. Plaintiffs' lawyers will look to sue any essential businesses—including shelters, grocery stores, restaurants, mail and package delivery companies, utilities, and banks—that have remained open and either fully or partially operational in order to serve the public despite the challenges presented by the ongoing crisis.

Beyond that, there will be an endless stream of litigation targets as businesses that were closed during the pandemic begin to reopen, welcome customers back into their stores and establishments, and offer their services once again. For example, a potential batch of claims could include allegations from customers that they contracted COVID-19 from a business and that the establishment knew or should have known about the risk, that the business did not properly clean its premises, or that it did not appropriately warn customers of potential Coronavirus exposure.

PUBLIC NUISANCE

The Issue: In recent years, plaintiffs' attorneys have attempted to expand the public nuisance theory of liability far beyond its traditional scope through lawsuits in areas like climate change, opioids, vaping, and more. It is likely that they will now attempt to use the COVID-19 pandemic as a basis to continue expanding this once-narrow cause of action. For example, several class action lawsuits have been filed



Image credit: TopClassActions.com

against the People's Republic of China, seeking to hold the country responsible for the spread of COVID-19, some of which include claims of public nuisance.¹⁰

Look Out For: Due to the inherent difficulties associated with proving that a business (as opposed to some other source) caused someone to be infected by COVID-19, the plaintiffs' bar will likely turn to public nuisance theories in large-scale

COVID-19 lawsuits. Plaintiffs frequently argue that causation standards generally applicable to tort claims should not apply to their public nuisance claims, but rather that the existence of a nuisance and some nexus of that nuisance to the defendant is enough to establish liability.¹¹

Future COVID-19 public nuisance cases may claim that businesses did not take appropriate precautions, took these precautions too late, or ended them too early, causing the infection to spread. Further, many recent (non-COVID-19) public nuisance suits have involved contingency fee-based plaintiffs' lawyers recruiting local—often cash-strapped—municipalities to file the suits.¹² Like other attempts to expand the public nuisance theory of liability, the spread of the virus will tax the resources of states, cities, counties, and other local government entities. Trial attorneys will likely attempt to transfer these costs to businesses and extract a profit using public nuisance claims.

CONTRACT CLAIMS

The Issue: The outbreak of COVID-19 has caused unexpected challenges for businesses large and small, including having to close their doors to paying customers and cancel events relied upon for revenue. As a result, breach of contract claims are among those being asserted against businesses around the country.

For example, such claims were levied in a nationwide class action lawsuit against 24-Hour Fitness, alleging that gym members continue to be charged their monthly membership fee despite the closure of hundreds of gyms, even though the company had announced it was going to cease billing members during the quarantine, award members time to compensate for lost usage once it re-opened, and provide virtual content (normally subscription-based) for free.¹³ And at least one university is in the class action crosshairs for allegedly not refunding room and board expenses to students after the campus was closed due to COVID-19.¹⁴

Additionally, just three days after the U.S. Department of Transportation mandated on April 3 that airlines fully refund passengers who wish to cancel their flights in light of the COVID-19 outbreak, two class action lawsuits were filed alleging that United Airlines was not complying with the directive. The suits were filed in the U.S. District Court for the Northern District of Illinois and claim that the airline changed its cancellation policies multiple times but still is not providing cash refunds for canceled flights.¹⁵

Look Out For: These types of contract-based claims can be expected to proliferate against companies operating on a paid membership basis, such as gyms or clubs, and ticketed single-event promoters, such as music or sporting events.¹⁶

PRODUCT LIABILITY

The Issue: As a result of well-founded health fears, consumers, health practitioners, first responders, and others are looking to a variety of products to protect themselves. These range from once-commonplace hand sanitizer and disinfecting household products to more advanced personal protective and healthcare equipment. The threat of lawsuits against the

businesses that convert their normal operations to produce medical supplies.¹⁸ These protections allow increased production and distribution of products to meet the needs of the medical community, as illustrated by the increased output of respirators.¹⁹

Look Out For: Product liability claims are a real possibility for companies that manufacture, sell, or distribute medical or other supplies to diagnose, treat, detect or protect against COVID-19 if that product allegedly malfunctions or is not effective. Furthermore, preexisting liability protections such as those provided by the 2005 Public Readiness and Emergency Preparedness (PREP) Act²⁰ or the CARES Act only cover certain specified categories and types of products.

Regardless of where a product may fall on this spectrum of accessibility and importance, suits will likely emerge alleging that the claimed

benefits of the products are exaggerated or false. And plaintiffs' lawyers will surely seek to divert the legal analysis away from the risk that was known or foreseeable when the product was initially marketed (long before COVID-19 was on the scene).

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manufacturers of these critically needed products is what prompted Congress to include respirator protections in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹⁷ It also drove Kentucky to extend an affirmative defense in product liability suits to



Labor and Employment

The Issue: COVID-19 raises a host of issues for employers and employees, including matters involving leave policy, travel restrictions and telework protocols, and the health and safety of employees that remain on the job during this tumultuous time.

Labor-related class action lawsuits have already been filed, including a lawsuit against a cruise line for failing to protect employees on its ships.²¹ And the Allied Pilots Association filed a suit against American Airlines that would stop service to China in the interest of employee and passenger safety.²² Cases have also been filed by employees claiming they were terminated after expressing concerns about employers' preparedness and precautions to prevent the spread of COVID-19.²³

Other sources of liability are suits against employers based on layoffs occurring due to business shutdowns and lack of demand for goods and services.²⁴ The federal Worker Adjustment and Retraining and Notification (WARN) Act²⁵ and many similar state laws require

that employers comply with procedural requirements, including notice to employees, in the event of layoffs. California Governor Gavin Newsom issued an executive order on March 17, 2020 that suspended some requirements under California's version of the WARN Act, and ordered the state's labor agency to issue guidance on the suspension.²⁶ Similar suspensions in other states and at the federal level

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would protect businesses that are facing extraordinary financial difficulty due to the global pandemic.

State governors, regulators, and legislatures have also begun instituting workers' compensation presumptions, which may present ongoing liability risks for businesses. For example, the Illinois Workers' Compensation Commission has created a presumption that employees in essential

industries who are infected with Coronavirus caught the virus in the workplace.²⁷ This may have implications in civil litigation, such as lawsuits from customers, as plaintiffs' lawyers look to take advantage of the presumption.

Look Out For: Suits will likely increasingly be filed against essential businesses that continue to operate during the pandemic, and businesses that reopen in the future will face similar litigation. The limited supply of PPE or lack of training in the use of this equipment may be one basis for these suits. Workers' compensation issues dealing with shortages of PPE or incorrect use of this equipment are also likely. The trial bar is actively encouraging lawsuits against employers as an

alternative to workers' compensation for those who are ineligible, such as independent contractors.²⁸ Expansion of traditional workers' compensation issues will likely be worsened by presumptions such as the one in Illinois. These suits will continue through the apex of the pandemic, and employers will likely be at risk based on their decisions to reopen their businesses.

False Claims Act

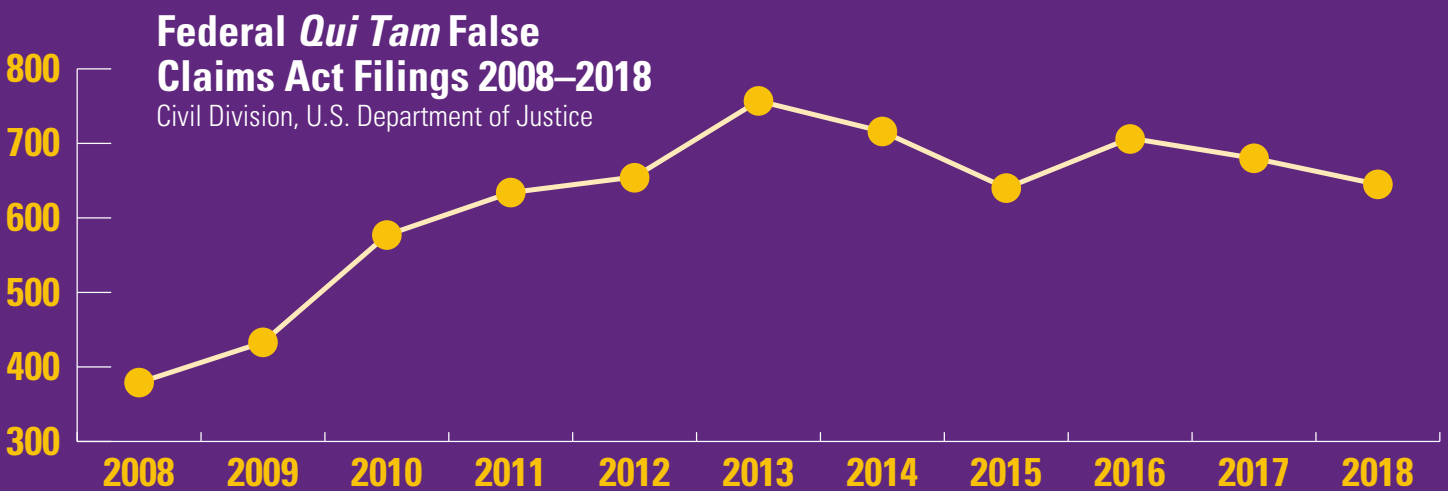
The Issue: The federal False Claims Act (FCA) was originally passed during the American Civil War to prevent defense contractors from defrauding the government, and the FCA is being highlighted as a weapon against fraud in this time of crisis.²⁹ However, beyond addressing genuine cases of fraud, plaintiffs' lawyers will target businesses with frivolous or speculative FCA claims in order to turn a profit.

For example, under the CARES Act, financial services providers are the critical conduit for the federal loans and loan guarantees made available to small businesses by that statute.³⁰ Unfortunately, history teaches us that as businesses begin to make use of the financial assistance provided by the government, FCA investigations and litigation are sure to follow. Consider what occurred in the four years after 2009, when Congress passed stimulus bills

to respond to the financial crisis: the government and private whistleblowers filed nearly 4,000 FCA cases.³¹ This risk is mirrored in states that have their own FCA statutes.³²

Look Out For: Plaintiffs' lawyers are waiting to bring FCA suits against any financial service providers who approve loans that are not used for the purposes approved by the CARES Act or for loans made to businesses not qualified to receive them. While the Small Business Administration (SBA) has put in place "hold harmless" language for lenders in its regulations implementing the CARES Act loan Paycheck Protection Program,³³ more should be done to implement this protection. If not, the process of getting critical financial relief to small businesses will be significantly delayed as lenders focus on mitigating litigation risks.³⁴

The SBA should take these concerns into consideration and enter into a memorandum of understanding with the Department of Justice (DOJ) to implement its hold harmless protections and define the conditions under which FCA litigation would be appropriate under the CARES Act.³⁵ FCA suits based on allegations from whistleblowers in cybersecurity or healthcare are also likely.³⁶ Groups such as the National Whistleblower Center are calling on DOJ to create a "Task Force to Combat Coronavirus-Related Fraud" and to prioritize FCA enforcement and *qui tam* (whistleblower) actions.³⁷ The DOJ has already established a National Nursing Home initiative to address substandard care and abuses at nursing homes, which will likely utilize the FCA.³⁸ Any action taken by DOJ and other regulatory agencies in this context will surely lead to follow-on trial lawyer claims against businesses.



Data Privacy

VIRTUAL MEETINGS

The Issue: In the new reality of social distancing, business and school closures, and widespread teleworking, issues of privacy and data security will emerge. These concerns largely stem from the increased use and security of online platforms as massive portions of the workforce turn to working remotely.

Online voice and video conferencing services have become a lifeline for many businesses and schools attempting to continue their operations. As a result, providers of online video conferencing services have seen their usage rates increase dramatically.³⁹ Unfortunately, the litigation risk they face has also dramatically increased. For example, a data privacy class action lawsuit has been filed against Zoom, a provider of online video conferencing services.⁴⁰ The suit alleges that Zoom failed to protect users' personal information, allowing targeted ads and the sending of personal information to third parties.

Virtual platforms are being used for children's education, teleworking, and telehealth. They are also being used to supplant in-person social gatherings, including virtual happy hours, TV show viewing parties, and fitness classes.

Look Out For: These services are at a heightened risk of being sued while they are

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experiencing unprecedented volume generated by social distancing requirements. Lawsuits will likely focus on the privacy practices of these platforms, including how and to what extent they collect, use, share, and/or sell user information and what privacy policies and commitments they have made to users. Additionally, litigation will ensue if these entities suffer a data

breach by a criminal or other bad actor taking advantage of the expanded online universe, with increased scrutiny on the security protocols and practices the entity had in place at the time of the breach.

HEALTH INFORMATION

The Issue: Employers are especially at risk for privacy lawsuits, as the Americans with Disabilities Act (ADA) and the Health Insurance Portability and Accountability Act (HIPAA) require employers to adhere to certain privacy provisions when designing workplace policies related to COVID-19.⁴¹ These statutes limit the health information that employers can request from their

employees and how they may share that health information with others. The CDC has also issued guidance providing that “If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure ... but maintain confidentiality” as required by the ADA.⁴² HHS has also issued a bulletin that offers employers guidance regarding the disclosure of

protected health information during a public health crisis, including which disclosures require individual authorization and which do not (such as to the CDC or other public health authority).⁴³

Look Out For: Employer obligations are an especially gray area until HHS issues guidance on the sharing of personal health information, as required by Section 3225 of the CARES Act. At that point, lawsuits can be expected that measure entities up against the guidance, as well as their obligations under the ADA and HIPAA.

BIG DATA

The Issue: As pointed out during the Senate Commerce Committee's April 9, 2020 hearing entitled, "Enlisting Big Data in the Fight Against Coronavirus," government officials and healthcare

professionals have turned to "big data" to help fight the COVID-19 pandemic. And Congress recently authorized the CDC to develop modern data surveillance and analytics systems to track COVID-19 more effectively and reduce its spread.⁴⁴ Recent media reports reveal that data is being used by the mobile advertising industry and technology companies in the U.S. to track the effectiveness of social distancing, as well as the spread of the virus through the collection of consumer location data.⁴⁵

Look Out For: As telehealth and non-conventional health services are launched and used, data privacy and security lawsuits are likely close behind. Google is developing a screening website to help determine whether users qualify for COVID-19 testing, and concerns are already being

raised both about the accessibility of this service and Google's use of the information it collects.⁴⁶ Another company is producing "smart thermometers" for the purpose of tracking and curbing the spread of infectious illnesses through the company's app and opt-in location tracking.⁴⁷ Apple and Google are working on a joint program for COVID-related contact tracing.⁴⁸ Privacy risks and alleged violations will certainly be explored by the plaintiffs' bar, including how consumer data is anonymized, how consumers are notified about the collection of their location or other information, their ability to control or opt out of data collection, and to what extent this information is publicly disclosed.

ARBITRATION UNDER ATTACK

Arbitration provides dispute resolution solutions to employees and consumers that are often faster and cheaper than time-consuming and expensive litigation.⁸⁸ Because this tool reduces litigation, plaintiffs' lawyers are using every opportunity to try to ban pre-dispute arbitration agreements. The plaintiffs' bar

also views arbitration clauses as an impediment to class action litigation. Accordingly, they are seeking to leverage the COVID-19 pandemic as a way to weaken the enforceability of arbitration clauses in various contexts.

For example, in recent unsuccessful federal bills dealing with COVID-19, such as H.R. 6379⁸⁹ and S. 3513,⁹⁰ plaintiffs' bar allies in Congress included anti-arbitration provisions that would have invalidated

arbitration agreements in disputes related to the suspension of consumer and small business loans, employees' sick leave, and public health emergency leave.

This is part of the trial bar's strategy of chipping away at arbitration's availability in order to increase litigation. Policymakers should watch out for future attempts to prohibit or weaken arbitration agreements in other COVID-19 related bills.



Financial Services

The Issue: Congress has quickly passed a series of much-needed legislation to address various immediate threats posed by the COVID-19 pandemic, but the emergent need for Coronavirus legislation has presented an opportunity for plaintiffs' bar allies to attempt to expand corporate liability. Lawsuits have been filed against several banks, including Bank of America and Wells Fargo, regarding their decision related to the CARES Act Paycheck Protection Program to only accept loan applications from existing customers.⁴⁹ A Maryland district court judge ruled in favor of Bank of America on April 13, 2020, finding that the CARES Act does not contain a private right of action or any prohibitions against additional applicant eligibility requirements.⁵⁰

Look Out For: Additional litigation against financial services providers involving rent, mortgage, or other loan disputes is likely to continue. Trial lawyers who are unable to achieve policy

goals to expand liability for companies will look to the courts and attempt to make policy through litigation rather than through the more appropriate legislative process.

Foreclosure and student loan protections were included in the recent CARES Act,⁵¹ but financial services institutions may be subject to lawsuits alleging

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they implemented these protections incorrectly or that following these federal guidelines was not enough.

In addition, some state attorneys general (AGs), a group often active in consumer financial

services matters, have already sent warning signs that they are keeping a close eye on financial and lending institutions during the COVID-19 pandemic. Recently, Arizona AG Mark Brnovich sent a letter to over 1,000 financial institutions doing business in his state requesting they suspend foreclosures, repossessions, and evictions for at least 90 days.⁵² AG Brnovich also asked credit card companies and other lending institutions to waive late fees and default interest for late payments.

While this measure is far from an investigation or enforcement action, companies should be on the lookout for the trial bar engaging with state AGs to bring contingency fee-based state consumer protection

act lawsuits against financial services companies for otherwise standard business activity during this crisis.

Consumer Claims

TELEPHONE CONSUMER PROTECTION ACT

The Issue: Class action lawsuits under the Telephone Consumer Protection Act (TCPA) are often brought against companies alleging that consumers received automated calls or texts without first providing their consent to receive these communications. The TCPA contains an exception that allows these types of automated contacts in emergency situations “affecting the health and safety of consumers.”⁵³ The Federal Communications Commission (FCC) issued a declaratory ruling on March 20, 2020 that confirms “the COVID-19 pandemic constitutes an ‘emergency’ under the Telephone Consumer Protection Act.”⁵⁴

Look Out For: The FCC declaratory ruling limits the “emergency” exception to hospitals, healthcare providers, health officials, or government officials.⁵⁵ However, other important communications from many businesses are not protected, depriving consumers of critical information in these uncertain times. Unless the exemption is appropriately extended so that consumers can receive information about COVID-19 that companies send in good faith, the aggressive TCPA bar will have its sights on

companies that communicate information about supply availability, closures, service limitations, reduced hours, and the availability of remote access. The FCC has received a petition for an additional declaratory ruling extending the application of the FCC’s original TCPA emergency declaration.⁵⁶

Without this protection for businesses, consumers will not be provided with important information due to the uncertainty of facing rampant class action lawsuits. The “Top Class Actions” website is already searching for plaintiffs to file a class action lawsuit based on COVID-19 communications in the wake of the FCC’s limited ruling.⁵⁷

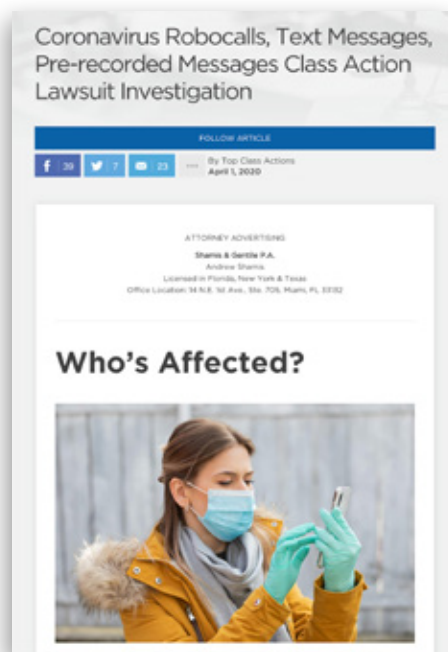


Image credit: TopClassActions.com

EXCERPT: FCC DECLARATORY RULING

“... With this Declaratory Ruling, we ensure that public health authorities can efficiently and effectively communicate vital health and safety information to the American people. Specifically, we confirm that the COVID-19 pandemic constitutes an ‘emergency’ under the Telephone Consumer Protection Act (TCPA) and that consequently hospitals, healthcare providers, state and local health officials, and other government officials may lawfully communicate information about the novel coronavirus as well as mitigation measures without violating federal law.”⁹¹



FALSE ADVERTISING AND DECEPTIVE MARKETING

The Issue: In the area of false advertising and deceptive marketing claims, COVID-related lawsuits have already been rolling in. Several class actions have been filed against companies that manufacture or sell hand sanitizer claiming that the suggestions that hand sanitizer products prevent disease or reduce illness are unfounded.⁵⁸ A California woman recently filed a class action lawsuit against Target, alleging that the retailer is misleading its customers with false advertising about its hand sanitizer. The lawsuit, filed in the U.S. District Court for the Central District of California, seeks to stop the retailer “from engaging in deceptive advertising and business practices concerning false and misleading promotion of its hand sanitizer that purports to eliminate 99.9% of germs.”⁵⁹ The lawsuit alleges negligent misrepresentation, violations of California’s Business and Professions Code, intentional misrepresentation, and violations of the California Civil Code.

Look Out For: Plaintiffs’ attorneys have been filing weak false advertising and deceptive marketing lawsuits against food manufacturers for years, including one against Ben & Jerry’s alleging the company

misled consumers by advertising that their ice cream comes from happy cows.⁶⁰ Using the same playbook, plaintiffs’ attorneys are likely to continue to bring lawsuits against companies for their advertising and marketing relating to the use of everyday products in the context of the COVID-19 pandemic.

State and federal consumer protection enforcers are also making COVID-19 advertising and marketing issues a major

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priority. The Federal Trade Commission (FTC) and Food and Drug Administration (FDA) issued seven joint warning letters to companies “allegedly selling unapproved products that may violate federal law by making deceptive or scientifically unsupported claims about their ability to treat Coronavirus (COVID-19).”⁶¹ State AGs around the country have also been particularly vigilant in going after what they believe to be false or

misleading claims (especially health-related claims) associated with the pandemic.⁶²

Many, if not all, of these early enforcement activities by state and federal authorities are justified takedowns of scammers and fraudsters looking to use advertising schemes to take advantage of the pandemic. Companies should be mindful, though, that the plaintiffs’ bar will likely be active in encouraging contingency fee lawsuits and follow-on litigation against traditional companies with deeper pockets to test the limits of liability expansion.

PRICE GOUGING

The Issue: Charging inflated prices for much-needed supplies during this crisis is a problem that many lawmakers and businesses are

working together to prevent and remedy. State AGs, the Department of Justice, the FTC, and others are all working to address price gouging.

In Florida, a class action lawsuit has already been filed against Amazon for allegedly raising prices to profit from the health crisis.⁶³ In contrast, Florida AG Ashley Moody and Missouri AG Eric Schmitt are working with Amazon to review consumer concerns, remove price

gouging product postings, and issue refunds.⁶⁴ Other companies are also taking steps, such as creating hotlines and releasing pricing information, to address price gouging on their platforms or involving their products.

In late March, 33 state AGs sent warning letters to the CEOs of Amazon, Walmart, eBay, Facebook, and Craigslist saying that the companies' efforts to date to crack down on overpriced items on their selling platforms have "failed to remove unconscionably priced

critical supplies." The letter noted that the AGs "believe [the companies] have an ethical obligation and duty to help [their] fellow citizens in this time of need by doing everything in [their] power to stop price gouging in real-time."⁶⁵ Nearly all the companies responded immediately, noting that they regularly monitor and address attempts to price gouge and have zero-tolerance policies towards such activities.⁶⁶

Look Out For: Despite these best efforts from the vast majority of the business community, plaintiffs' lawyers will continue to file lawsuits against companies whose products are being sold at increased prices or whose platforms host third party sellers that allegedly engage in price gouging. Additionally, price gouging will likely continue to be the primary focus of state AGs during this crisis. Enforcement actions—as well as follow-on private lawsuits—are expected.

Securities

The Issue: The trend of event-driven securities lawsuits has continued, with claims being filed after adverse events, such as an environmental disaster or a lawsuit filed against the company. Legal experts have questioned the merit of these event-driven claims, but because of reputational harm from ongoing litigation and the cost of defense, businesses face heavy pressure to settle. An increase in securities suits was seen after the 2008 financial crisis,⁶⁷ and trial lawyers are expected to respond to the COVID-19 pandemic in the same way, by increasing litigation.

Securities lawsuits have already been filed related to the COVID-19 outbreak. The suit against Inovio Pharmaceuticals alleges that the company falsely claimed it had developed a vaccine for the virus.⁶⁸ Norwegian Cruise Lines allegedly offered positive outlooks for the company in February 2020, despite the COVID-19 outbreak, leading to the securities action.⁶⁹ A securities suit has also been filed against Zoom, based on privacy litigation filed against them that was tied closely to the increased use and scrutiny of video conferencing services as a result of social distancing requirements.⁷⁰

Look Out For: This trend is expected to continue with plaintiffs filing event-driven securities claims that allege companies failed to disclose or downplayed a risk that then caused their stock to drop when the negative event occurred. Businesses with direct links to COVID-19, like pharmaceutical and biotechnology companies working on vaccines and countermeasures to combat the virus, and those hardest hit economically during the crisis, such as companies in the hospitality and travel industries, are likely going to be significant targets for speculative securities litigation.



The Litigation Machine and COVID-19

TRIAL LAWYER ADVERTISING

Plaintiffs' lawyers responded immediately to COVID-19 the same way that many businesses did: by letting their customer base know that they were still open for business, were able to meet with them remotely, and would continue to represent them during this difficult time. However, the tenor of those ads quickly changed as trial lawyers across the country began posting blogs, client advisories and related content discussing how those impacted by COVID-19 can build lawsuits against potential defendants.

Not surprisingly, COVID-19 ads began online, with firms suggesting that those who become infected or whose family member(s) become infected should contact an attorney, including if they were infected at work, on a cruise ship, or at a nursing home.

COVID-19 (Coronavirus) Lawsuits



Image credit: Sanders Phillips Grossman, LLC

Cruise Ship Passengers and Crewmembers Exposed to Coronavirus May Be Entitled to Financial Compensation

Posted on April 13, 2020 to Coronavirus



Image credit: Law Offices of Lee Steinberg, P.C.

The first broadcast ads quickly followed. Among the first television ads include nursing home lawsuit ads in Tennessee from The Kelly Firm,⁷¹ Ohio from the Anzellotti, Sperling, Pazol & Small firm,⁷² and insurance claims ads in Miami from the Landau Law Group.⁷³

Lawsuit marketing firms also jumped at the opportunity to take advantage of a uniquely captive audience. The CEO of one major lawsuit marketing operation put out a video client alert noting that "from a marketing perspective, we couldn't have a more ideal situation with people at home watching TV." He noted in his address that because of some advertising cancellations relating to travel and other affected industries, prices for ad buys are extraordinarily low.⁷⁴

These firms have also made clear to their trial lawyer clients that they are well equipped to include COVID-19 content and graphics into their ad spots. In fact, the firm is currently "testing messaging that's [sic] relevant to the COVID virus," incorporating Coronavirus-related language into its ad campaigns and noting a major spike in the value of the key search term "coronavirus lawyer."⁷⁵

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Image credit: ConsidertheConsumer.com

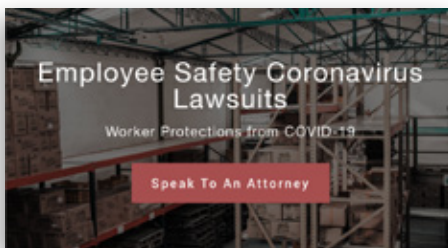


Image credit: Gibbs Law Group LLP

Plaintiffs' firms are continuing to recruit plaintiffs for suits against cruise lines.⁷⁶ Websites and claim aggregators are also soliciting clients for nursing home cases. Sites advertise by stating that "[a]s the disease reached U.S. soil, nursing homes became hot spots for the virus's spread"⁷⁷ and that they "will seek and obtain physical and emotional pain and suffering, medical, and, if appropriate, wrongful death damages."⁷⁸

THIRD PARTY LITIGATION FUNDING

Making matters worse, third party litigation funders are

touting their financial offerings in full anticipation of the volume of litigation that will flow from COVID-19-related economic volatility. Funding has traditionally been used for plaintiffs' cases, but during this economic crisis, funders are branching out and marketing their services to defense-side law firms that may be facing financial challenges.⁷⁹ Indeed, one of the country's largest funders, Burford Capital, published a blog claiming that "whenever there is increasing economic volatility, there is greater propensity for companies to litigate. Enter legal finance[.]"⁸⁰

The third party litigation funding industry has been growing exponentially. By betting on lawsuits, these funders drive

“The funder also boasted that its share prices went up during previous outbreaks, such as SARS and Swine Flu. Omni Bridgeway’s U.S. chief investment officer recently characterized business in recent weeks as ‘drinking from a fire hose.’”

unnecessary litigation and reap a huge profit.⁸¹ Their funding agreements are not revealed in court; therefore, it is impossible

to know how many COVID-19 related lawsuits they have funded or will fund. But it is clear that they expect the pandemic will be good for their bottom lines. The funders will benefit not only from the wave of cases filed, but also from the delays caused by court closures and docket backlogs.

Burford Capital and Omni Bridgeway (formerly IMF Bentham), two of the world's largest litigation funders, are telling investors in Australia that the delays due to COVID-19 could boost returns. The CEO of Omni Bridgeway reported that "contracts commonly return twice their investment within 12 months, three times the investment between 12 and 24 months, and four times the investment between 24 to 36 months."⁸² The funder also boasted that its share prices went up during previous outbreaks, such as SARS and Swine Flu.⁸³ Omni Bridgeway's U.S. chief investment officer recently characterized business in recent weeks as "drinking from a fire hose."⁸⁴

Conclusion

The COVID-19 pandemic is not the first crisis that plaintiffs' lawyers have worked to exploit, but it is the largest economic and public health crisis that has been faced by the United States in the last century. Similar crises in past years, whether from man-made or natural disasters, have engendered a rush of litigation that harms both recovery and future efforts to prepare for national emergencies. However, these past experiences have also provided us with knowledge and tools that we can use and improve upon to address the challenges we currently face.

When widespread technological malfunctions were expected due to the Y2K changeover, Congress knew that the plaintiffs' lawyers would follow with opportunistic lawsuits. The Y2K Act was passed on a bipartisan basis, placing a three-year ban on most lawsuits in state and federal courts over economic losses associated with these glitches.⁸⁵

Then, in 2005, the PREP Act was passed.⁸⁶ Hurricane Katrina had hit the southern United States in August that year, just

four months before the PREP Act was passed, and legislators were worried about the country's ability to respond to any disasters or outbreaks that might occur in the future. The PREP Act enables the Secretary of HHS to issue a declaration providing limited immunity from liability to entities and individuals for countermeasures they manufacture or employ against public health emergencies. The Secretary of HHS used this authority under the PREP Act at the start of the COVID-19 crisis to limit liability related to certain

medical countermeasures, and Congress has since added certain COVID-19 countermeasures that are eligible for PREP Act protection.⁸⁷

Nevertheless, the COVID-related litigation tsunami is forming, and leaders and policymakers must provide shelter against the wave. Now is the time to build upon the work that has already been done and lessons learned from past challenges to rise to the challenge of fighting COVID-19 and facilitating the economic recovery.

“ The COVID-related litigation tsunami is forming, and leaders and policymakers must provide shelter against the wave. ”



Endnotes

- 1 Joyce Hanson, *Princess Cruise Lines Hit by Wave of COVID-19 Suits*, Law360 (Mar. 17, 2020); Craig Clough, *Suit Faults Carnival Unit For 'Ticking Coronavirus Time Bomb'*, Law360 (Apr. 7, 2020); Amanda Bronstad, *Lieff Cabraser Files First Class Action Over Quarantined Grand Princess Cruise Ship*, The Recorder (Apr. 8, 2020).
- 2 Nick Beres, *Lawsuit to be filed against Gallatin nursing home over alleged mishandling of coronavirus*, News Channel 5 Nashville (Apr. 6, 2020); Tim Reid, *Seattle-area nursing home hit with wrongful death lawsuit over coronavirus death*, Reuters (Apr. 10, 2020).
- 3 Daniel Wiessner, *Estate of Walmart worker who died from COVID-19 sues for wrongful death*, Reuters (Apr. 7, 2020).
- 4 CARES Act, H.R. 748, 116th Cong. §§ 3103, 3215 (2020).
- 5 85 FR 15198 (Mar. 17, 2020).
- 6 Arizona Executive Order No. 2020-27 (Mar. 11, 2020); Arkansas Executive Order No. 18 (Apr. 14, 2020).
- 7 Arkansas Executive Order No. 20-18 (Apr. 14, 2020); Connecticut Executive Order No. 7V (Apr. 7, 2020); Georgia Executive Order No. 04.14.20.01 (Apr. 14, 2020); Illinois Executive Order No. 19 (Apr. 1, 2020); Indiana Executive Order No. 13 (Mar. 6, 2020); Michigan Executive Order No. 30 (2020); New Jersey Executive Order No. 112 (Apr. 1, 2020); New York Executive Order No. 202.10 (Mar. 23, 2020); North Carolina Executive Order No. 130 (Apr. 8, 2020).
- 8 New York Budget Bill S07506, Art. 30-D (2020).
- 9 Alaska SB 241; Kentucky SB 150.
- 10 *Alters v. People's Republic of China*, No. 1:20-cv-21108 (S.D. Fla.); *Bella Vista LLC v. The People's Republic of China*, No. 2:20-cv-00574 (D. Nev.); *Buzz Photo v. People's Republic of China*, No. 3:20-cv-00656 (N.D. Tex.).
- 11 Joshua K. Payne & Jess R. Nix, *Waking the Litigation Monster: The Misuse of Public Nuisance*, U.S. Chamber Institute for Legal Reform, 28 (Mar. 2019).
- 12 Rob McKenna, Elbert Lin, & Drew Ketterer, *Mitigating Municipality Litigation: Scope and Solutions*, U.S. Chamber Institute for Legal Reform, 4 (Mar. 2019).
- 13 *Labib v. 24 Hour Fitness USA, Inc.*, 3:20-cv-02134 (N.D. Cal.); Letter from 24-Hour Fitness CEO Tony Ueber (Mar. 17, 2020), <https://www.24hourfitness.com/pdf/TonyLetter.pdf>; 24 Hour Fitness Launches New 24/7 Live At-Home Streaming Channel, Business Wire (Mar. 30, 2020).
- 14 *Rosenkrantz v. Arizona Board of Regents*, 2:20-cv-00613 (D. Ariz.).
- 15 Gio Benitez, Mina Kaji, & Amanda Maile, *As flights are canceled amid coronavirus, officer sues United Airlines for refund*, ABC News (Apr. 7, 2020).
- 16 See, e.g., *McMillan v. Stubhub*, 3:20-cv-00319 (W.D. Wis.); *ACE Universe Inc. v. GrowTix LLC*, 1:20-cv-02517 (S.D.N.Y.).
- 17 CARES Act, H.R. 748, 116th Cong. §§ 3103, 3215 (2020).
- 18 Kentucky SB 150, §1(10)(2020).
- 19 Jeanne Whalen, Rosalind S. Helderman, & Tom Hamburger, *Inside America's mask crunch: A slow government reaction and an industry wary of liability*, The Washington Post (April 2, 2020).
- 20 Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act 2006, H.R. 2863, 109th Cong., §§ 1-3 (2005).
- 21 *Nedeltcheva, et al. v. Celebrity Cruises, Inc.*, No. 1:20-cv-21569 (S.D.Fla.).
- 22 Jake Harris, *Pilots' union sues American Airlines to stop flights to China amid coronavirus outbreak*, WFAA 8 ABC (Jan. 30, 2020).
- 23 See, e.g., Andrew Wolfson, *2 workers say their COVID-19 fears were 'brushed off.' Then they were fired. So, they sued*, Louisville Courier Journal (Mar. 28, 2020).
- 24 *Scott, et al. v. Hooters III Inc.*, No. 8:20-cv-882 (M.D.Fla.).
- 25 The Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (1988).
- 26 Kelly Hensley & Michael Campbell, *California Issues Guidance on Conditional Suspension of California WARN Act Notice Requirements*, Sheppard Mullin Labor & Employment Law Blog (Mar. 24, 2020).

- 27 Illinois Workers' Compensation Commission Notice of Emergency Amendment (April 13, 2020), https://www2.illinois.gov/sites/iwcc/news/Documents/13APR20-Emergency_Amendment_Only-501AC9030_70.pdf.
- 28 jfabian, *Does Workers' Compensation Cover Coronavirus (COVID-19)?*, Work Injury Source (Mar. 14, 2020).
- 29 Scott Heimburg, et al., *Reducing False Claims Act Exposure in the Aftermath of COVID-19 Legislation*, JD Supra (Apr. 3, 2020).
- 30 CARES Act, *supra*, §1102.
- 31 Jessie Ortiz & Caleb Hayes-Deats, *False Claims Act Litigation Will Follow the Stimulus Package. Here's How to Avoid It*, Law.com (Apr. 5, 2020).
- 32 Jonathan Diesenhaus, *The Great Myths of State False Claims Acts*, U.S. Chamber Institute for Legal Reform (Feb. 2018).
- 33 PPP Interim Final Rule, SBA-2020-0015 (Apr. 2, 2020), <https://www.sba.gov/document/policy-guidance-ppp-interim-final-rule>.
- 34 Editorial Board, *Congress's Small-Business Ventilator*, Wall Street Journal (Apr. 6, 2020).
- 35 Press Release, *ILR and U.S. Chamber Submit Comments to SBA on PPP*, U.S. Chamber Institute for Legal Reform (Apr. 8, 2020).
- 36 Dallas Hammer, *Cybersecurity Whistleblower Protections for Employees of Federal Contractors and Grantees*, The National Law Review (Apr. 8, 2020); Scott Heimberg, et al., *Reducing False Claims Act Exposure in the Aftermath of COVID-19 Legislation*, JD Supra (Apr. 3, 2020).
- 37 Letter from the John Kostyack, Executive Director, National Whistleblower Center, to William P. Barr, Attorney General of the United State (Mar. 20, 2020), <https://www.whistleblowers.org/wp-content/uploads/2020/03/NWC-Letter-to-DOJ-AG-Barr-3-20-20.pdf>.
- 38 Todd Yoder, *DOJ Announces Initiative to Combat Substandard Care in Nursing Homes; Emphasizes Importance of Whistleblowers*, The National Law Review (Mar. 10, 2020).
- 39 Rupert Neate, *Zoom booms as demand for video-conferencing tech grows*, The Guardian (Mar. 31, 2020).
- 40 *Cullen v. Zoom Video Communications, Inc.*, 5:20-cv-02155 (N.D. Cal.).
- 41 *COVID-19 Client Primer*, Shook Hardy & Bacon (Mar. 2020).
- 42 CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last viewed on Apr. 9, 2020).
- 43 Department of Health and Human Services, *COVID-19 & HIPAA Bulletin: Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency*, <https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf> (last viewed on Apr. 9, 2020).
- 44 Senate Committee on Commerce, Science and Transportation, "Enlisting Big Data in the Fight Against Coronavirus" (Apr. 9, 2020).
- 45 Geoffrey A. Fowler, *Smartphone data reveal which American are social distancing (and not)*, Washington Post, (Mar. 24, 2020).
- 46 Jessica Davis, *Sens. Flag Privacy, Security Concerns Over Google COVID-19 Screening Site*, Health IT Security (Mar. 19, 2020).
- 47 Kinsa, *Proud to announce 2 new initiatives to help improve our country's ability to detect outbreaks and stop the spread of illness*, <https://www.kinsahealth.co/> (last visited Apr. 10, 2020).
- 48 Matthew Panzarino, *Apple and Google are launching a joint COVID-19 tracing tool for iOS and Android*, Tech Crunch (Apr. 10, 2020).
- 49 *Profiles, Inc. v. Bank of America Corp.*, No. 1:20-cv-00894 (D. Md.); *Scherer v. Frost Bank*, No. 4:20-cv-01297 (S.D. Tex.); *Scherer v. Wells Fargo Bank, N.A.*, No. 4:20-cv-01295 (S.D. Tex.).
- 50 Jon Hill, *Battle over BofA's Virus Relief Biz Lending Heads for Appeal*, Law360 (Apr. 15, 2020).
- 51 CARES Act, *supra* at §§ 4022, 3513.
- 52 Letter from Arizona Attorney General Mark Brnovich to "Financial and Lending Institutions Serving Arizonans" (Mar. 19, 2020), <https://twitter.com/GeneralBrnovich/status/1240779517800509440/photo/1>.
- 53 47 CFR § 64.1200(f)(4).
- 54 Declaratory Ruling, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, at 1 (Mar. 20, 2020), <https://docs.fcc.gov/public/attachments/DA-20-318A1.pdf>.
- 55 *Id.*



- 56 ABA, *Trades Urge FCC to Facilitate COVID-19-Related Calls*, American Bankers Association (Mar. 30, 2020), <https://www.aba.com/advocacy/policy-analysis/aba-trades-urge-fcc-to-facilitate-covid-19-related-calls>; Letter from Harold Kim, President, U.S. Chamber Institute for Legal Reform, and Tom Quaadman, Executive Vice President, U.S. Chamber CCMC, C_TEC, to Marlene H. Dortch, Sec'y, FCC (Apr. 8, 2020), https://www.instituteforlegalreform.com/uploads/sites/1/ILR_CCMC_CTEC_Comments_in_Support_of_TCPA_Emergency_Relief_Petition_COVID-19.pdf.
- 57 *Coronavirus Robocalls, Text Messages, Pre-recorded Messages Class Action Lawsuit Investigation*, Top Class Actions (Apr. 1, 2020), <https://topclassactions.com/coronavirus-covid-19/coronavirus-robocalls-text-messages-prerecorded-messages>.
- 58 *Manal Alesia v. Gojo Industries, Inc. D/B/A Purell* (C.D. Cal.); *Miller v. Gojo Industries, Inc. D/B/A Purell* (N.D. Ohio).
- 59 Charmaine Little, *Lawsuit claims Target made misleading statements about hand sanitizer's capabilities*, Legal Newsline (Apr. 8, 2020).
- 60 Jonathan Stempel, *Ben & Jerry's is sued over 'happy cows' claim*, Reuters (Nov. 8, 2019).
- 61 Press Release, *FTC, FDA Send Warning Letters to Seven Companies about Unsupported Claims that Products Can Treat or Prevent Coronavirus*, Federal Trade Commission (Mar. 9, 2020).
- 62 Leonard L. Gordon, Shahin O. Rothermel, & Deborah Bessner, *FTC, FDA, State AGs, and Class Action Lawsuit Clean Up Claims that Products Can Treat or Prevent Coronavirus*, Venable: All About Advertising Law (Mar. 12, 2020).
- 63 *Armas v. Amazon.com Inc.*, No. 104631782 (Fla. Cir. Ct. Mar. 10, 2020).
- 64 *Florida Attorney General Issues More Than 40 Subpoenas Over Alleged Price Gouging on Amazon*, Space Coast Daily (Mar. 25, 2020); *Attorney General Schmitt and Amazon Announce Partnership to Monitor and Combat Coronavirus Price Gouging*, Eric Schmitt Missouri Attorney General (Mar. 20, 2020), <https://ago.mo.gov/home/news/2020/03/20/attorney-general-schmitt-and-amazon-announce-partnership-to-monitor-and-combat-coronavirus-price-gouging>.
- 65 Douglas Thompson, *NAAG Polices COVID-19 Price Gouging, Demands Fair Pricing Policies and Actions*, JD Supra (Apr. 8, 2020).
- 66 Alina Selyukh, *'Stop Price Gouging,' 33 Attorneys General Tell Amazon, Walmart, Others*, NPR (Mar. 25, 2020).
- 67 Cornerstone Research, *Securities Class Action Filings – 2008: A Year In Review 2* (2009), <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2008-A-Year-in-Re.pdf>.
- 68 *Patrick McDermid v. Inovio Pharmaceuticals, Inc.*, No. 20-CV-01402 (E.D. Pa.), complaint available at <http://securities.stanford.edu/filings-case.html?id=107344>.
- 69 *Eric Douglas v. Norwegian Cruise Lines*, No. 20-CV-21107 (S.D. Fla.).
- 70 Peter Blumberg, *Zoom Sued for Fraud Over Privacy, Security Flaws*, Bloomberg (Apr. 8, 2020).
- 71 Kelly Law Firm (2020). Nashville: WTVF [CBS]. Aired Apr. 3, 2020, 5:58AM.
- 72 Anzellotti, Sperling, Pazol & Small (2020). Youngstown: WYTV [ABC]. Aired Apr. 8, 2020, 6:09AM.
- 73 Landau Law Firm (2020). Miami: WSVN [FOX]. Aired Apr. 7, 2020, 5:13AM.
- 74 *Steve Nober Makes Sense Out of the Current Covid Media Landscape*, Consumer Attorney Marketing Group (Apr. 2, 2020), <https://www.camginc.com/covid-19/>.
- 75 *Id.*
- 76 Keller Rohrback, *Did a Princess Cruise put you at risk of contracting COVID-19?*, <https://krcomplexlit.com/2020/03/princess-cruise-covid19-investigation/> (last visited Apr. 8, 2020).
- 77 Thomas J. Henry, *Coronavirus (COVID-19) Nursing Home Exposure*, <https://thomasjhenrylaw.com/personal-injury-attorney/medical/coronavirus-covid-19/nursing-home-exposure/> (last visited Apr. 8, 2020).
- 78 Nadrich & Cohen, *Nursing Home Coronavirus Lawsuit*, <https://www.personalinjurylawcal.com/coronavirus-lawsuit/> (last visited Apr. 8, 2020).
- 79 *Litigation Funding May Be a Lifeline for Businesses and Law Firms Distressed by Coronavirus Shutdown*, Litigation Finance Journal (Apr. 8, 2020).
- 80 Elizabeth Fisher, *Legal finance: Future proof against recession*, Burford Capital (Mar. 3, 2020).
- 81 John Beisner, Jessica D. Miller, & Jordan M. Schwartz, *Selling More Lawsuits, Buying More Trouble*, U.S. Chamber Institute for Legal Reform (Jan. 2020).

- 82 Roy Strom, *Court Delays May Grow Lawsuit Funders' Returns, or Spur Disputes*, Bloomberg Law (Mar. 24, 2020).
- 83 Investor Presentation, Omni Bridgeway 19 (Mar. 17, 2020), <https://www.imf.com.au/docs/default-source/site-documents/94-b-investor-presentation>.
- 84 Caroline Simson, *Third-Party Funders' Business Is Booming During Pandemic*, Law360 (Apr. 8, 2020).
- 85 Y2K Act, H.R. 775, 106th Cong., § 12 (1999).
- 86 *Supra*, note 20.
- 87 *Supra*, note 5.
- 88 Nam D. Pham & Mary Donovan, *Fairer, Faster, Better: An Empirical Assessment of Employment Arbitration*, NDP Analytics (May 2019), <https://www.instituteforlegalreform.com/research/fairer-faster-better-an-empirical-assessment-of-employment-arbitration>.
- 89 Take Responsibility for Workers and Families Act, H.R. 6379, 116th Cong., §§ 104, 203 (2020).
- 90 Providing Americans Insured Days of Leave Act of 2020, S. 3513, 116th Cong., § 306 (2020).
- 91 *Supra*, note 54.





U.S. CHAMBER

Institute for Legal Reform

202.463.5724 main
202.463.5302 fax

1615 H Street, NW
Washington, DC 20062

instituteforlegalreform.com