

## **COVID-19 THEMIS TASK FORCE MEMO:**

Themis Advocates Group provides you with the below update regarding the impact of COVID-19 on issues relating to business, insurance, and law in the United States. The below is not meant to be all inclusive, as regulations are changing each day and in each local jurisdiction, but provides an overview as to the trends in the United States and is meant to highlight orders and regulations most likely to impact Lloyd's and the London market.

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### **SUMMARY OF IMPORTANT LEGISLATION AND EMERGENCY ORDERS AND DIRECTIVES:**

Below we provide an overview as to the types of legislative actions that have been occurring, both on a federal and state level. If you have any questions as to whether a particular legislative action has been taken in a given state, please contact Jen, Mark or Beth and they can provide information specific for that state along with contact information for the local Themis member who is on the ground in that jurisdiction.

- The U.S. Senate on Wednesday passed legislation aimed at providing economic relief from the coronavirus pandemic that also includes extending liability protections for makers of face masks. <https://nypost.com/2020/03/11/coronavirus-bill-will-include-liability-protection-for-face-mask-sellers/>
- Many states have required that providers of electric, gas, water, telephone, cable, VOIP, internet service, and deliverable fuel services be prohibited from disconnecting or discontinuing service for non-payments for the duration of the State of Emergency



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(including Indiana, New Hampshire, Oregon) Example order:

<https://www.governor.nh.gov/news-media/press-2020/documents/emergency-order-3.pdf>

- Many states have also barred evictions and foreclosure proceedings for varying periods of time (including California, New York, Massachusetts and Washington). On March 17, the National Low Income Housing Coalition issued recommendations to Congress including a “national moratorium on foreclosures, evictions and homeless encampment sweeps.” U.S. Rep. Maxine Waters, D-Calif., who chairs the House Financial Services Committee, proposed a national eviction ban.  
<https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406440>
- Related, the Department of Housing and Urban Development, issued a 60-day moratorium on foreclosures for homeowners unable to pay federally backed mortgages.  
[https://www.washingtonpost.com/business/2020/03/18/hud-orders-60-day-foreclosure-moratorium-homeowners-affected-by-coronavirus/?tid=lk\\_inline\\_manual\\_11&itid=lk\\_inline\\_manual\\_11](https://www.washingtonpost.com/business/2020/03/18/hud-orders-60-day-foreclosure-moratorium-homeowners-affected-by-coronavirus/?tid=lk_inline_manual_11&itid=lk_inline_manual_11)
- Given social distancing requirements, states are extending the validity of driver’s licenses and vehicle registrations set to expire on or after March 1, 2020 (Indiana, Tennessee, Oregon).
- New York has prohibited banks from refusing to grant a forbearance to any business who has a financial hardship as a result of the pandemic for a period of 90 days, is requiring that applications for forbearance be made widely available for consumers, and has directed that service fees for ATMs be lifted during the period of the emergency (all in Executive Order 202.9, effective March 21, 2020).
- On March 18, 2020, President Trump signed into the law the Family First Coronavirus Response Act. It goes into effect on April 2, 2020. As passed, it is for those employers with 500 or fewer employees. Significant provisions include:
  - Twelve weeks of paid job-protected FMLA leave after the first 14 days. For those first 14 days, employees may use accrued personal or sick leave, but cannot be required to do so.
  - Will expire December 31st, 2020.
  - The law does not pre-empt state or local sick leave, meaning that whatever is most generous prevails.
  - The employee may use the leave for COVID-19 requirements or recommendations, the care of a family member based on their requirements or recommendations, or for a child whose school has shut down.
- The Federal Motor Carrier Safety Administration (FMCSA) decided to waive certain hours-of-service, parts and accessories and other regulations in response to Covid-19. Drivers who are involved in emergency relief efforts are not subject to hours of service. This is the first time the agency has issued national, as opposed to regional, emergency relief from Federal Motor Carrier Safety Regulations. These exemptions will remain in effect until the termination of the emergency or April 12. There are specified categories



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of goods that fall under the category of emergency relief efforts.

<https://www.ttnews.com/articles/fmcsa-issues-hos-relief-coronavirus-assistance-hauls>

## **INSURANCE AND COVERAGE RELATED NEWS AND ORDERS/LEGISLATION:**

Below we provide an update as to regulations, news, and litigation specifically related to insurance and potential coverage related to the COVID-19 pandemic.

- The Oceana Grill in New Orleans filed what is believed to be the first declaratory judgment action against an insurer seeking business interruption and/or civil authority coverage for COVID-19 losses. It asserts that coverage exists because its policy: (1) covers all risks unless excluded; (2) does not specifically exclude coverage for losses from a virus or global pandemic; and (3) covers “direct physical loss and/or from a civil authority shutdown due to a global pandemic virus.” The Grill asserts that COVID-19 satisfies the latter element because it is physically impacting private property and physical spaces by remaining viable on surfaces which then require cleaning and fumigating due to the intrusion of microbials, resulting in a direct physical loss needing remediation. The complaint claims that any argument by the insurer to the contrary would be a fraudulent misrepresentation that could endanger policyholders and the public. <https://www.wvltv.com/article/news/health/coronavirus/first-coronavirus-insurance-dispute/289-9597675b-c4de-486b-b796-dc764b52b79a>
- Indiana has instituted a 60-day moratorium on cancelation of all insurance policies for non-payment of premium, though policyholders are still required to make payment.
- The Indiana Department of Insurance noted in a press release that liability insurers for childcare facilities cannot cancel or limit coverage for staying open during COVID-19 without filing an endorsement change with the IDOE and that the department “will aggressively support those facilities if their commercial insurance carrier attempts to deny liability insurance without approval.” <https://calendar.in.gov//site/doi/event/liability-insurance-for-childcare-facilities-during--the-covid-19-pandemic/>
- Massachusetts’ Department of Insurance posted a link to its website encouraging Massachusetts residents to read NAIC guidance encouraging travelers to read their travel insurance policies because COVID-19, as a “known event,” likely will not trigger benefits under the policy. That NAIC guidance can be found here: [https://content.naic.org/article/consumer\\_insight\\_taking\\_trip\\_information\\_about\\_travel\\_insurance\\_you\\_should\\_know\\_you\\_hit\\_road.htm](https://content.naic.org/article/consumer_insight_taking_trip_information_about_travel_insurance_you_should_know_you_hit_road.htm).
- The New Jersey legislature is already discussing a statutory way to shift these losses to the insurance industry. A bill was introduced on March 16, 2020 and still remains subject to revision. If it passes it would certainly be challenged by the insurance industry on constitutional grounds. Tracking: <https://legiscan.com/NJ/bill/A3844/2020>. The bill – New Jersey Bill A-3844 – provides a framework for businesses that have business interruption losses due to the pandemic. If enacted, it will be retroactive for any insured



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with a business interruption policy in place from March 9, 2020, when New Jersey Governor Phil Murphy first declared a public health emergency and a state of emergency due to the virus. It would apply to New Jersey businesses with less than 100 eligible employees, meaning full-time employees working a normal week of 25 hours or more.

- A number of domestic insurers have been pressured regarding business interruption coverage. Eighteen members of the House of Representatives wrote to the leaders of the American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, the Independent Insurance Agents & Brokers of America, and the Council of Insurance Agents and Brokers. Insurer representatives responded and confirmed that business interruption policies were not designed to provide coverage against communicable diseases. <https://www.insurancejournal.com/news/national/2020/03/20/561810.htm>
- The New York Department of Financial Services has indicated doubt that a stay-at-home order or closure of business due to COVID-19 would trigger business interruption coverage.
- The Vermont Department of Financial Regulation has posted its own guide to Business Income Insurance at: [https://dfr.vermont.gov/sites/finreg/files/doc\\_library/dfr-insurance-covid-business-income.pdf](https://dfr.vermont.gov/sites/finreg/files/doc_library/dfr-insurance-covid-business-income.pdf). Vermont has also encouraged carriers to be flexible with premium payments and directed health insurers to suspend all provider audits. <https://dfr.vermont.gov/about-us/covid-19>

## **BUSINESS AND COMMERCE NEWS AND LEGISLATION RELATED TO COVID-19**

Below we discuss news regarding the economic impact of COVID-19 and measures being taken to address that. St Louis Federal Reserve President James Bullard has warned that the U.S. economy could take a \$2.5 trillion hit, and that unemployment could hit 30%. The U.S. federal government is still over economic aid packages (as Democrats warned the proposed measure voted on Sunday evening did not do enough to help workers). National Economic Council Director Larry Kudlow stated an economic stimulus package to fight the virus will total more than \$2 trillion (which is approximately 10% of the U.S. economic output).

- The Small Business Administration is making disaster assistance available to businesses and non-profits. This assistance can extend up to \$2 million in support, including low interest loans over a 30-year period. To apply online, businesses can go to: <https://disasterloan.sba.gov/ela>.
- In Massachusetts, Unions have also taken steps in response to COVID-19. For example, some municipalities have placed a moratorium on construction. The Mass Building Trades Association has established best practices for building trades unions and construction in general: <https://massbuildingtrades.org/coronavirus-best-practices/>
- Cannabis lobbying groups are warning that the coronavirus pandemic and restrictions on movement and commerce could be a boon to illicit dealers peddling unsafe products,



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which they said underscores the need for governments to ease access to legal marijuana amid the crisis

### **LITIGATION/CIVIL JUSTICE SYSTEM UPDATES AND ORDERS:**

There are several key methods that Courts have been using to address the COVID-19 virus. The first is suspending proceedings. Below we note for most of the states, closures to date. Further, some states have suspended the statute of limitations. Finally, we highlight notable COVID-19 litigation not specifically related to insurance.

- Courts have suspended proceedings for various periods of time:
  - Alabama: State courts have suspended all in person activity, hearings, and appearances for 30 days.
  - Alaska: All state civil jury trials and hearings cancelled/postponed until May 1, 2020.
  - Arizona: All state trials suspended until May 1.
  - Arkansas: All in person proceedings in state court suspended until April 3, 2020.
  - California: Courts are suspending state proceedings on a county by county basis. Most counties have suspended all non-emergency proceedings until further notice.
  - Colorado: State court trials suspended through April 3, 2020.
  - Connecticut: All state civil trials are postponed until further notice.
  - Delaware: Court facilities are closed to the public until April 15, 2020.
  - Florida: Courts are suspending state proceedings on a county by county basis.
  - Hawaii: All state trials suspended until May 1, 2020.
  - Idaho: All state trials suspended through April 10, 2020.
  - Illinois: State courts have taken a county by county approach. The federal courts have suspended trials between now and April 3, 2020 (Northern District) and May 18, 2020 (Central District). The Southern District provides that all civil matters are continued generally pending further order from the Court.
  - Indiana: Federal civil trials continued until at least May 1, 2020. Counties have adopted policies suspending state trials on a county by county basis.
  - Iowa: All state civil trials are reset to a date no earlier than April 20, 2020.
  - Kansas: State courts are closed without further notice.
  - Kentucky: All state civil trials are postponed until further notice
  - Louisiana: All state civil trials are reset to a date no earlier than April 14, 2020.
  - Maine: State trials are suspended until at least May 1, 2020.
  - Maryland: Federal trials postponed through April 24, 2020. State civil hearings and trials postponed through April 3, 2020.
  - Massachusetts: In state court, all trials, in both criminal and civil cases, are postponed until no earlier than April 21, 2020. In federal courts all trials scheduled to begin before April 27, 2020 have been continued.



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- Michigan: All non-emergency proceedings have been suspended in state court until April 3 if they cannot be conducted remotely.
- Minnesota: State civil trials suspended until April 22, 2020.
- Mississippi: State court judges can postpone any trials through May 15, 2020.
- Missouri: State courts are closed until April 3, 2020.
- Montana: State courts are suspending proceedings on a county by county basis, but the Montana Supreme Court has recommended resetting all trials through April 30, 2020.
- Nebraska: State courts are closing on a county by county basis as they see fit.
- Nevada: All federal court trials have been continued until after April 10, 2020. In state court, all trials suspended until mid-April.
- New Hampshire: All in person proceedings suspended through April 6, 2020 in state courts, and trials suspended for 30 days from March 13, 2020 (with some exceptions).
- New Jersey: All federal civil trials scheduled before April 30, 2020 are continued. State courts have postponed in person proceedings until further notice.
- New York: In the Northern District Court of New York, all trials through April 30, 2020 have been continued. In the Western District Court of New York, all civil trials are continued for 60 days from March 13, 2020. In the Eastern District Court of New York, all trials before April 27, 2020 are continued until further notice. In the Southern District Court of New York, all trials scheduled to begin between March 16 and April 27 are continued until further notice. State courts have postponed all non-essential matters until further notice.
- North Carolina: State courts civil proceedings are suspended until at least mid-April, 2020.
- North Dakota: All state civil trials are reset to a date no earlier than April 14, 2020.
- Ohio: State court non-emergency hearings are cancelled for 30 days. All foreclosures are stayed for 30 days.
- Oklahoma: From March 15, 2020, all state jury service cancelled for 30 days and cases continued to the next docket.
- Oregon: State courts are suspending proceedings on a county by county basis. Most have suspended trials through April 30, 2020.
- Pennsylvania: State courts are fully closed through April 3, 2020.
- Rhode Island: All state civil trials continued until after April 17, 2020.
- South Carolina: All state civil trials are postponed until further notice.
- Tennessee: All in person proceedings suspended through March 31, 2020 in state court.
- Texas: State courts are suspending proceedings on a county by county basis.
- Vermont: State court non-emergency trials and hearings are suspended until April 15, 2020. Further, the Supreme Court is allowed to decide appeals without argument.



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- Utah: All state court non-essential hearings are delayed and must transition to video proceedings. Trials are not suspended, but COVID-19 precautions must be taken.
- Virginia: All non-emergency proceedings have been suspended through April 6, 2020 in state courts.
- Washington: State court civil trials are suspended until April 24, 2020, with extension possible as required by continuing public health emergency.
- Washington, D.C.: All hearings and trials through May 15, 2020 are continued.
- West Virginia: All state civil trials continued until after April 10, 2020
- Wisconsin: Wisconsin state courts have taken a county by county approach. Most have continued hearings and trials presently scheduled for at least the next three weeks.
- A handful of states have also suspended the statute of limitations for claims:
  - Massachusetts: All statutes of limitations are tolled through April 21, 2020.
  - New York: Executive Order 202.8 provides that any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, are tolled through April 19, 2020. This applies to time limitations with respect to the Criminal Procedure Law, the Family Court Act, the Civil Practice Law and Rules, the Court of Claims Act, the Surrogate's Court Procedure Act, and the Uniform Court Acts, and any other New York rules or regulations.
  - Oklahoma: All civil statutes of limitations are tolled through April 25, 2020.
  - Washington, D.C.: Statutes of limitations tolled through May 15, 2020.
- Notable suits related to COVID-19:
  - In the Eastern District U.S. District Court for Eastern Pennsylvania, the first case against a bio-tech firm related to Coronavirus has been filed (McDermid v. Inovio Pharmaceuticals, Inc., et al., No. 2:20-cv-01402). The case alleges that Inovio made misleading statements about the company's development of a purported vaccine for the novel coronavirus, artificially inflating the company's share price and resulting in significant investor losses.
  - In Douglas v. Norwegian Cruise Lines, (No. 1:20-cv-21107 (S.D. Fla.)), an investor's proposed class action has accused Norwegian Cruise Lines of inflating the stock prices through false and/or misleading statements made by the company about the coronavirus outbreak. Further allegations relate to supposedly false internal communications as well as external reports regarding assurances about the pandemic. The class would include anyone who acquired Norwegian stock on the NYSE from Feb. 20 through March 12.
  - In Weissberger v. Princess Cruise Lines Ltd., No. 2:20-cv-2267 (C.D. Cal.), passengers have filed suit claiming that the cruise line put them in danger by allowing them to board a ship after it learned that passengers on a previous cruise on the same ship had shown coronavirus symptoms.



- In a class action against a foreign government, four U.S. citizens have alleged that the Chinese government knew of the virus yet covered it up for their economic self-interest and caused injury and incalculable harm to the plaintiffs. Alters v. People's Republic of China, No. 1:20-cv-21108 (S.D. Fla.).
- There have now been false advertising claims against a hand sanitizer manufacturer filed in California. David v. Vi-Jon Inc., No. 20cv-0424 (S.D. Cal.). There, plaintiffs allege that defendants made false and misleading advertising statements regarding the medicinal and virus preventative benefits of their hand sanitizers.



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