

## **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 the insurance market.

If there are any questions regarding any of the notes below, please contact a Themis member and they will direct you to the Themis Advocates Group representative in that particular state.

### **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 a Themis member and they can provide contact information for the local Themis member who is on the ground in that jurisdiction.

- A \$2.2 trillion stimulus package was passed by the federal government. It provides payments of \$1,200 to most Americans and increases unemployment benefits. Business are able to get loans, grants, and tax breaks. Small businesses It also provides funding for health care systems.
  - About \$500 billion goes for loans to businesses. Any company receiving a loan is subject to a bank on stock buybacks through the term of the loan plus one year. Executive bonuses are also limited. Borrowers must also certify that they will stay neutral in any union organizing effort over the term of the loan;
  - \$17 billion was set aside for companies deemed critical to national security (this is intended to assist Boeing);
  - \$25 billion in grants for airlines;
  - More than \$350 billion is set aside for small businesses, who must retain workers in order to be eligible;
  - Individuals are eligible for checks up to \$1,200 along with an extra \$500 per child (married couples filing jointly are eligible for up to \$2,400). This benefit is phased out depending on income, with a full cutoff for individuals earning more than \$99,000 and couples earning more than \$198,000. This applies to individuals with no income as well as those on Social Security;
  - The U.S. Federal Reserve is allocated \$4 trillion to local governments and industries;
  - Hospitals and other health care organizations are provided \$150 billion for equipment and supplies; and
  - Unemployment benefits will be enhanced by \$600 weekly for four months.



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- 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.

### **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.

- Texas: On March 20, 2020, Governor Greg Abbott suspended certain claim-handling deadlines imposed by law. Additionally, the Commissioner of Insurance has determined that the COVID-19 pandemic is a disaster under Texas Insurance Code Section 542.059(b). This declaration is necessary due to the significant disruption to policyholders, carriers, and their staff caused by this disaster, in particular the impact and volume of claims expected to be filed as a result of COVID-19. Taken together, the Governor's suspension and the Commissioner's declaration have the effect of extending claim-handling deadlines imposed by the state's prompt payment laws for an additional 15 days to help carriers respond to the COVID-19 outbreak. This extension will be in effect until the Governor's suspension and Commissioner's declaration are lifted
- The Texas Department of Insurance said that they expect all carriers to work with policyholders who may experience financial hardships due to the COVID-19 outbreak, and encourage carriers to use grace periods for payments, temporary suspension of premium payments, payment plans, and other actions to allow continuing insurance coverage as appropriate. TDI said they will work with carriers to minimize the regulatory effects of an insurer's actions to provide policyholder relief, specifically for financial review requirements. The term "suspension" is not intended to mean the forgiveness of the premium. Automatic bank drafts for premium payments may continue according to a carrier's written agreement with a policyholder, unless a policyholder notifies a carrier of a specific hardship. TDI noted that this should be weighed against the potential disruption to a carrier's business model or the inconvenience caused to the policyholder by multiple payments. It is TDI's expectation that carriers will work directly with policyholders to resolve issues and minimize the effects of any penalties or additional charges.



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- Washington: The Washington State Insurance Commissioner, Mike Kreidler issued a letter dated March 25, 2020, to all Washington State authorized property and casualty insurers. The letter instructs each insurer to provide the Washington Insurance Commissioner and policyholders with certain information by April 1, 2020. Property and casualty insurers must identify business interruption or business income type coverages (including civil authority) that may be available under any of their coverage forms. Carriers must explain the coverage the policies offer related to COVID-19.
- Ohio: Two Democrats in the House of Representatives introduced legislation designed to require insurers with property insurance policies offering business interruption insurance to cover losses attributable to viruses and pandemics. As introduced, this bill would require every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption, to be construed to include among the covered perils under that policy, “coverage for business interruption due to global virus transmission or pandemic during the state of emergency.” The text of the bill states it shall only apply to policies issued to (1) businesses located in Ohio, (2) businesses employing one hundred or fewer “eligible” employees (a full-time employee working at least twenty-five hours per week), and (3) businesses covered by business interruption insurance as of the date that the law becomes effective. It is not expected that the bill will gain much traction given the makeup of the Ohio Legislature.
- Massachusetts: Legislators have sought to introduce similar legislation to that of Ohio and New Jersey (noted in last week’s memo).

## **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.

- 3.3 million Americans have now filed for unemployment benefits (initial applications). This is a twelvefold increase from prior to the COVID-19 pandemic. The previous record was 695,000 claims filed in October 1982. Oxford Economics has stated that it forecasts 15-20 million job losses in the coming weeks.
- New York: All non-essential construction must shut down except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site). Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. We are seeing similar shutdowns in other states.
- There is significant discussion regarding non-medical factories changing over to manufacturing ventilators and other COVID-19 related medical supplies. President



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Trump has invoked the Defense Production Act (a Korean War era statute allowing the government to force American companies to produce materials in short supply) to order General Motors to make ventilators.

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

Below we highlight additional cases filed related to the COVID-19 pandemic, along with changes to the statute of limitations made in Ohio.

- Ohio has tolled any statute of limitation, discovery deadline, service of process deadline, or “any other civil limitation or deadline under the Revised Code” that was set to expire, or that was to come due, between March 9, 2020 and July 30, 2020. This law is only temporary and will expire on July 30, 2020 or on the date the period of emergency ends, whichever is sooner
- Buzz Photos v. People’s Republic of China (Texas): Lawyer Larry Klayman has filed a \$20 trillion lawsuit against China for the creation and the release of the novel coronavirus that has infected more than 334,000 people globally. Klayman, who works for Texas advocacy group Freedom Watch and Buzz Photos, filed the lawsuit in the US District Court for the Northern District of Texas. Klayman alleges that the COVID-19 virus is a biological weapon designed by China, and by releasing it, China violated “U.S. law, international laws, treaties and norms.”
- Planned Parenthood Center for Choice et al v. Abbott et al (Texas): Planned Parenthood joined other abortion providers this week in suing Texas over moving to ban abortions during the coronavirus outbreak, including one clinic owner saying Republican Governor Greg Abbott’s weekend order has already resulted in more than 150 canceled appointments. The federal lawsuit was filed in Austin, Texas. Abortion providers accused Republican leaders in Texas of exploiting the pandemic for politics after Abbott halted nonessential surgeries in order to free up medical supplies to fight COVID-19.
- California: In French Laundry Partners, LP dba The French Laundry, et al. v. Harford Fire Insurance Company, et al., The French Laundry and Bouchon Bistro – allege that their operations were shut down by a March 18th order of a Napa County health officer, which required all residents to stay at home unless they are performing certain essential activities. The restaurants allege that they are insured under an "all risks" policy issued by Hartford which provides coverage for lost business income incurred if access to the restaurants has been prohibited by an order of civil authority as a direct result of a covered loss in the immediate area. The restaurants claim that the March 18th Order triggers coverage because the policy does not include an exclusion for viral pandemic and the "policy's Property Choice Deluxe Form extends coverage to direct physical loss or damage caused by virus". As to the virus itself, the restaurants allege that it “physically infects and stays on surfaces of objects or materials, ‘fomites,’ for up to twenty-eight days.”
- Oklahoma: The Chickasaw and Choctaw nations filed separate lawsuits against several insurance companies seeking judicial rulings that financial losses to their casinos and other



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businesses caused by the COVID-19 pandemic are covered by their business interruption insurance policies.

- We have seen process service companies suspending work nationwide – even in jurisdictions where courts are still accepting new filings.



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