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What are the implications of COVID-19 for the insurance sector?

By: Marvin J. Straus, Esq.

On behalf of: The San Diego Insurance Adjusters Association

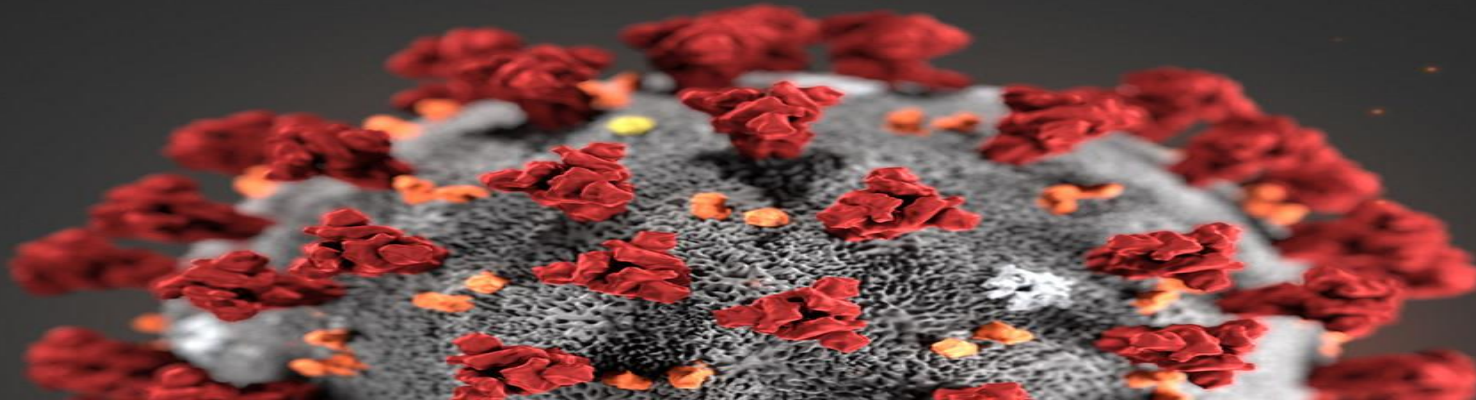
Areas of Practice

- Insurance Defense Litigation
- Underinsured / Uninsured Motorist
- Insurance Coverage
- Intellectual Property
- Trucking / Transportation
- Examinations Under Oath
- Civil Litigation
- Hospitality Liability & Risk
- Bad Faith
- Automated External Defibrillators (AED) Litigation
- Products Liability
- Autonomous Vehicles
- Employment Litigation Defense
- Real Estate
- Business-Business Dispute
- Business Mergers / Acquisitions
- Uniform Domain-Name Dispute Resolution Policy (UDRP)
- Trucking Coverage
- Complex Fraud Litigation / Qui Tam
- Public Entity Civil Defense Litigation
- Products Liability
- Autonomous Vehicles
- Employment Litigation Defense
- Real Estate
- Business-Business Dispute
- Business Mergers / Acquisitions
- Uniform Domain-Name Dispute Resolution Policy (UDRP)
- Trucking Coverage
- Complex Fraud Litigation / Qui Tam
- Public Entity Civil Defense Litigation

Introduction

The COVID-19 coronavirus outbreak that commenced in late-2019 has now become a global pandemic. “A crisis such as COVID-19 affects all business sectors – but it especially puts a spotlight on insurers who can expect to be [overwhelmed] with general inquiries and claims across multiple different lines, whether that be for **Liability (automobile)** insurance, **Travel** insurance, **Business** insurance, **Life** insurance, or **Health** coverage.” (By: Laura J. Hay, Global Head of Insurance KPMG International)

We are yet to see the full impact that COVID-19 will have on the insurance industry. However, we can expect a significant impact and change in the insurance sector. With this in mind, we will turn to each type of insurance to discuss the implications that COVID-19 may have on insurance.



The Latest Health News from NYU School of Medicine

A group of researchers at the NYU School of Medicine claim that the neurological damage is not caused by the virus or inflammation in the brain but rather due to the low oxygen levels in the body associated with COVID-19. (Neurology, October 5, 2020).

Breathing is overrated

- We require a constant supply of oxygen throughout our body.
- Our brain requires 20% of the oxygen and blood in our body.
- The harder you think, the more oxygen and blood your brain will use – up to 50%.

Causes of reduced oxygen to the brain

- Low blood pressure
- Choking
- Carbon monoxide
- Drowning
- High altitudes
- Brain injury
- Asthma
- Sleep apnea
- COVID-19

But wait I was out of breath for just a little bit

- **Hypoxia**: A reduction or inadequate flow of oxygen to the brain. Causes may include asthma, high altitudes, stroke, cardiac arrhythmia, or near drowning.
- **Anoxia**: A total lack of oxygen to the brain. Causes may include cardiac arrest, or near drowning.

Physical Effects

- **Loss of oxygen** from 3 to 5 minutes may result in **permanent brain damage**
- **Short term** memory loss with Alzheimer's like symptoms.
- **Severe** – Change in personality, complete loss of memory, and loss of motor skills.

Mental Effects

- PTSD
- Major depressive disorder
- Depression
- Anxiety
- Bipolar Affective Disorders

Impact on the body

- The virus attacks lungs which results in damage to the surrounding cells caused by the immune system
 - Lung damage
 - Fluid retention
 - Pneumonia
 - Blood clots – stroke
 - **Extreme cases** – Respiratory failure and shortness of breath and impairments to memory and atrophy
 - Increase risk of psychiatric problems

Cognitive impairment?

- Need to rule out other potential causes:
 - Substance abuse
 - Head injuries
 - Sleep apnea

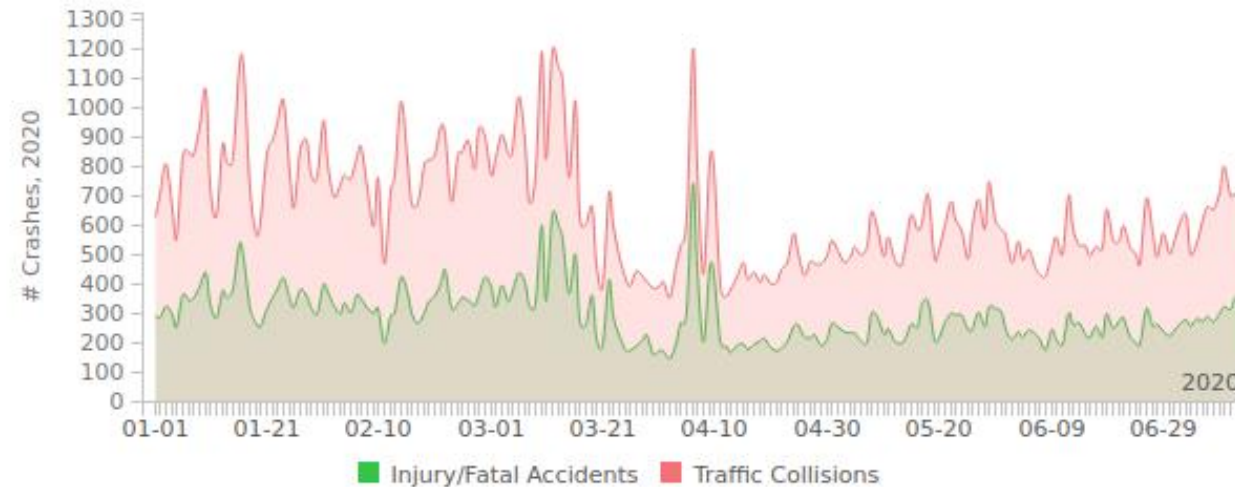
Automobile Insurance

- How does a global pandemic affect this type of insurance?

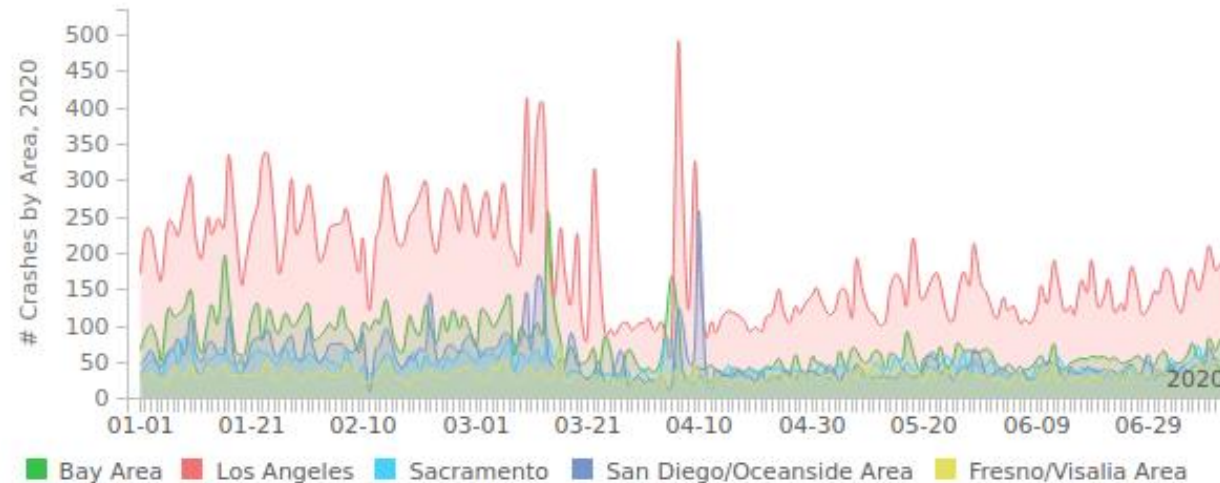
Executive Order: Stay-At-Home

- Since the early stages of COVID-19, many states (including California) enacted mandatory stay-at-home orders to decrease the chance of getting and spreading COVID-19.
- On March 4, 2020, the Governor of the State of California (Governor Newsom) executed an Order mandating “...all individuals living in the State of California to stay home” as an effort to preserve the public health and safety of Californians. As such, Californians were required to quarantine for a period of time, subject to exceptions. (Executive Order N-33-20).
- **Less driving, more remote working** – Due to state mandated shutdowns and a widespread adoption of remote work, car usage and the number of accidents has greatly decreased.

Special Report: Impact of COVID-19 Mitigation on Numbers and Costs of California Traffic Crashes



Data source: California Highway Incidents Processing System (CHIPS)



Reduction in Rates

- “Insurers are again fulfilling their role as economic first responders by providing **financial relief** to customers when they need it most,” said Sean Kevelighan, CEO, Triple-I. “If the rest of the nation’s private-passenger auto insurers are as generous as the companies the Triple-I knows about, we project insurers will be giving customer refunds, discounts, dividends, and credits totaling \$10.5 billion.”
- The Triple-I’s \$10.5 billion estimate is based on its analysis of 14 U.S. auto insurers who announced this week premium refunds, discounts, dividends, and credits totaling \$8.1 billion. These insurers cited reduced policyholder mileage and the receipt of fewer claims amid the COVID-19 crisis as the reasons they were able to make these decisions.
- Source: Insurance Information Institute

Further Restrictions on Insurers

In an effort to further these important objectives and support measures designed to reduce the growing threat of the COVID-19 pandemic, the CDI strongly encourages insurers to refrain from using the expiration of policyholders' drivers licenses or vehicle registrations for 60 days from March 16, 2020, for any of the following reasons:

- To affect a driver's ability to secure and maintain auto insurance coverage;
- To affect a driver's eligibility for a Good Driver discount;
- To determine eligibility for a California Low Cost Automobile policy;
- To impact the rates charged to any driver.

Expiration of Driver License

- Sacramento – The California Department of Motor Vehicles is extending driver licenses expiring during the COVID-19 pandemic.
- Licenses for drivers younger than 70 that expire between March and May 2020 are now valid through May 31, 2020.
- All commercial driver licenses, endorsements and certificates expiring between March and June 2020 are now valid through June 30, 2020, aligning with a recent emergency declaration from the Federal Motor Carrier Safety Administration. The extension does not include medical certificates for commercial drivers, which requires additional administrative actions scheduled in the near future.
- The DMV has alerted California law enforcement of the extensions. Californians with a suspended license are not eligible.

Recommendations vs. Law

- On May 15, 2020, in a continuation of his “response to the substantial disruption caused by the COVID-19 pandemic”, California Insurance Commissioner Richard Lara issued a notice to “All Admitted and Non-Admitted Insurance Companies” “requesting that all insurance companies provide their policyholders with an **additional grace period to pay premiums.**” The Notice requests that the grace period to pay insurance premiums be extended until July 14, 2020.
- The Notice states further that insurance companies should **not cancel or non-renew a policyholder for failure to pay insurance premiums** during this time period. On or after July 14, 2020, if a consumer has not been able to pay their outstanding premiums or has not worked with the insurance company on an alternate payment schedule, insurance companies should provide consumers with at least **10 days’ prior written notice of cancellation.** This written prior notice should include the effective date of the cancellation and the reasons for the cancellation in a manner consistent with the requirements of the Insurance Code for the particular line(s) of insurance at issue.
- It does not appear that this “request” has any force of law. Moreover, the scope of the Notice appears to be limited: “The grace period in this Notice applies only to cancellation or non-renewals attributed to a failure to pay premiums during the applicable grace period.” By this language, Commissioner Lara may be communicating his consciousness of the Hartford Acc. decision, exempting insurance policies which were not yet in existence due to not having been formed yet from coming within the scope of policies liable to cancellation. Thus, the Notice would not have any applicability in the event that the policy were deemed to never have been in effect because of lack of formation.

Statistics

- Based on California's 2017 Annual Report of Fatal and Injury Motor Vehicle Traffic Collision:
 - **Persons Killed** – 3,904
 - **Persons Injured** – 277,160
 - **Fatal Crashes** – 3,582
 - **Injury Crashes** – 193,564
 - **Mileage Death Rate** – fatalities per 100 million miles traveled – is 1.13
(California Highway Patrol and California Office of Traffic Safety, <https://www.ots.ca.gov/ots-and-traffic-safety/score-card/>)
- According to *Arity*, a mobility data analytics company founded by [Allstate](#), there has been a **65% decrease in driving** since before the first statewide shelter-in-place order was mandated in California on March 19, 2020. **Thus**, we can expect the fatal and injury rates to drop in 2020.

How has COVID-19 Impacted Auto Insurance?

- **With fewer miles driven, fewer crashes** – As more workers are asked to work from home during the Stay-At-Home Orders, we can expect **less accidents and casualty claims** as a result of the dramatic decrease in driving. However, the **reality** is that we are seeing more and more drivers on the road as time progresses – at least in California.
- **Increase in commercial vehicles (delivery services)** – While there are less drivers on the road, that isn't always the case for commercial vehicles, such as UberEats, Amazon, GrubHub, and other restaurant businesses turning to delivery services.
 - The issue is whether the employee delivering the food is using his/her own car; and whether his/her personal line coverage covers an **accident during a delivery** for the restaurant.
 - Will insurance companies expand what is typically a commercial line coverage to personal vehicles?
 - Proposition 22.
- **Fewer cars on the road but more reckless speeds** – Based on an article concerning a new trend (excess speeding), there has been a reporting of an increase of “...drivers traveling at extremely high speeds” based on the fact that there are lesser cars on the road. This can lead to an increase in the fatality rates in the event of an accident, as well as a great **increase in serious bodily injury claims**.
- We are yet to see the full impact that COVID-19 will have on accidents and casualty claims.

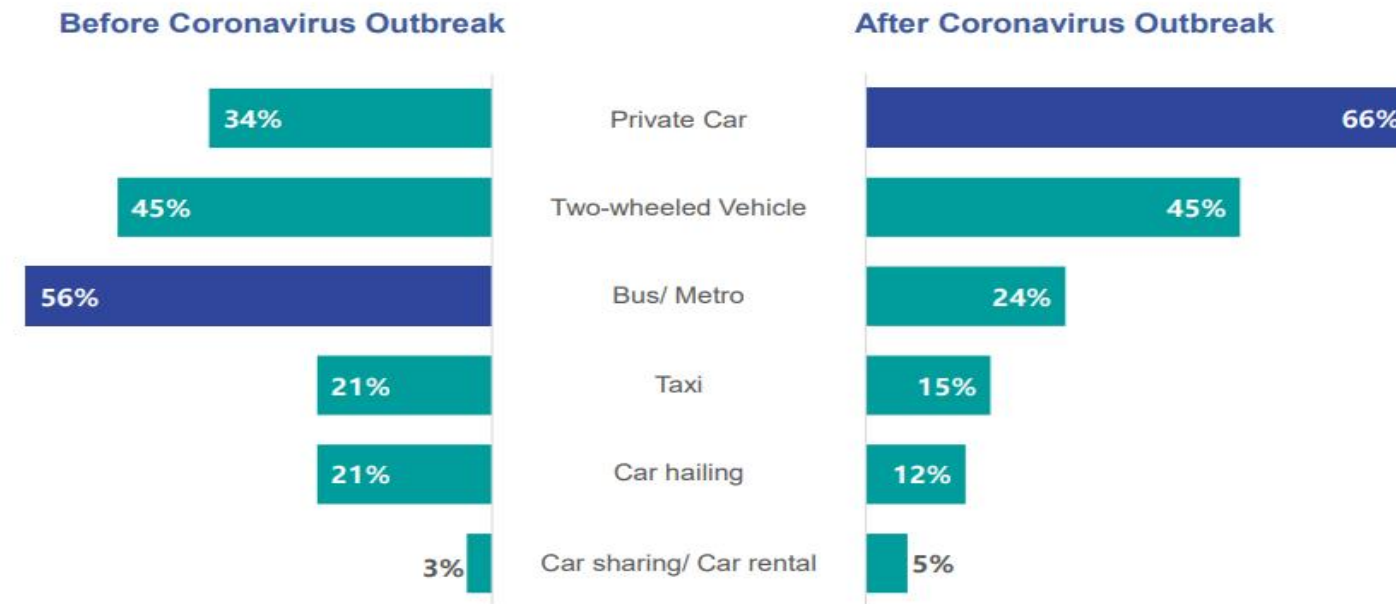
The increased demand for insurance

- **Increase demand for insurance** – “We can only *speculate* on the long-term effects of the crisis. We believe that a fear of infection combined with an increased acceptance of using digital collaboration tools will lead to a **decrease in the use of public transportation**. In response to this, we may see a general **increase in the use of private transportation**, and thus also an increased demand for insurance...”
- **Decrease in the use of public transportation** – the main motivation for this is to reduce the chance of getting infected on public transport. (please, see next slide for “China’s automobile purchase data”)

Decrease of Public Transportation

(China's automobile purchase data during COVID-19)

CONSUMERS TEND TO USE MORE PRIVATE CARS AND LESS PUBLIC TRANSPORTATION



Total respondents (N=1620)

Challenges

- **Future rates** – Insurance companies consider a number of factors when determining future rates for auto insurance, including the expected frequency of accidents, amount of miles driven, inflation related to repair costs, inflation related to medical care, type and cost of vehicle being insured and more.
 - It **takes time** to project future rates; however, a global pandemic and a significant economic effect was not anticipated 12 months ago.
- **Handling claims** – While adjusters are now working from home, the insurance companies will need to prepare and train its adjusters to effectively adjust claims outside of an office space.
- **Interruption to supply chain** – With businesses closed, *i.e.* repair shops, chiropractor, etc., the costs of claims may increase.

Unemployment, Payment Relief, and Refunds:

- California (and other states) has made an order that all insurance companies must offer at least **60-day grace periods** for insurance payments to Californians.
- Car usage and the number of accidents, as a whole, decreased greatly and resulted in many auto insurers to offer discounts and refunds on their customer's auto insurance premiums.
- Due to the current situation (COVID-19), some auto and homeowners insurance companies are offering **financial assistance** to customers, such as payment relief, flexible payment options, halted insurance cancelations, and providing online claims processing. Many have provided partial reimbursement of their personal auto premiums.
- For example,
 - **Liberty Mutual** is offering refunds of 15 percent to personal auto insurance customers on two months of their auto premiums;
 - **State Farm** is giving customers \$2 billion in rebates for those who have auto insurance policies with the company between March 20 to May 31;
 - **Progressive Insurance** customers will receive 20 percent credit for their April and May premiums; and
 - Other insurance companies, such as **Allstate, Geico, Nationwide**, are all offering compensation to their customers due to the impact of Coronavirus.

Travel Insurance

Travel insurance helps protect the insured from certain kinds of **unexpected events** that can occur before or during his/her trip. Unlike liability insurance, travel insurance is elective.

Gambling with your travel investment

“According to the U.S. Travel Insurance Association, 1 in 6 Americans experience issues during their trip, such as medical conditions, severe weather, mechanical issues or issues caused by the airline carrier. However, **only 22% of those affected had travel insurance.**”

What does travel insurance cover?

The most popular type of travel insurance is **trip cancellation and trip interruption coverage** which provides reimbursement for unused, non-refundable, prepaid trip costs if the insured needs to cancel his/her trip for a covered reason, such as sickness, job loss, flight cancellations due to adverse weather and more.

Does coverage extend to global pandemics?

- Generally, events that are not listed on, or not described in, the policy are **not covered**.
- Most standard travel insurance policies are not likely to provide trip cancellation or trip interruption coverage related to COVID-19. That is because “[s]tandard travel insurance does NOT provide coverage if you choose not to travel because of **COVID-19 fear or concerns**.” (Information on Novel Coronavirus FAQs)
- However, because coverage varies across policies, the short answer as to whether coverage extends to COVID-19 is... **IT DEPENDS**.
- Although many travel insurance policies do not cover global pandemics, the insurance and airline companies are **lenient as to granting reasonable accommodations** to allow the insured to change traveling dates (as opposed to cancel and reimbursement).

Two Part Test to determine whether COVID-19 is covered

According to the *New York Department of Financial Services*, if a person purchased a travel insurance policy, coverage for COVID-19 will likely depend on two key issues:

- (i) whether COVID-19 was “**foreseeable**” when the policy was issued, which depends on whether it was publicly known that COVID-19 was dangerous at the time the policy was issued; and
- (ii) whether the particular policy contains a “**pandemic exclusion.**”
 - For example, if a person purchased his/her airplane ticket (with insurance) in early-2020, the insured’s travel insurance policy will more likely than not cover the interruption/cancellation of the trip, and therefore, the insured may be entitled to reimbursement, so long the policy did not contain a “pandemic exclusion.”
 - However, this is on a case by case basis and will depend on the particular policy at issue.

How has COVID-19 affected traveling?

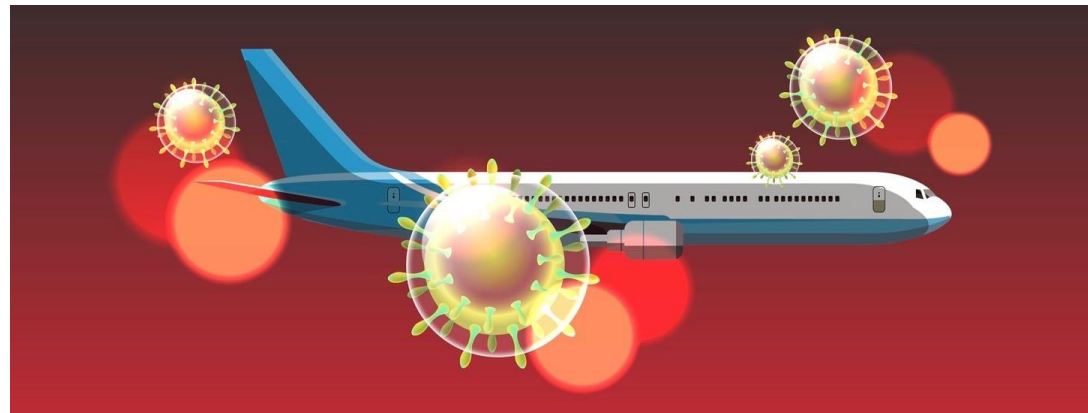
- Since the early stages of COVID-19, the U.S. Government has systematically **discouraged traveling** and many states have enacted mandatory stay-at-home orders to decrease the chance of getting and spreading COVID-19.
- Traveling involves increased exposure for contracting the COVID-19 for numerous reasons, such as:
 - (i) **Increased contact with larger number of persons** who may be infected in venues such as airports, train stations, bus terminals, conferences, events, etc.
 - (ii) **Inability to social distance** yourself from others, *i.e.* on an airplane or being in close quarters with others on a cruise.
 - (iii) **Spreading** the disease to others, even if you are asymptomatic; and
 - (iv) Travel could be suspended or interrupted, quarantines put into effect and borders closed at any time **leaving you stranded** or required to stay out of the US and/or away from home for extended periods of time.
- As such, traveling has substantially decreased because people have cancelled their vacations based on the fact that many of them are frightened that they may be **exposed** to infection and/or may be required to **isolate** due to their traveling.



Statistics as to coronavirus (COVID-19) impacting the travel industry

The coronavirus (COVID-19) has impacted the travel industry as follows:

- **Global business traveling** – According to the Global Business Travel Association, more companies are canceling or suspending business travel due to the coronavirus.
 - Business travel to Asia - “...at least three of every four companies reported they have cancelled or suspended ‘all’ or ‘most’ business trips to **China (95%), Hong Kong (87%), Taiwan (79%)** and other **Asia-Pacific** countries (e.g., **Japan, South Korea** and **Malaysia; 77%.**”
 - Business travel to Europe – “Half (51%) of the Global Business Travel Association members report their company has canceled or suspended their business travel to Europe.”
 - Business travel to Latin America – “...nearly one-third (30%) of companies have suspended or canceled ‘all’ or ‘most’ business travel to Latin America.
 - Business travel to Middle East – “...almost half (47%) of companies have canceled or suspected business travel to the Middle East.”



What implications has the decrease in traveling had on travel insurance?

- Given that a majority of persons and companies have cancelled and/or suspended all or most traveling since the rise of COVID-19, **claims for reimbursement** have been at its highest level.
- Disputes of vague and ambiguous policies (i.e. whether COVID-19 is covered) are **now potential lawsuits**.
- The courts will consider the totality of the circumstances, such as the insured's **loss** in his/her travel investments, the **foreseeability** of the situation (COVID-19), the **balance of fairness**, etc.
- COVID-19 has been a wake-up call in so many ways. Moving forward, travel insurance policies will need to unambiguously state whether or not the insured is covered for global pandemics.
- “The insurance companies cannot cover every risk in the world at any cost, it is simply impossible.”

Airline refunds - DENIED

In the past month, federal judges in California have dismissed cases against Norwegian Air Shuttle and Deutsche Lufthansa after concluding that the airlines did not breach their contract with passengers, who ultimately got refunds.

The Nitty Gritty – *Daversa-Evdyriadis v. Norwegian Air* (US District Court for the Central District of California)

- April 13, 2020 – Class action complaint.
- Allegation – Failure to refund flight cancelled due to COVID-19.
- Cause of action – Breach of contract.
- Rule 12(b)(6) – Motion to dismiss for failure to state a claim.
- Defendant contends – We refunded you on April 16, 2020. Therefore, no cause of action under the General Conditions of Carriage (“GCC”) because no timetable.
- Plaintiff contends – but wait, the Department of Transportation requires a full refund within seven days.

The Nitty Gritty – *Daversa-Evdryiadis v. Norwegian Air* (US District Court for the Central District of California)

- The Court answers the questions before it:
 - Question: Is the DOT incorporated into the GCC?
 - Answer: No.
- “Plaintiff, perhaps sensing that the GCC does not explicitly incorporate the relevant DOT regulations, posits two alternative breach of contract theories....”
 - 1. “that defendant breached a contractual ‘duty to carry customers’”
 - 2. “that defendant breached a statutory ‘duty to refund ... by failing to refund her in a reasonable amount of time’”.

The Nitty Gritty – *Daversa-Evdryiadis v. Norwegian Air* (US District Court for the Central District of California)

- In response to Plaintiff's arguments:
 - 1. Where, after a contract is made, a party's performance is made impracticable ... his duty to render that performance is discharged.
 - 2. California Civil Code section 1657 provides for a refund within a reasonable time. Reliance on section 1657 clearly enlarges the GCC. The GCC's refund provision contains no terms requiring a refund within a certain amount of time.
- MOTION TO DISMISS GRANTED WITHOUT LEAVE TO AMEND

Business Interruption Insurance (and Unemployment)

- Business Interruption Insurance is optional coverage that covers the **loss of income that a business suffers** due to a peril, such as property damage to the business caused by earthquakes, floods, fires, etc.
- Perils not listed on, or not described in, the policy are typically not covered.

Does coverage extend to global pandemics?

- The California Department of Insurance recognizes that COVID-19 is affecting many businesses throughout the state. However, in order for your policy to cover interruptions (loss of income) deriving from COVID-19, the policy itself must list such coverage – that is, the loss due to contamination by virus and similar perils, such as pandemics must be **expressly stated in your policy**.
- It has long been the insurance practice that infectious disease coverage **is available** for business interruption insurance. However, a vast majority of businesses never requested such coverage.
- Foreseeable losses** – Before 2020, business owners purchased commercial policies that included business interruption insurance for **foreseeable** losses, *i.e.* California residents insured against earthquakes and Florida residents insured against floods caused by hurricanes.
- Global pandemics was not one of them** – However, most business owners throughout the country did **not foresee** a business shut down due to a global pandemic. As such, many of these businesses were **not covered** for COVID-19 , even if their policy included business interruption coverage.

Does coverage extend to global pandemics?

- Thor Equities LLC, owns commercial properties in Manhattan, Chicago, San Francisco and other major cities, sues Factory Mutual Insurance Co., files a declaratory relief asking a New York federal court to declare the insurer owes Thor coverage for rent payments its renters have skipped because of the COVID-19 pandemic.
- Many business interruption policies have exclusions for viruses. Decisions vary as to the application virus exclusions and whether they apply to general business interruption coverage.

How has COVID-19 affected businesses?

- As discussed, many states have enacted mandatory stay-at-home orders to decrease the chance of getting and spreading the coronavirus. As a result of the state shut down and the decrease of tourism, many **businesses are forced to close down** in its entirety (or at least partially).
- **Effect on local economy is severe!** – Small businesses, such as salons, barber shops, spas, restaurants, bars, gyms, etc., are forced to shut down in an effort to stop the spread of COVID-19. Many people will lose their jobs and have a dramatic impact in their income.
- As such, many small businesses will not be able to survive the pandemic because they cannot maintain their status, continue payments of their leases, and cannot afford to **maintain their personnel**.

How has COVID-19 affected businesses?

- **Unemployment rate** – Based on reports published by the Department of Labor and the Bureau of Labor Statistics, “[m]ore than thirty million initial unemployment claims were filed between March 14, 2020, and June 13, 2020, and the national unemployment rate rose from 3.5 percent in February to 13.3 percent in May.” (By: Health Affairs, 8/6/2020)



Business continuity (impact on small businesses – surviving the pandemic)

- How will small businesses **survive the pandemic**? – Small businesses have options, such as:
 - Examine any and all of the applicable **stimulus programs** that the government is offering, as well as **loan options** that are available through the government (SBA – Small Business Administration) and/or private insurance companies.
 - **Renegotiate** with vendors to make sure you can get your best terms, *i.e.* get better prices or payments, etc.



California Commission Lara Request Higher Scrutiny

- The department of insurance has received complaints from businesses, public officials, and other stakeholders asserting that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refusing to open and investigate these claims upon receipt of a notice of claim.

California Commission Lara Request Higher Scrutiny?

- Response: Commissioner Lara hereby notifies all agents, brokers, insurance companies, and other Department licensees that they are required to comply with their contractual, statutory, regulatory, and other legal obligations, including but not limited to, the obligations set forth in the California Fair Claims Settlement Practices Regulations (Cal. Code Regs. tit.10; sections 2695.1 et seq.) in connection with all California insurance claims including, but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses.

State Efforts to Assist California Workers

- California provides affected workers with benefits, such as:
 - **Paid Family Leave** - if a person is unable to work because he/she is caring for an ill or quarantined family members with COVID-19, that person may qualify for Paid Family Leave.
 - **Disability Insurance** – if a person is unable to work due to medical quarantine or illness, that person may qualify for Disability Insurance.
 - **Unemployment Insurance Claim** – those who have lost a job or have had their hours reduced for reasons related to COVID-19 may be able to partially recover their wages.
 - **Paid Sick Leave** – if a worker or a family member is sick or for preventative care when civil authorities recommend quarantine, workers may use their accrued paid sick leave.
 - **Workers' Compensation Benefits** – if a worker is unable to do his/her usual job because he/she was exposed to and contracted COVID-10 during the regular course of their work, that worker may be eligible for workers' compensation benefits.

CA Benefits for Workers Impacted by COVID-19

Program	Why	What	Benefits	How to File
Disability Insurance	If you're unable to work due to medical quarantine or illness related to COVID-19	Short-term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness, injury, or pregnancy.	Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 52 weeks.	File a Disability Insurance claim
Paid Family Leave	If you're unable to work because you are caring for an ill or quarantined family member with COVID-19	Up to 6 weeks of benefit payments to eligible workers who have a full or partial loss of wages because they need time off work to care for a seriously ill family member.	Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 6 weeks.	File a Paid Family claim
Unemployment Insurance	If you have lost your job or have had your hours reduced for reasons related to COVID-19	Partial wage replacement benefit payments to workers who lose their job or have their hours reduced, through no fault of their own.	Range from \$40-\$450 per week for up to 26 weeks (plus additional weeks under extended UI benefits programs).	File an Unemployment Insurance claim
Pandemic Unemployment Assistance	If you have lost your job or business or have had your hours reduced for reasons related to COVID-19	Partial wage replacement benefit payments for business owners, self-employed, independent contractors, those who have limited work history, those who have collected UI benefits for which they are eligible, and others not eligible for regular UI benefits who are employed, partially unemployed, unable to work or unavailable to work as a direct result of COVID-19.	Range from \$167-\$450 per week for up to 39 weeks.	File a Pandemic Unemployment Assistance claim
California Paid Sick Leave	If you or a family member are sick or for preventive care, including when civil authorities recommend quarantine, isolation, or stay-at-home	The leave you have accumulated or your employer has provided to you under the Paid Sick Leave law. This may be 1 hour accrued for every 30 hours worked or 3 days/24 hours provided per year; employer may cap accrual at 48 hours and use at 3 days or 24 hours, whichever is greater, within a 12 month period.	Paid to you at your regular rate of pay or an average based on the past 90 days.	If accrued sick leave is denied, file a Wage claim
				Next slide→

Program	Why	What	Benefits	How to File
California COVID-19 Supplemental Paid Sick Leave	If you are (1) subject to a governmental quarantine or isolation order related to COVID-19, (2) advised by a health care provider to self-quarantine or self-isolate due to COVID-19 concerns, or (3) are prohibited from working by the Worker’s Hiring Entity due to COVID-19-related health concerns.	Up to 80 hours of supplemental paid sick leave for workers who work for hiring entities with 500 or more employees in the U.S. and healthcare employees and first responders employed by employers with less than 500 employees, if their employers opted out of coverage under federal law.	Paid to you at your regular rate of pay, the state minimum wage, or the local minimum wage, whichever is higher, and not to exceed \$511 per day and \$5,110 in total.	If COVID-19 Supplemental Paid Sick Leave is denied, file a Wage claim.
Federal Families First Coronavirus Response Act (FFCRA) Emergency Paid Sick Leave	If you are unable to work (or telework) because: (1) You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19. (2) You have been advised by a health care provider to self-quarantine due to concerns related to COVID19. (3) You are experiencing symptoms of COVID-19 and seeking a medical diagnosis. (4) You are caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2). (5) You are caring for a child whose school or place of care has been closed, or whose childcare provider is unavailable, for reasons related to COVID-19. (6) You are experiencing any other similar condition specified by Secretary of Health & Human Services	Up to 80 hours of paid sick leave for employees who work for public employers, or for private employers fewer than 500 employees. (Some exceptions may apply, including small business exemption from providing paid leave for childcare.)	For employee: Higher of regular rate or minimum wage rate, not to exceed \$511 per day and \$5,110 in total For family care: 2/3 of regular rate, not to exceed \$200 per day and \$2,000 in total	If paid sick leave is denied, you may file a FFCRA Emergency Paid Sick Leave claim
Federal Families First Coronavirus Response Act (FFCRA) Emergency Paid Family & Medical Leave	If you are unable to work (or telework) because you are caring for a child whose school or place of care has been closed, or whose childcare provider is unavailable for reasons related to COVID-19.	Up to an additional 10 weeks of paid leave for employees who work for public employers or private employers with fewer than 500 employees. (Small business exemption may apply)	2/3 of regular rate, not to exceed \$200 per day and \$10,000 total	If denied, you may file a FFCRA Emergency Paid Medical Leave claim
Local Government Supplemental Paid Sick Leave for COVID-19	If you live in the city of Los Angeles, unincorporated areas of Los Angeles County, San Francisco, or San Jose, you may be eligible for supplemental paid sick leave for COVID-19-related reasons if you are not covered by the FFCRA.	Up to 80 hours of supplemental paid sick leave for covered employees.	Varies by locality.	Varies by locality.

Workers' Compensation Insurance

- Insurance providing medical and wage benefits to workers injured or becoming ill during the scope of employment.
- **California COVID-19 confirmed cases = 892,810+**

Workers' Compensation

- COVID-19 infections are presumptive injuries for ALL workers who perform job duties at the direction of their Employer from March 19, 2020 to July 5, 2020 if the Employee meets the necessary medical requirements.
- Employees who work from home are not included in the presumption.

Protecting Employees from COVID-19 coronavirus (and Employer Liability)

- Despite stay-at-home orders requiring businesses to shut down, states have authorized essential businesses to **remain open**, *i.e.* grocery stores, restaurants, healthcare facilities and other essential businesses. As time passes, some non-essential businesses are also being permitted to reopen conditionally.
- Both essential and non-essential businesses are **subject to conditions** designed to protect employees from infection and ensure safe operations.
- “Employers who remain open under these conditions must act carefully to protect their employees from coronavirus exposure. If employees become infected, **employers may face claims** alleging, among other things, that they failed to cleanse and sterilize physical spaces, failed to implement or enforce social distancing guidelines, failed to provide necessary personal protective equipment, ignored reports that employees were experiencing symptoms of COVID-19, or continued operations after learning that employees had been exposed to coronavirus in the workplace.”

Protecting Employees from COVID-19 coronavirus (and Employer Liability)

- Employees are protected under the federal Occupational Safety and Health Act (OSH Act). Section 5(a)(1) of the OSH Act **imposes a general duty to employers** requiring them to provide their employees with a workplace “free from recognized hazards ... likely to cause death or serious physical harm.” Employers must take reasonable steps to prevent or abate the hazard.
- However, there are **statutory (workers' compensation laws), and case law, exclusions** that will bar tort claims involving workplace exposure to diseases.
 - **Statutory Exclusions** – Some states exclude “ordinary diseased of life,” such as the cold or flue, from their workers' compensation claims. COVID-19 exposure may be treated similarly.
 - **Case law Exclusions** – Generally, injury from **nonoccupational disease** are those that do not arise out of the employment itself and are noncompensable (1Hanna, Cal. Law of Employee Injuries & Workers' Compensation [defining a nonoccupational disease as “one that is not contracted solely because of an exposure at work or because it is related to a particular type of work”]; see Johnson Acc. Com. (1958) 157 Cal. App. 2d 838, 840 [321 P.2d 856])

Case Law Exclusions

- In *Johnson*, the court held that “[a disease] does not become an occupational disease **simply because it is contracted on the employer’s premises**. It must be one which is commonly regarded as natural to, inhering in, an incident and concomitant of, the work in question.”
- However, there are **two exceptions** to the general rule of noncompensability for nonoccupational disease – making the injury compensable – and those are:
 - (i) where the employment subjects the employee to an **increased risk compared to that of the general public**; and
 - (ii) if **the immediate cause of the injury** is an intervening human agency or instrumentality of the employment.
- The California Court of Appeal held that an employee was subject to an increased risk compared to that of the general public when he was required to make a business trip to an endemic area where he contracted a disease. The court held that had the employee’s duties “...not taken him to the endemic area, he would not have contracted the disease.” In other words, but for the employee’s duty to travel to the endemic area, the employee would not have been infected. (Pac. Emp. Ins. Co. v. Ind. Acc. Com/ (1942) 19 Cal. 2d 622 [122 P.2d 570, 141 A.L.R. 798])

Liability to Third Persons (not workers)

- Employers also have to consider liability to third parties, such as **customers**, which could result in greater damages.
- Employees infected during their scope of employment may be limited to workers' compensation claims/damages, but customers that are infected for failure to sanitize the premises or infected by an Agent are subject to general principles of negligence.

CA's Benefits for Workers Impacted by COVID-19

- **Eligibility** – if you reported to your employer's worksite between **March 19 and July 5, 2020** and tested positive or were diagnosed with a COVID-19-related illness, you may be eligible for workers' compensation benefits under the Executive Order issued by Governor Newsom on May 6.
- **What** – under the Executive Order you may receive temporary disability (TD) payments after exhausting specific federal or state COVID-19 paid sick leave benefits. You may be entitled to TD payments **for up to 104 weeks**. TD payments stop when either you return to work, your doctor releases you for work, or your doctor says your illness has improved as much as it's going to.
- **Benefits** – temporary disability (TD) pays **two-thirds of the gross wages** you lose while you are recovering from a work-related illness or injury, up to maximum amount set by law. In addition, eligible employees are entitled to medical treatment and additional payments if a doctor determines you suffered a permanent disability because of the illness.

Liability Insurance

- How will COVID-19 affect the liability insurance sector?

Zuniga v. Safeway

- On May 13, 2020, Pedro Zuniga's wife, Norma Zuniga, files a complaint for wrongful death.
- Mr. Zuniga worked of the Safeway distribution center in Tracey, California.
- On March 9, 2020, OSHA issued Guidance on Preparing of Workplaces for COVID-19.
- On March 20, 2020, Safeway distributed a flyer called "Team Talk" where it is alleged that masks and gloves were NOT recommended.
- On April 1, 2020, Pedro Zuniga was diagnosed with COVID-19.
- On April 13, 2020, Pedro Zuniga passed away.
- On April 17, 2020, 51 of the 1,700 distribution center employees were diagnosed with COVID-19.

Evans v. Wal-Mart

- On March 25, 2020, Wando Evans passed away of COVID-19.
- Allegations include:
 - Failure to clean store
 - Failure to implement social distancing
 - Failure to provide personal protective equipment
 - Failure to recognize signs and ignore employee complaints
 - Failure to comply with OSHA
 - Failure to comply with CDC guidelines
 - Failure to properly train employees
 - Hiring employees over the telephone

Tyson Foods – Motion to Dismiss

- That these individuals are among the many thousands of Americans who have died or suffered illness during the COVID-19 pandemic is a tragedy. But the complaint brought by Plaintiffs fails to adequately plead a plausible claim against Tyson. The complaint pleads no theory of liability or causation other than conclusory allegations that Tyson was negligent for allegedly failing to shut down or provide sufficient protective measures, and the reader is left to speculate that the absence of those measures caused Plaintiffs to contract COVID-19. The complaint does not allege any particular incident of exposure occasioned by alleged negligence, nor does it attempt to rule out other potential causes of infection, such as community spread. The complaint simply concludes that Plaintiffs became infected because they worked at Tyson. This case must be dismissed.

Impact on Other Claims

- Apportionment between current TBI claims and prior COVID-19 diagnosis?
- **Ask the question** – Have you ever been diagnosed with COVID-19.

Life Insurance

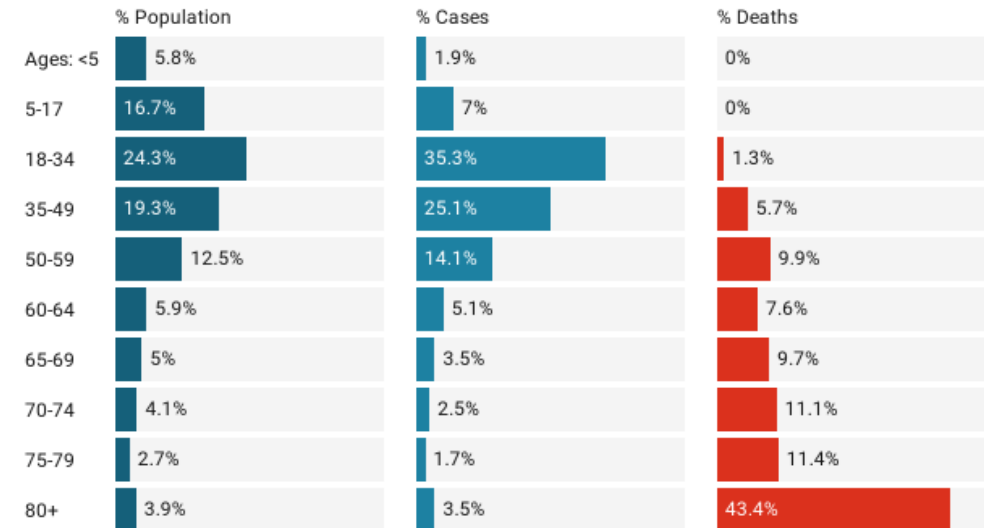
In exchange for a systematic payment or premium payments, the insurance company provides an amount, known as a **death benefit**, to beneficiaries **upon the death of the insured**.

COVID-19 Statistics

- Worldwide deaths = 1.15M+
- United States (all regions) confirmed cases = 8.58M+
- United States (all regions) deaths = 224K+
- California COVID-19 confirmed cases = 892,810+
- California COVID-19 deaths = 17,311+
- **Elderly make up a vast majority of the deaths** – “Californians 65 and older comprise 16% of the state’s population but just 11% of coronavirus infections, and a whopping 76% of deaths. By contrast, Californians 18-34 are 24% of the population, 35% of cases, but just 1% of all coronavirus deaths.” (By: Harriet Blair Rowan , Bay Area News Group; Source: California Department of Public Health)

Coronavirus cases are skewing younger, but older Californians make up a vast majority of the deaths

Californians 65 and older comprise 16% of the state's population but just 11% of coronavirus infections, and a whopping 76% of deaths. By contrast, Californians 18-34 are 24% of the population, 35% of cases, and just 1% of all coronavirus deaths.



Based on cumulative totals as of July 27, 2020.

Chart: By: Harriet Blair Rowan - Bay Area News Group • Source: California Department of Public Health • Created with Datawrapper

Deaths caused by coronavirus-related complications

- **Does my life insurance policy cover COVID-19?** – the answer is YES, so long the policy holder has an active life insurance policy in good standing.
- **How is COVID-19 impacting the life insurance business?**
 - **Reduced Sales, Increased Payouts** – the social and medical consequences of COVID-19 have been significant, but the impact to the economy and markets have had large implications on life insurance companies, for the reasons set forth:
 - (i) insureds are not paying premiums;
 - (ii) people are not buying new policies; and
 - (iii) upon the death of a policy holder, the insurance companies will have to payout the policy to the designated beneficiaries.

How is COVID-19 impacting the life insurance business?

- **Reduced Sales, Increased Payouts!**
- The social and medical consequences of COVID-19 have been significant, but the impact to the economy and markets have had large implications on life insurance companies, for the reasons set forth:
 - (i) insureds are **not paying premiums** for various reasons, *i.e.* jobless, uncertainty, etc.;
 - (ii) people are **not buying new policies**; and
 - (iii) upon the death of a policy holder, the insurance companies will have to **payout the policy** to the designated beneficiaries. (224K+ deaths in U.S. – many of which were likely insured)

Moving Forward

- **Issuance of New Policy** – while little is known about how insurance companies will manage underwriting decisions relating to COVID-19, we can expect that insurance companies may **postpone** underwriting applications after **recent foreign travel** and may require **greater medical exams** for approval with a life insurance policy.



Health Insurance

- How will COVID-19 affect the health insurance sector?

Health insurance coverage

- Due to COVID-19, more people will have to go to the doctor and hospitals.
- **Does my health insurance cover COVID-19?** – Congress has forced insurance companies to cover coronavirus “**testing.**” However, only some health insurance companies have agreed to waive all co-payments for coronavirus “**treatment.**”
- **Large out of pocket expenses** – There is an **uncertainty** as to what procedures are actually covered by your insurance. Although the “testing” is covered, the visit to the physician or other COVID diagnosis tests (e.g. white blood cell count) that are not actual COVID-19 tests may not be covered. Therefore, many insureds may end up with **large out of pocket expenses.**



What implications does the pandemic have on health care?

- **Historic levels of job loss and economic challenges (uninsured)** – As a result of the mandatory shutdowns, so many Americans have lost their jobs and are concerned as to health coverage. Further, many small businesses (employers) “...indicated they were not sure they could keep up with premium payments.” This historic level of job losses has significantly increased the number of **uninsured Americans** and will have a major disruption in health insurance coverage and an impact on the insurance industry.
 - “The extent of job loss in the COVID-19 pandemic already greatly exceeds that in the Great Recession, although the length and extent of the COVID-19 downturn remain to be seen.”
- **Increase in Medicaid recipients** – Given that many people have lost their jobs and employers have suspended their premium payments, there has been a dramatic increase in the number of people **eligible for Medicaid**.
- **State Budgets** – Unlike the federal government, the states have to balance their budgets. The dramatic increase in Medicaid recipients will stress the state budgets as to healthcare costs.

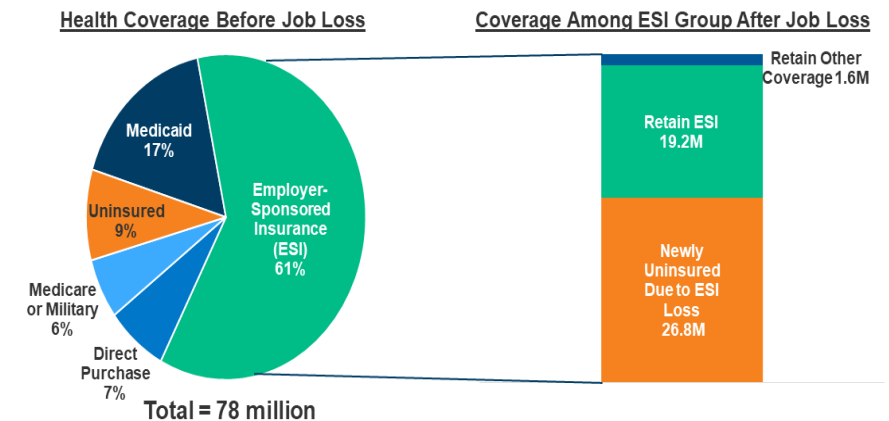


What implications does the pandemic have on health care?

- **State Budgets** – Unlike the federal government, the states have to balance their budgets. The dramatic **increase in Medicaid** recipients will stress the state budgets as to healthcare costs.
- **Dramatic Increase in Medicaid recipients** – Given that many people have lost their jobs and employers have suspended their premium payments, there has been a dramatic increase in the number of people **eligible for Medicaid**.
- A model/estimate from the KAISER Family Foundation predicted that by May 2, 2020, twenty-seven million people would have lost employer-sponsored insurance, even after accounting for those who are able to switch to the employer coverage of a family member. 79% of those who lost employer-sponsored health insurance were estimated to be eligible for ACA coverage, with the majority being eligible for Medicaid.

Figure 1

Health Insurance Coverage Before and After Job Loss Among People in a Family Experiencing Job Loss as of May 2, 2020



Notes: "Retain Other Coverage" refers to individuals holding multiple sources of coverage prior to family job loss.
 "Retain ESI" refers to individuals in families with multiple workers accessing ESI through separate employment-based policies.
 Source: KFF. Job Losses occurred March 1st through May 2nd, 2020. See Methods for more details.

What implications does the pandemic have on health care?

- **Physician shortages?** – A **need for more physicians** will certainly arise out of this pandemic. To meet this demand, some states (such as California) “...have already put out calls for **retired physicians**, nurses and other medical personnel to join the COVID-19 response, and those providers responded by the tens of thousand.” (American Medical Association)
- **Increase in Premiums:**
 - Due to COVID-19 coronavirus, hospitals and doctors have had to postpone and/or cancel routine cares and elective surgeries (e.g. hip replacement) which will cause the medical insurance carriers a **significant loss**. Also, the insurance companies are **spending more money** than anticipated in light of the coronavirus.
 - Thus, insurance carriers may **raise rates** for everybody the following year to account for the unanticipated losses.



Impact on Civil Litigation

- How has COVID-19 affected civil litigation?

Impact on Civil Litigation - Depositions

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

(a) Taking depositions

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Notice is served with the notice of deposition or the subpoena;
- (2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner.

However, each party so appearing must pay all expenses incurred by it or properly allocated to it;

- (3) Any party may be personally present at the deposition without giving prior notice.

(b) Appearing and participating in depositions

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Written notice of such appearance is served by personal delivery, e-mail, or fax at least three court days before the deposition;
- (2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(c) Party deponent's appearance

A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer.

Recent Changes in California Civil Procedure

- [Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020.]
- LEGISLATIVE COUNSEL'S DIGEST
- SB 1146, Umberg. Civil procedure: electronic filing, trial delays, and remote depositions.
- **Electronic Service:**
- (ii) For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, **electronic service of the document is authorized if a party or other person has expressly consented to receive electronic service in that specific action**, the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d), or the document is served electronically pursuant to the procedures specified in subdivision (e). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.

Recent Changes in California Civil Procedure (cont.)

- [Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020.]
- LEGISLATIVE COUNSEL'S DIGEST
- SB 1146, Umberg. Civil procedure: electronic filing, trial delays, and remote depositions.
- **Depositions:**
- 2025.310. (a) At the election of the deponent or the deposing party, the deposition officer may attend the deposition at a different location than the deponent via remote means. A deponent is not required to be physically present with the deposition officer when being sworn in at the time of the deposition.
- (b) Subject to Section 2025.420, any party or attorney of record may, but is not required to, be physically present at the deposition at the location of the deponent.

When will we be back in court?

- Governor Newsom issued an emergency order that gave Chief Justice Cantil-Sakauye the authority to issue emergency orders. In turn, the Chief Justice gave the Presiding Judges of the County Superior Courts the authority to issue emergency orders. Presiding Judges can only issue emergency orders for 30 day periods, and must apply for approval from the Chief Justice. Superior Courts are prioritizing criminal jury trials over civil jury trials. It's also important to note that counties face significant budget crises, with some counties looking to close branches one day a month.

When will we be back in court?

- **San Diego:** San Diego held its first criminal jury trial on 10/13/2020. Despite issuing 800 jury summons, only 41 people showed up. The court empaneled a jury for the three-day trial. A second criminal jury trial was slated to begin 10/19/2020. No civil jury trials will go forward in 2020, and it is unlikely civil trials will commence until the criminal backlog is handled. As of September 9, 2020, San Diego had a backlog of 2,000 criminal trials.
- **Orange County:** Orange County opened for civil jury trials 09/01/2020, subject to new COVID-19 protocols. The Civil Supervising Judge will select certain cases for trial, based on factors like preference, age, length of trial, and other case-specific factors. Orange County has designated at least five courtrooms to handle jury trials. Nearly all other jury trials are being continued through 2021 and 2022.

When will we be back in court?

- **Los Angeles:** The Spring Street Personal Injury (PI) Hub and independent calendar departments are not handling civil jury trials through the end of 2020, and is revisiting the issue in early 2021. Some civil bench trials may begin 11/16/2020, and other preference bench trials began 10/05/2020. As of 10/09/2020, LA had a backlog of over 7,000 criminal cases.
- **San Bernardino:** All civil trials are continued until further notice, at the earliest January 2021. The court will look at giving preference to five year cases and other statutory preference cases for jury trials.
- **Riverside:** All civil trials are continued until further notice, at the earliest January 2021. Moving a bit more quickly than other counties, Riverside completed 50 criminal jury trials between 06/18/2020 and 09/22/2020. Riverside continues to empanel criminal juries, as recently as last week Thursday.

Liability Shield

- **IN THE SENATE OF THE UNITED STATES July 27, 2020**
- Mr. Cornyn (for himself and Mr. McConnell) introduced the following bill; which was read twice and referred to the Committee on the Judiciary.
- Short Title: “Safeguarding America’s Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy Act” or the “SAFE TO WORK Act”.

SAFE TO WORK Act (Proposed)

No individual or entity engaged in businesses, services, activities, or accommodations shall be liable in any coronavirus exposure action unless the plaintiff can prove by **clear and convincing** evidence that—

(1) in engaging in the businesses, services, activities, or accommodations, the individual or entity was not making reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance in effect at the time of the actual, alleged, feared, or potential for exposure to coronavirus;

(2) **the individual or entity engaged in gross negligence or willful misconduct that caused an actual exposure to coronavirus**; and

(3) the actual exposure to coronavirus **caused** the personal injury of the plaintiff.

(c) Statute of limitations.—A coronavirus exposure action may not be commenced in any Federal, State, or Tribal government court later than **1 year** after the date of the actual, alleged, feared, or potential for exposure to coronavirus.

SAFE TO WORK Act (Proposed)

Jurisdiction—The district courts of the United States shall have concurrent original jurisdiction of any coronavirus-related action.

Limitations on damages.—In any coronavirus-related action—

- (1) the award of compensatory damages shall be limited to economic losses incurred as the result of the personal injury, harm, damage, breach, or tort, except that the court may award damages for noneconomic losses if the trier of fact determines that the personal injury, harm, damage, breach, or tort was caused by the willful misconduct of the individual or entity;
- (2) punitive damages—
 - (A) may be awarded only if the trier of fact determines that the personal injury to the plaintiff was caused by the willful misconduct of the individual or entity; and
 - (B) may not exceed the amount of compensatory damages awarded; and
- (3) the amount of monetary damages awarded to a plaintiff shall be reduced by the amount of compensation received by the plaintiff from another source in connection with the personal injury, harm, damage, breach, or tort, such as insurance or reimbursement by a government.

SAFE TO WORK Act (Proposed)

Doctor Certification:

In any coronavirus-related action filed in or removed to a district court of the United States, the plaintiff shall file with the complaint—

- (A) an affidavit by a physician or other qualified medical expert who did not treat the person on whose behalf the complaint was filed that explains the basis for such physician's or other qualified medical expert's belief that such person suffered the personal injury, harm, damage, breach, or tort alleged in the complaint; and
- (B) certified medical records documenting the alleged personal injury, harm, damage, breach, or tort.

SAFE TO WORK Act (Proposed)

Deterrent effect?

SEC. 164. Demand letters; cause of action.

(a) Cause of action.—If any person transmits or causes another to transmit in any form and by any means a demand for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a coronavirus-related action, the party receiving such a demand shall have a cause of action for the recovery of damages occasioned by such demand and for declaratory judgment in accordance with [chapter 151](#) of title 28, United States Code, if the claim for which the letter was transmitted was meritless.

(b) Damages.—Damages available under subsection (a) shall include—

(1) compensatory damages including costs incurred in responding to the demand; and
(2) punitive damages, if the court determines that the defendant had knowledge or was reckless with regard to the fact that the claim was meritless.

(c) Attorney's fees and costs.—In an action commenced under subsection (a), if the plaintiff is a prevailing party, the court shall, in addition to any judgment awarded to a plaintiff, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Questions

- ON BEHALF OF THE SAN DIEGO INSURANCE ADJUSTERS ASSOICATION:
- THANK YOU

Sources:

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