

MELICK & PORTER, LLP COVID-19 MEMO:

Melick & Porter, LLP provides you with the below update regarding the impact of COVID-19 on issues relating to insurance in the United States. The below is not meant to be all-inclusive, but provides an overview as to the trends in the United States. If you have any questions regarding any of the updates below, please do not hesitate to contact us.

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.

- On November 14, 2020, Massachusetts will start requiring that people arriving in the state from New York and Washington State, as well as the nation's capital, stay in quarantine, the Department of Public Health announced today.
 - Under the new [Massachusetts' travel order](#), state health officials will begin considering the states and district a higher risk for travel starting at 12:01 a.m. on November 14, 2020.
- The Food and Drug Administration [issued](#) an emergency use authorization on Monday for an Eli Lilly antibody drug to treat mild-to-moderate cases of COVID-19.
- The Centers for Disease Control and Prevention updated its [guidance](#) on facemasks to say that masks not only protects others around you, but also protects the wearer.
- Health and Human Services Secretary Alex Azar and Dr. Anthony Fauci said Tuesday, November 10, 2020; they expect a COVID-19 vaccine to be rolled out [widely](#) in the U.S. by next spring.
- The Senate Appropriations Committee on Tuesday [released](#) drafts of all 12 annual spending bills for 2021, setting up negotiations for a deal ahead of the December 11, 2020 deadline to keep the government-funded.
- On November 7, 2020, most major networks and news sources announced that Joe Biden won the presidential election to become the 46th President of the United States. On November 9, 2020, President-elect Joe Biden gave a COVID-19 briefing where he laid out his [COVID-19 plan](#) and how his transition team will take action as soon as Biden and Vice-President Elect Harris are sworn into office on January 20, 2021.
- Pfizer [announced](#) Monday that that data from its trials show that its experimental COVID-19 vaccine “prevents 90% of people from catching the disease.”

- The U.S. surpassed 10 million confirmed COVID-19 cases on Monday, November 9, 2020, according to [Johns Hopkins data](#).

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.

- There were two recent victories in policyholders' pursuit of insurance coverage for COVID-related business interruption losses. These decisions reject the insurance industry's position that COVID-related losses are not covered by insurance.
 - A [North Carolina court](#) granted a policyholder summary judgment that a commercial property insurance policy covers business interruption losses resulting from COVID-related government shutdown orders.
 - Meanwhile, a Florida federal court determined a "virus exclusion" does not preclude a policyholder from pursuing insurance for COVID-related business interruption loss.

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.

- SBA proposed release of "loan necessity questionnaires," apparently designed to seek financial and other information from PPP borrowers who received loans with an original principal amount of \$2 million or more. The information being collected may signal the adoption of new standards around PPP loan necessity.
- The Internal Revenue Service Chief Counsel Michael Desmond said the agency might issue guidelines on debt that companies will not have to pay back after borrowing from emergency federal loans through the Paycheck Protection Program.
- The United States [added](#) 638,000 jobs and the unemployment rate fell to 6.9% in October, according to data released Friday, October 6, 2020, by the Labor Department. The number of workers who permanently lost their jobs also stayed flat at 3.7 million.

LITIGATION/CIVIL JUSTICE SYSTEM UPDATES AND ORDERS:

Below we, highlight additional judicial orders and trends related to the COVID-19 pandemic.

- The New York State Courts have provided preliminary rulings on Commercial Lease performance during COVID-19 Pandemic.

- o Since the beginning of the COVID-19 pandemic, we have seen a torrent of litigation concerning the interpretation of *force majeure* clauses and the applicability of the “frustration” and/or “impossibility” defenses to contract, especially as applied to commercial leases.
- o Two recent New York State court preliminary rulings offer somewhat conflicting view of how these doctrines may be applied to commercial leases in New York. See:
 - *Dr. Smood New York LLC, v. Orchard Houston, LLC*, 2020 WL 6526996 (N.Y. Sup. Ct., Nov. 2, 2020); and
 - *The Gap, Inc., v. 170 Broadway Retail Owner, LLC*, 2020 WL 6435136 (N.Y. Sup. Ct., Oct. 30, 2020).
- Court dismisses in-person learning contract claims in COVID-19-related class action against university. See: *Chong v. Northeastern Univ.*, 2020 U.S. Dist. LEXIS 181622 (D. Mass. Oct. 1, 2020).
- The Supreme Court heard [arguments](#) on Tuesday, November 10, 2020, in a suit challenging the Affordable Care Act. The case has garnered heightened interest from the public, industry, and interest groups amid the COVID-19 pandemic.
- The Massachusetts Trial Court has created a video with information about remote and virtual services that are offered by the court. The video is [posted on the court's website here](#) and is available on the [court system's response to Covid-19 webpage](#) under remote/virtual court services.
- On Tuesday November 10, 2020, the Massachusetts Trial Court posted locations and the schedule for Phase 1 Jury Trials
 - o [Locations & schedule for Phase 1 jury trials](#)
 - o [COVID-19 jury information](#) (Information about jury trials and jury service during COVID-19).
- Beginning on Monday November 16, 2020, in Connecticut, it will become mandatory for attorneys and law firms without an exemption from [electronic services](#) to submit electronically in PDF format all exhibit documents on paperless Civil and Family matters, for all hearings and trials scheduled after Monday November 16, 2020.