

Daily COVID-19 Bulletin

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May 4, 2020

To Our Clients and Colleagues:

Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's

[Coronavirus \(COVID-19\) Response Team.](#)

GLOBAL OVERVIEW

The Future Fund – a Venture into the Unknown for the UK Government

On 20 April 2020, the UK Government announced the launch of an investment fund intended to deliver up to £500 million of investment and liquidity to high-growth companies impacted by the Covid-19 pandemic (the "Future Fund"). The Future Fund will provide UK-based companies with convertible loans ranging from £125,000 to £5 million, provided that the amount loaned by the UK Government is matched by third party investors. The UK Government's total commitment to the Future Fund is £250 million. This new form of support is an important step in providing liquidity and investment to innovative high-growth companies as they are typically loss-making and thus ineligible to access financial support through the Coronavirus Business Interruption Loan Scheme (the "CBILS") during the Covid-19 pandemic.

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Employer Liability and Defenses from Suit for COVID-19-Related Exposures in the Workplace

In recent weeks, legal commentators have predicted that employers will face an “explosion” of employee lawsuits for tort claims relating to the COVID-19 pandemic. As non-essential businesses begin to develop plans for reopening—and essential businesses continue to navigate the unprecedented challenge of remaining operational during a pandemic—employers worry that one wrong step might expose them to sweeping legal liability. Perhaps most concerning for employers is the specter of class action lawsuits alleging that unsafe workplaces have caused employees to contract COVID-19 or left them at heightened risk of exposure, which the U.S. Chamber of Commerce considers to be possibly the “largest area of concern for the overall business community.”

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COVID-19 and Personal Injury Tort Liability: Preliminary Considerations for Businesses

As governments contemplate lifting COVID-19 restrictions, businesses looking to reopen their doors face numerous questions about the legal risks of operating in the midst of a pandemic. Some of the most pressing concerns include identifying the precautions needed to avoid transmission of the virus to employees, customers, or others in proximity to their operations and the potential for liability if individuals become severely ill or die from a COVID-19 infection. Personal injury claims based on COVID-19 are already being filed against businesses in courts across the country, and some fear that a wave of litigation in the wake of the pandemic will threaten economic recovery. Plaintiffs have claimed that defendants failed to properly warn others of the presence of a COVID-19 outbreak, and failed to take reasonable steps to prevent the virus from spreading. Some plaintiffs have even claimed that businesses that do not take sufficient precautions create a public nuisance, which strategy echoes efforts by the plaintiffs’ bar to assert public nuisance claims in other contexts, such as opioid, tobacco, and environmental litigation. Indeed, the potential for a high volume of lawsuits has prompted nursing homes to seek executive orders granting immunity from negligence claims involving COVID-19. And others have called for legislation to provide liability protections across many industries. Here, we preview just a few of the issues likely to shape the scope of liability in personal injury actions related to COVID-19.

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Coronavirus: Private Equity Investing in a Distressed Environment

For private equity funds, the current Covid-19 pandemic - while providing unprecedented challenges for many portfolio companies - will also present some unique investment opportunities to invest in distressed businesses.

In a distressed context, there are four principal strategies to achieve ownership: a negotiated distressed sale conducted outside of a formal insolvency process; a negotiated sale through a pre-packaged insolvency procedure, such as a scheme of arrangement; a purchase out of a judicial insolvency process, such as a scheme of arrangement, administration or liquidation; and a loan-to-own strategic purchase of debt as a path to obtaining control. This article discusses these strategies below and introduces the key issues, opportunities and obstacles associated with each of them. *Originally published by IFLR on April 23, 2020.*

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