

# REVIEW & OUTLOOK (Editorial): Stopping a Lawsuit Epidemic

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(Wall Street Journal) --

Millions of Americans will lose their jobs and tens of thousands will die from Covid-19. Leave it to the plaintiff bar to make money off the misery.

"The WHO is telling health care facilities to take all necessary steps in dealing with patients to detect, isolate and limit the spread of Coronavirus," says the law firm Cogan & Power, P.C. Advises personal injury attorney Steven Heisler: "If you or a family member has become seriously ill or someone has died from coronavirus due to someone else's negligence or fault, you should seek legal advice to see if you have a coronavirus malpractice lawsuit."

Most businesses are advertising less, but trial lawyers are taking advantage of America's home confinement to recruit clients on TV. Consumer Attorney Marketing Group notes that "media consumption in the U.S. is already at historical highs" and "staying put in our homes can lead to almost a 60% increase in the amount of content we watch in some cases." Legal finance firms are also capitalizing by lending money for virus lawsuits on condition they receive a dividend from the eventual payout.

Most health-care providers have malpractice insurance, and insurers are directing them to establish explicit treatment protocols as a prophylactic. But it's unclear whether insurers will cover some coronavirus legal claims. Hospitals were inundated with lawsuits after Hurricane Katrina, so now most are prepared for natural disasters.

But a pandemic like the coronavirus hasn't occurred in a century. Hospitals and workers are managing a surge of patients that nobody could have predicted. They aren't responsible for a lack of protective equipment. Health-care providers have to make treatment decisions against a disease we still know too little about, and they shouldn't be sued unless they are grossly negligent.

Congress last month provided liability protection for health-care volunteers but should extend them to all providers. Credit Democratic governors, including New York's Andrew Cuomo, Illinois's J.B. Pritzker and Michigan's Gretchen Whitmer, for using emergency executive powers to protect providers in their states from trial lawyers. Other governors should do the same.

Those actions by Democrats are also an opening for Republicans to press liability reform in Congress. Nebraska Sen. Ben Sasse has introduced legislation shielding health-care workers for testing or treating coronavirus patients. Congress last month legislated liability protection for N95 mask manufacturers that feared lawsuits if health-care workers wearing masks got sick. Liability concerns discouraged manufacturers who don't usually make masks from assisting against the coronavirus.

It will get worse. Plaintiff firms are also targeting employers if they reopen for business and workers or customers get sick. Cruise companies have been sued for negligence, and the American Federation of Government Employees has filed a class action against the federal government for not providing enough protective equipment in prisons and veterans hospitals.

All of this will hamper the recovery. The virus can spread easily among workers in confined spaces, and infections have forced some meatpacking plants and food facilities to close. Most employers are adopting practices recommended by public health including keeping workers at least six feet apart and are regularly sanitizing their facilities. States need to grant them legal protection if they do.

Employers are also worried about wage-and-hour lawsuits by workers who may claim they weren't allowed to take rest breaks or weren't paid overtime while working remotely. Small businesses also say new federal paid sick and family leave mandates could leave them vulnerable to worker lawsuits.

If Congress wants America to recover with any speed from this pandemic recession, we can't have a lawsuit epidemic too. Employers operating in good faith need a safe harbor.