

# REVIEW & OUTLOOK (Editorial): Stay Shut Down or We'll Sue

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Governors are moving to reopen their economies, and Congress could at least do its part. That includes passing the liability protections that business owners need to feel confident they won't be looted by lawsuits as they get back to work.

The plaintiff bar is trying to cash in almost as quickly as the coronavirus has spread. Trial lawyers are filing suits against emergency-supply manufacturers (false advertising), colleges (refusal to refund student fees), cruise lines (emotional distress), retailers (wrongful death), nursing homes (negligence), and governments (denial of hazard pay) -- and much more. There is little point in lifting lockdowns if employers don't open for fear of lawsuits.

A number of governors used emergency powers to grant liability protections to health-care workers. But trial lawyers will attempt to get friendly state courts to invalidate them. Most orders also fail to address the wider economy or novel pandemic-related legal claims. Legislation is needed, and some state legislatures are moving. But the better answer is for Congress to pass legal protections related specifically to the pandemic and economic recovery that set a national standard and limit the trial bar's ability to forum shop class actions in friendly state courts.

One obvious step is to eliminate frivolous lawsuits that don't claim serious injury. Law firms have already filed lawsuits against cruise lines, arguing that even passengers that did not contract the virus were subject to emotional harm and entitled to punitive damages. The answer is to restrict lawsuits to individuals who sustain "serious physical injury" -- perhaps defined as a permanent impairment of health, or situations that require medical intervention to preclude such an impairment.

Even then, business owners need assurance that they won't face suits if they have complied with relevant guidelines during the crisis and after reopening. One law firm has already filed a wrongful death suit on behalf of a family of a Chicago-area Walmart worker who died in late March from the virus. Yet Walmart has stressed the steps it has taken to protect workers and customers, and in many cases it is impossible to prove where an individual picked up the virus. The standard for lawsuits against business should be evidence of reckless conduct or deliberate indifference.

Also needed are protections for health providers, including those who use new treatments in their frantic efforts to save lives. Lawsuits should have to prove gross negligence. Companies rushing to produce new drugs and vaccines need assurance that they won't be fleeced if their products fail. Companies that stepped into new areas to make vital equipment -- breweries producing hand sanitizer, automotive firms making ventilators -- deserve guards against lawsuits for unintentional design or manufacturing flaws. The liability standard here should be reckless or willful misconduct.

The White House and Senate Republicans want liability protection to be part of any new virus relief, and we hope they stick to it. Texas Senator John Cornyn is working on a bill that would protect essential and non-essential businesses from lawsuits if they comply with federal guidelines.

Democrats oppose all this, with Senate Minority Leader Chuck Schumer accusing Republicans of working for "big CEOs." But let's remember whom Senate Democrats work for. Lawyers and law firms have contributed more than \$8 million to Mr. Schumer's campaigns, and some \$1.6 million to Nancy Pelosi's. They've given more than \$4 million to the Democratic Senatorial Campaign Committee and nearly \$3 million to the House Democratic committee in this election cycle. Individual candidates benefit from bundled trial-bar contributions.

Congress has passed nearly \$3 trillion in virus spending for hospitals, struggling businesses and state and local governments. The money should be used to save jobs and businesses, not be siphoned into trial-lawyer bank accounts. The government lockdowns put the economy into a deep recession. Now government has a duty to help businesses reopen without fear of crippling litigation.