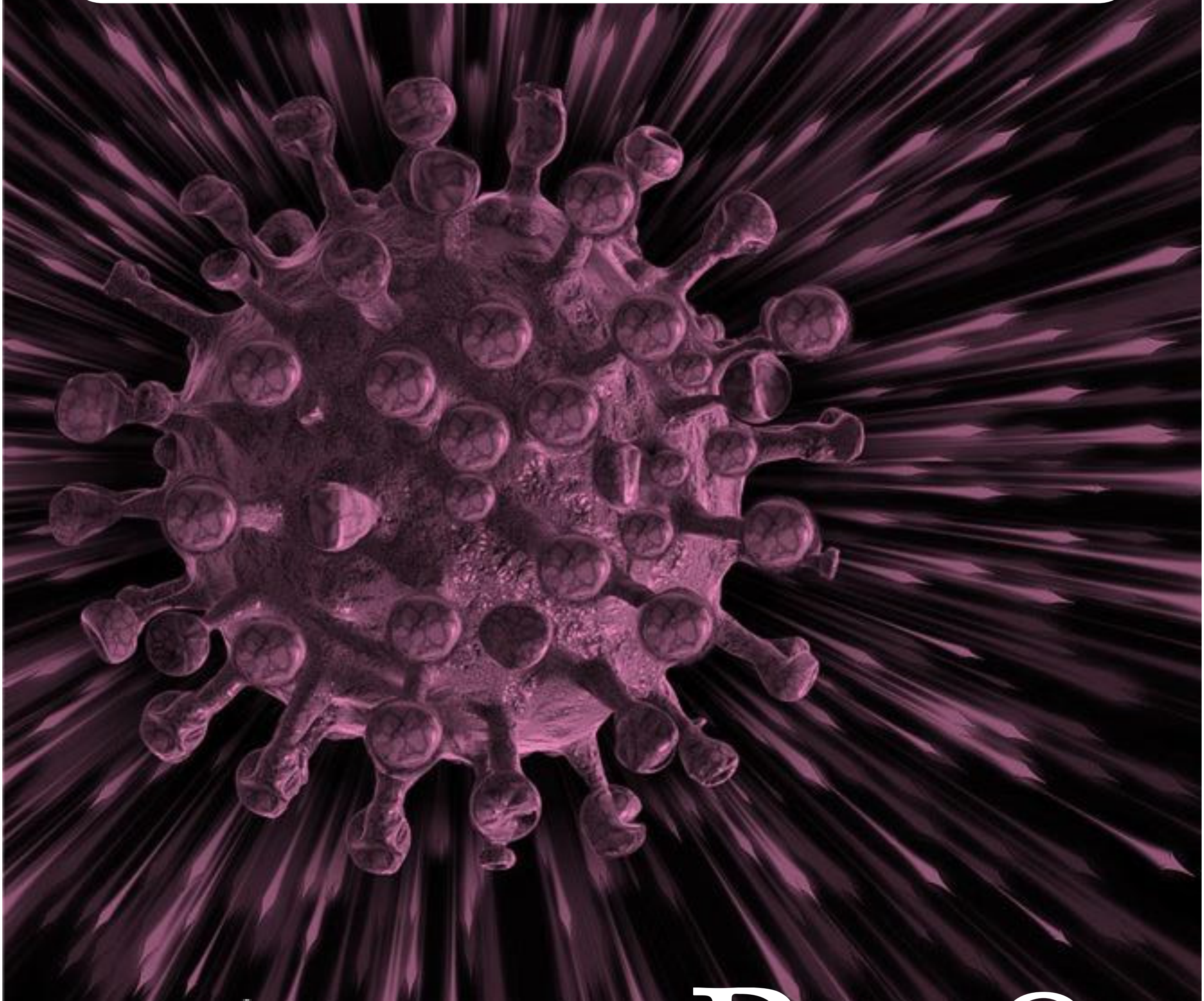
COVID-19 Newsletter

Edition 6

1st May 2020



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General Outlook

Death of market luminaries, cancellation of conferences (or rendezvous), shaming in the global newspapers. We won't shy away from saying, there is a fair amount to be downcast about both within our professional world and that beyond it. So today we will try to lean the opening gambit towards the significant positives to be found (if you wade through the media gloom):

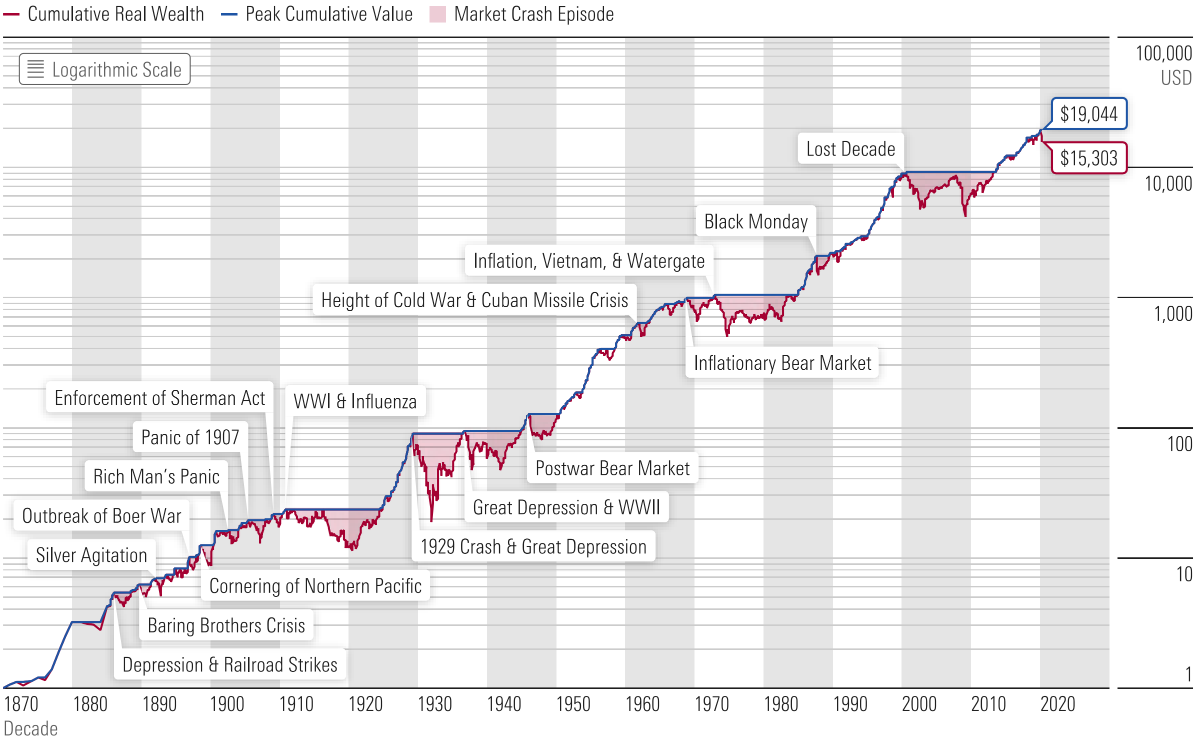
On the matter of business interruption, it seems as though a corner is being turned towards collaboration and compromise in the United Sates. The US House of Representatives is reviewing potential legislation that would obligate insurers to offer pandemic business interruption cover to insureds. However, this would not apply retrospectively to the Coronavirus outbreak. The move would also require the development of a government-backed backstop to support insurers. So, it seems that a palatable middle ground is now being sought. If progress is made in such a regard, it is critical that the industry looks to assist society wherever it can. It will then be presented for a fantastic opportunity to remould its own perception.

Jay Bregman, CEO of Thimble (an Insurtech offering by the hour insurance coverages) considers that historically, cataclysmic epochal events – of which this pandemic is widely regarded as one – lead to wholesale change across the industry. Such events inspired the birth of some of the most well known companies we have today – such as the USAA, formed in 1922 following World War I, or Geico in 1936 following the Great Depression – to support society through crises. He considers this event to be as seismic for the insurance market. Perception of risk is set to change, as protection is entering the forefront of minds. Insurance will be a key part of the world starting up again, it is here that great opportunity lies in reworking how people and businesses engage with insurance but also to recommunicate the role of insurers in society.

Swans and Turkeys

A great deal of comfort can be found when looking to the past for guidance. There has been much talk of the Coronavirus outbreak being a "black swan" event – i.e. the likes of which we have never seen before and therefore had no chance of predicting. But Laurence Siegel of Ibbotson Associates suggests that such events are in fact "Back Turkeys". By this he means, "an event that is everywhere in the data – it happens all the time – but to which one is wilfully blind." Paul Kaplan, writing in Morning Star's features[1], suggests that such crashes are frightening in the short term, but we should take solace in the fact that the aftermaths have almost always seen impressive recovery and reactionary growth. He goes on to propose a "pain index" which is a simple function of the extent of the market crash considered alongside its duration. This allows a closer comparison between dramatic but relatively short-lived events and those which were less savage but longer lasting in financial market damage. The impact of the Coronavirus outbreak will be considered not only in its aggregate damage but how quickly we as a society can recover. We must look to the past to enable a swift recovery – the insurance market is no exception.

[1] Source: https://www.morningstar.com/features/what-prior-market-crashes-can-teach-us-in-2020



Data as of Mar 31, 2020
Sources: Kaplan et al. (2009); Ibbotson (2020); Morningstar Direct; Goetzmann, Ibbotson, and Peng (2000); Pierce (1982); www.econ.yale.edu/~shiller/data.htm.

This week we have taken a look into the Errors and Omissions (E&O) space to see how the exposure is changing as increasing numbers of employees adopt furlough status as activity continues to fall. We look also to the insurtech world to take a health check on the sector and to see what we can learn from the agile new participants in terms of best serving customers through the crisis. We provide an overview of the spate of D&O claims entering the market. Finally, we consider the pernicious issue of mental health, how it is being managed in our industry and whether it might become an exposure issue for carriers.

E&O Market

Is the Lawyers Professional Liability Market set for further pain?

The US E&O market initially appeared to not have an explicit link to COVID-19. However, as the disease became a worldwide pandemic and is now almost certain to lead to a lasting global recession, it is anticipated that a delayed wave of claims activity may arise in this class.

The legal industry is facing one of the most significant challenges as a result of COVID-19. In the US, the Shelter in Place orders has closed courtrooms, legal trials are being held over video conferencing or have been delayed, and lawyers are having to implement a whole host of new risk management procedures to adapt to new work settings.

In 2019, the Lawyers Professional Liability (LPL) market followed the trend of transition and increased rates amongst the broader professional lines space. This was depicted by several carriers retrenching from the market due to a rise in the frequency of high severity losses.

COVID-19's impact on LPL will certainly be dependent on any particular firm's core legal activities. For example, Deloitte recently announced that US M&A activity in Q1 of 2020 was down 39% compared to Q4 of 2019, and this looks set to plunge further in Q2, significantly impacting lawyers working in the corporate finance practice. Additionally, some of the leading lenders in the US, such as Wells Fargo and Bank of America, have recently announced initiatives to allow for payment suspensions on mortgages and other loans, which looks set to lower the burden on lawyers working in the debt collection space. These areas of the market look set to reduce markets' exposures to losses. This is already being empirically recognised as law firms furlough high numbers of staff, leading to a large drop off in activity and therefore to potential insurer exposure.

Your Pain, Their Gain

Conversely, as the Covid-19 induced disruption has resulted in a wave of insurance claims arising, lawyers working in the commercial litigation space will be experiencing a hive of opportunities. It is also suggested that lawyers working in family separation cases have experienced a rise in the number of people seeking divorce representation hearings, with US law firm Schulte Roth & Zabel reporting 50% increases during the initial weeks of lockdown!

Increases in the volume of legal cases being handled is more likely to lead to a rise in claims relating to litigation strategy negligence, drafting and communication errors. Furthermore, the recent economic volatility amongst financial markets will have dramatically diminished the values of funds, trusts and estates. In this area, claims frequency and severity are historically higher during recessions as a result of improper documentation, disbursement of funds and failure to apply law. It is likely that risk management procedures will have evolved since the last Global Financial Crisis, especially with the most sophisticated of firms. Therefore, we now anticipate that firms will be advocating actions such as documentation a decedent's intentions, which in turn will remove the possibility of an attorney-client relationship which is at conflict with independent actions of the trustee.

Also, it is worth noting that a halt a law firms' activity will not simply relate to lower exposure. For instance, failed M&A activity can also operate as a claims risk, businesses are already assessing their liquidity and financial resilience which may result withdrawing from ongoing deals.

The reaction of insurers within the LPL space looks set to be dependent upon a multitude of variables, including the type of law firms insured and one's position on an insurance tower. It is likely that there will be a further growth in rates, especially for programmes which include ground-up defence costs as a result of a rise in frivolous yet administratively costly claims.

Ultimately, this event does not appear to be such a critical event as the historical precedents, such as the Global Financial Crisis, where law firms were implicated in litigation regarding collateralized debt obligations and Ponzi schemes.

Will COVID-19 have a similar impact as the 2008 Global Financial Crisis on the Professional Lines Market?

With COVID-19 now being touted as a catastrophe like threat to the industry, it is difficult not to draw comparisons with the 2008 Global Financial Crisis. Professional negligence claims are, in general, counter-cyclical to the economy; it is when things start to go wrong that people begin to look for someone to place the blame of financial burden.

A big difference here is that the financial crisis was a man-made event whereas we now are amid a global disease pandemic; yet, we may find ourselves in a similar situation. Where financial institutions were a target for mis-selling mortgages to sub-prime borrowers who couldn't afford them, and further developments of other misinformed sales such as PPI and so on; the insurance carriers are currently facing the possibility of suits put forward for non-coverage.

Other 2008 claims that saw a rise were those against professional advice in the investment of pensions. Many will have seen a dramatic drop in the total value of their pension fund caused by the COVID-19 market fall, which may lead to claims arising from mis-selling annuities and other pension products. In 2008, the construction industry output fell faster than the whole of the rest of the economy, continuing in 2009, with broadly flat growth in 2010 and 2011[2]. A direct consequence of the crisis was that many existing projects were put on hold and new projects could not secure funding. This led to a high outflux of construction workers looking for work abroad, leaving a skills shortage in the UK market. Many of these firms that looked to foreign markets have ended up being involved in disputes over late payments and allegations of negligence. Although we are unlikely to see this repeated, with all of the travel bans and grounded air fleets, we could see the rise in claims associated with payment delays, and possible negligence in construction, once work is resumed, due to the possible rush to get back on track to meet tight deadlines.

[2] Source: https://www.legalfutures.co.uk/wp-content/uploads/223112015-BLM-white-paper.pdf

Insurtech

In a time that the mainstream insurance industry is taking a pounding in the press, insurtechs seem to be enjoying a wave of enhanced profile and reputation. The insurance industry has long been regarded as one that can be reluctant to change, neglecting technology in favour of tried and tested practices. This has left it at risk from competition from its more tech-savvy rivals entering the market, utilising the power of AI and big data to make the industry more automated. This rise of Insurtech firms is shown best through the sharp increase in capital that they attract – Insurtech investment reached a new high last year with over $2bn in Q4 alone. The technology is targeted at improving the customer experience through providing tailored advice, personalised services and the feeling that the insurance company is not simply a 'claim payer' but an 'insurance partner.'

The coronavirus has posed a completely new set of challenges to the industry. Some traditional insurers who are lacking the latest technology**,** or fighting loss-related fires, could struggle to keep pace with their Insurtech counterparts and risk losing the customers that expect a 'modern experience'. This is more the case in life insurance than anywhere else, where the pandemic has caused an influx in demand. The traditional methods of conducting medicals are not plausible while lockdown measures are in place, and thus the need for 'meditech' or 'telemedecine' is more important than ever before. Of course, regulatory hurdles need to be overcome before this can be made as widely available as necessary, but it is a practice that has been a long time coming and has increased greatly as healthcare providers are unable to offer their usual services at their onsite facilities.

Outsourcing is another area that has been impacted by the coronavirus. Outsourcing companies do not fall into the 'essential' bracket posing "inconsistencies with data infrastructure reliability and security"[3] as the companies look to adhere to the rules and continue business as normal, while working remotely. It has been reported[4] that many well-known data outsourcers have been asking clients to relax their privacy and NDA rules, potentially comprising data privacy, security and business continuity. This is driving the push towards a new data paradigm, where there is a heavier reliance on cloud-based technology to facilitate outsourcing. Next week, thanks to in depth conversations with our resident cyber specialist Tom Quy we will be exploring the world of cyber in more detail.

The Power of Technology and Innovation

In general, insurtechs have a lack of exposure in the hotly reported lines of business such as business interruption. As such, they are directly benefiting from the asymmetry of loss, owing to their exposure bases, as explored in edition 5 of this newsletter. Perhaps more importantly for the future, the implicitly dynamic nature of insurtechs has served them well, in being able to offer targeted, bespoke and immediate help to insureds in their time of need:

- Insurtech products often operate on a usage basis – i.e. they charge you relative to your tracked exposure. Premium holidays are automatically applied, rather than an individual having to ask for one. Some insurance companies are coming under fire for having simply

[3] Source: https://www.quantemplate.com/news/covid-19-creating-a-new-insurance-data-processing-paradigm
[4] Source: https://www.bloomberg.com/news/articles/2020-03-23/world-s-back-office-scrambles-to-stay-online-as-india-locks-down

given a blanket percentage or value of premium back, which some are now considering not to be enough. With insurtech paybacks being linked to live exposure, the insured may feel as though they are in a more equitable and interactive arrangement.

- Downgrading policies – the agile and modular nature of policies allows the product to be amended mid-term. Insureds can remove modules of cover that may not be required for certain business practises that are currently restricted. This allows the insured to pay a lower price for a period and add this module when they return to the activity. Traditional insurers are offering similar options, but often through a replacement contract for the period of time – somewhat clunky and in some cases poorly communicated.
- Flexibility of cover – allowing workers to change the focus of their work more readily. An example here would be a private hire driver moving to driving for food delivery perhaps. This can be easily amended within an application (albeit at a potentially added premium), allowing an insured to move more seamlessly between roles, at a time when adaptability is very important.

Insurtechs – Chiefs of The False Dawn?

Despite the above, it is evident that insurtechs continue to struggle with accessing the commercial market for higher insured values. It is more likely that technology adding value or removing cost from the insurance chain will offer most benefit, rather than that which aims to replace the entire system. This gives rise to an important distinction that should be made when discussing the role of insurtech – there are those that seek to disrupt, or those that seek to enable. The disruptive side is widely regarded as too bullish, where the few that have been successful have benefited from over-inflated valuations that do not reflect the true value of the firm. On the other hand, insurtech firms that seek to enable the incumbent insurers by providing or enhancing the required required, will likely be more successful and bring the change to the industry that is required.

Adrian Jones, deputy CEO of P&C Partners at Scor, speaking on the Insurtech Connect webcast on the 16th of April, suggested that the number and quantum of investments in insurtech companies from inside the insurance market would fall as a result of the Coronavirus outbreak. Insurers are now far more cautious in assessing the value proposition offered by insurtechs, this comes at a time in which external investors also have diminishing fears regarding missing the next ground-breaking unicorn and are more concerned with being left with costly duds, as well as during a period when there is little investment capital readily available. Over-inflated valuations are being found out more widely in the start-up sector, with some considering echoes of the .com saga.

One final key point to note is the geographical areas that VCs are focusing their capital in the insurtech industry. There is still seen to be a big opportunity in the emerging markets – only 20% of earned premiums by insurtech firms came from the emerging economies. Notably, Latin American and some of the less developed areas in Asia, are crying out for more extensive Insurtech influence.

Cowbell Cyber

Cowbell Cyber is an Insurtech start up issuing AI powered cyber insurance to business with up to $100m in revenue. It is currently licensed in 15 US states and can offer up to $5m of cyber coverage.

As discussed in previous issues, Covid-19 has forced many people to work remotely, and this in turn poses a heightened cyber security risk – we now live in a time where cyber intrusion is a matter of “when” not “if”. Cowbell is an example of an Insurtech firm that has been quick to respond to the challenges posed by Covid-19 and has been offering free of charge access to its platform to its non-policyholders. This is in order to advertise the versatility of their product offering and the benefits of being able to accurately monitor and track both the probability and severity of the risk exposure to the business.

Potential Notable MPL Claims

The following claims are presented to show that despite many people claiming that the social inflation trend might be able to shift, health care class actions are already coming to fruition.

NYSNA versus NYSDOH

- The New York State Nurses Association (NYSNA) has filed 3 lawsuits against the New York State Department of Health (NYSDOH) and 2 New York hospitals
- The lawsuits allege that the entities aren't doing enough to protect the nurses working to treat Covid-19 patients
- So far 1,000 of the 42,000 members of the NYSNA have tested positive for the virus.
- In the suit against Westchester Medical it is alleged that the hospital is currently like a warzone and the nurses are being sent in without the necessary protective equipment
- The lawsuit, among other other things, seeks to enforce the directive that all direct care nurses are provided with at least one N95 respirator per day.

Accordius Health

- A family has filed a lawsuit against Accordia Health, the owners of 'The Citadel' care home in North Carolina
- The family members of a 96 year old patient said the she was paying thousands of dollars every month and was not given the
- She was moved to another part of the facility with other members that seemed sick, dubbed a "quarantine hall", despite only having UTI and not Covid-19
- She eventually did test positive for Covid-19, and the claimant is alleging that this was due to negligence and reckless conduct among other things.

Responsive Group Inc

- Six for-profit care homes owned by Responsive Group Inc and its subsidiaries are named in a proposed lawsuit.
- The claim alleges that the care homes failed to prepare for the pandemic, failed to comply with public health guidance, didn't provide appropriate PPE and didn't isolate patients that had tested positive for the virus.
- In a care home in New York, workers were told not to wear masks as it would "scare the residents".
- The situation in the care homes has been described as a 'wildfire'.

[5] Source: https://westfaironline.com/123813/war-zone-nurses-sue-westchester-medical-center-montefiore-and-state/
[6] Source: https://www.wsoctv.com/news/local/lawsuit-filed-against-nursing-home-dealing-with-covid-19-outbreak/BISTW57UUZAU3EOHRQQJAAKLBU/
[7] Source: https://www.cbc.ca/news/canada/toronto/covid-proposed-class-action-1.5543970

Arbor Terrace Long Term Care Home, Atlanta

- The families of five people that tragically passed away due to the coronavirus are filing lawsuits against Arbor Terrace
- **This is in spite of an executive order issued that limits legal liability for health care providers, hospitals and long-term care facilities during the pandemic.**
- So far 52 residents have tested positive for the virus and 15 have died, and a further 34 care workers have tested positive at the care home.
- Only one other long term care facility has registered more deaths as a result of the virus
- The lawsuit claims that the care and service that was paid for was not provided and that the residents have been failed
- The Arbor Company claims it followed infection-control protocols and alerted public health officials as soon as it discovered a patient had tested positive.
- Among other claims, the lawsuit states that the care workers were not wearing the appropriate protective equipment.

[8] Source: https://www.ajc.com/news/state--regional/lawsuits-blame-atlanta-senior-care-home-covid-deaths/pXVg2Uzjzx6tPz1NpIMffO/

Potential Notable Management Liability Claims

Phoenix Tree Holdings Limited

- This is an IPO class actions suit.
- The first COVID-19 securities lawsuit in the US filed against a non-US company, due to the Chinese real estate firm listing ADR shares on the NYSE
- Holds that the company's IPO prospectus and documents misrepresented the firm's current exposure to COVID-19 due to the firm's economic reliance to Wuhan region.

SCWorx Corp

- Potential Securities Fraud Class Action
- Investigation into SCWorx statement which pertained that they had a purchase order for millions of COVID-19 rapid testing kits, which helped generate a 400% rise in share price
- This was questioned by investigative financial investigation company, Hindenburg Research, this had such a devastating impact that last week the SEC was required to halt the trading of SCWorx shares

Siers v. Velodyne Lidar

- Employment Practices Liability Class Action
- Holds that Velodyne Lidar, a Silicon Valley technology firm, violated the California Worker Adjustment and Retraining Notification (WARN) Act when it terminated more than a third of its workforce, only providing one day rather than sixty days notice
- The class action maintains that the company is using the falsely using the pandemic as an excuse to slash its US workforce and shift operations overseas

Mental Health amidst Covid-19

Mental health often suffers a lag in reporting as the realisation of its impacts takes time. Research released earlier this month by Express Scripts[9], a pharmaceutical benefit management company, showed the US saw the number of prescriptions filled per week for antidepressant, anti-anxiety and anti-insomnia medications increase by 21% between February 16 and March 15. The greatest increase was for anti-anxiety medicines, at 34.1%.

In addition to prescriptions, calls to the federal mental health crisis hotline have increased 900% from this time last year[10]. With a prescription-cased approach to treatment, the issue is easiest to track in the US, but it is also taking hold beyond their shores.

42 psychiatric researchers have come together to form the International COVID-19 Suicide Prevention Research Collaboration. Writing in The Guardian, they stress that action must be taken to get ahead of a potential exacerbation of the mental health crisis, resulting from COVID-19. The key concern being that individuals with psychiatric disorders will experience worsening symptoms, others might develop new mental health problems, especially depression, anxiety and post-traumatic stress. These will all be very important considerations within the workplace.

Beyond ensuring that their own workforce is coping with such a monumental shift in lifestyle, insurers may need to consider the potential for mental health related claims to employer's liability and directors and officers policies. The latter do often contain exclusions for personal bodily injury (which writeback emotional distress or emotional anguish), however, as periods of movement restrictions continue to be extended, the actions taken by management to safeguard the mental health of their employees will come under scrutiny. Employers have a duty of care, to deploy preventive and even protective measure for their employees.

The increased usage of telemedicine has been well documented following the pandemic outbreak, insurers have been asked to keep up with the advance and support the providers. A number of insurers have stepped forward to help start enhancing the offering within the mental health space, by covering the service as part of their product offering. There is suggestion that telemedicine has a positive impact on commitment to treatment. Specific to the drug addiction space, Bright Heart Health officials say one barometer of the effectiveness of the care is that 90% of patients are still in treatment after 90 days and 65% after 90 days[11] — this is far higher than with traditional treatment. The ease of picking up the phone for treatment makes patients far less likely to bunk off.

All of us here at Beach would urge you to keep communicating both with your usual network but those beyond, it could be far more meaningful than you could ever think.

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[9] Source: https://www.express-scripts.com/corporate/articles/americas-state-mind-use-mental-health-medications-increasing-spread-coronavirus
[10] Source: https://thehill.com/opinion/technology/494732-people-have-increased-anxiety-and-depression-from-covid-19-telehealth-can
[11] Source: https://khn.org/news/coronavirus-crisis-opens-access-to-online-opioid-addiction-treatment/

If you would like to find out what forms of mental support exist in your area, do take a look at the Hub of Hope website – they run a fantastic service outing where and how you can get help.

https://hubofhope.co.uk/

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