



# Losses, Leases and Litigation - Personnel, Pandemic and Legal Protection

June 11, 2020

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# A Look at Leases

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# Commercial Leases Generally

## Commercial vs Residential Leases

- For Business Use
- Legal Protections
- Length of Lease
- Maintenance & Repairs



# Rent - Key Components

What is a “Triple-Net” Lease?

## What Does Rent Include?

- Base Rent
- Additional Rent
  - Taxes
  - Insurance
  - Common Area Maintenance
  - Other



# Key Lease Terms to Consider

- Tenant Operating Obligations – “going dark”
- Co-tenancy & Subtenancy
- Cancellation & Early Termination Clauses
- Renewal Options & Deadlines
- Defaults and Remedies
- Security Deposits & Other Collateral
- Insurance Requirements
- Essential Services



# Force Majeure

- Georgia Courts Construe Narrowly
- Any event claimed to excuse performance must be
  - Extraordinary
  - Unforeseeable
  - Unavoidable by ordinary prudence
- Exact Language
  - Broad Provisions – “including but not limited to”
  - Specific Provisions – Pandemics, Disease, Public Health Emergencies, Stay-at-Home Orders
  - Notice
  - Obligation to Pay Rent



# Lease Restructuring Alternatives

## Buying Time

- Deferral
- Abatement
- Reduction in Base Rent and/or Additional Rent
- Term





# Lease Restructuring Alternatives

## Paying Back

- Extend Lease Term
- Pay Back Deferred Amount in Installments
- Credit Security Deposit
- Credit Unused Tenant Improvements
- Provide Additional Security
- Apply for Paycheck Protection Program
- Early Termination



# Going Out of Business Considerations

- Responsibility for Rent
- Landlord's Obligation to Re-lease
- Personal Guaranties
- Bankruptcy



# A Look at Liability

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# A Look at Liability

## Reopening your Business & Opening your Liability

Is it safe to go outside?

Employees

Customers & Clients



# A Look at Liability

## Executive Actions and Executive Orders

### Presidential Guidelines

- Three Phases of Opening Up America Again

### Governor Kemp's Executive Orders

- Business Safety Guidelines



# A Look at Liability

## Executive Actions and Executive Orders

### Governor Kemp's Executive Order

- health care and medical facility employees, staff, and contractors
- limits their civil liability for the services they provide or perform within the health care or medical facility for the duration of the COVID-19 Public Health State of Emergency
- except in cases of willful misconduct, gross negligence, or bad faith can be demonstrated.



# A Look at Liability

## Statutory Authority

Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief.

O.C.G.A. §38-3-51(j)



# A Look at Liability

## Immunity Comes from the Legislature

### U.S. Congress

U.S. Senate Majority Leader Mitch McConnell

*“Our legislation is going to create a legal safe harbor for businesses, nonprofits, governments and workers and schools who are following public health guidelines.”<sup>1</sup>*

### Georgia General Assembly

Actively Looking at Legislation



<sup>1</sup> - <https://www.reuters.com/article/us-health-coronavirus-usa-mcconnell/mcconnell-says-he-is-spearheading-broad-coronavirus-liability-bill-idUSKBN22O28J>



# A Look at Liability:

## Employees

### Personal Injury Claims

- All employers in Georgia owe their workers a Duty of Care, i.e. the right to a reasonably safe workplace
- Breach of the Duty of Care
- The Breach directly causes the Injuries or Damages
- Actual Damages
- Court

### Worker's Compensation

- Employee does not have to prove the employer is at fault
- Paid from Worker's Compensation Insurance



# A Look at Liability:

## Families First Coronavirus Response Act (FFCRA)

### Employers with Fewer than 500 Employees

### Certain Exemptions for Employers with Fewer than 50

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>



# A Look at Liability:

## Families First Coronavirus Response Act (FFCRA)

### Up to Two Weeks of Paid Sick Leave at Full Pay

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>



# A Look at Liability:

## Families First Coronavirus Response Act (FFCRA)

### Up to Twelve Weeks of Paid Sick Leave at 2/3 Pay

is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19

FFCRA Expenses are Fully Funded by Tax Credit via the Department of Treasury

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>



# A Look at Liability:

## Customers & Clients

### Premises Liability Claims

- All Business Owners in Georgia owe their invitees a Duty of Care, i.e. a right to safe conditions on the property of the business.
- The property contains a Dangerous Condition that the Business Owner knows about or should know about.
- The Business Owner fails to fix the dangerous condition or warn the patrons of its existence
- The Dangerous Condition results in Actual Damages



# A Look at Liability:

## Waivers

### Liability Waivers

- Written contract between two or more parties
- One party acknowledges the risks of participating in or accepting the services of the other party.
- That party agrees in advance not to sue if there are injuries or liabilities.
- A clear intention to waive specific rights is critical.
- Clear and unambiguous
- Usually covers liability arising from negligence
- Usually does not cover liability arising from intentional, reckless or grossly negligent conduct.
- Cannot contradict Public Policy



# A Look at Liability:

## Summary

- Depending on Executive Orders alone may be risky, but follow all relevant Guidance and have evidence
- Relief from Congress and the Georgia General Assembly would be welcomed but would also be tested.
- Check your Worker's Compensation Coverage.
- Check your Premises Liability Coverage.
- A customer or employee trying to prove your business is the cause of their illness will not be easy but not impossible.
- Consider a liability waiver knowing its effectiveness will be tested.



# A Look at Liability:

## Summary

We know very little about the corona virus known as COVID-19, but we know infinitely less about the legal repercussions it will have.





# A Look at Losses

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# A Look at Losses

## Recouping some of the losses from the shut-down

- Take a Careful Look at Your Business Insurance Policies
  - Business Interruption Insurance
  - Loss of Use of Office Space
  - Loss of Key Employees
  - Look for Ambiguities



# A Look at Losses

## Triggers that could give coverage due to COVID-19

- Take a Careful Look at Your Business Insurance Policies
  - “Coverages” Portion of Your Policy and “Definitions” Sections
  - Each Insurance Policy is Different
  - Insurance Companies and Interpretations
  - Key-Employee or “Key-Man” Policies



# A Look at Losses

## Filing a Business Insurance Claim

- Take a Careful Look at Declarations Page
- Calling Your Agent vs Providing Notice Under Your Insurance Contract



# A Look at Losses

## When Should a Business File an Insurance Claim?

- Type of Policy
  - Claims-Made Policy
  - Occurrence Policy
  - Do Not Delay



# A Look at Losses

## What Should be Included in an Insurance Claim?

- Date of Loss
- Evidence of Damages
- Policy Number
- Names of Employees
- Damages
- Submit that which is Required



# A Look at Losses

## What Happens if my Insurance Company Denies My Claim?

- Document
- Reservation of Rights
- Bad Faith or Unfair Dealing - O.C.G.A. §33-4-6



# A Look at Losses

Are there already lawsuits being filed?

- Workplace & Employment Lawsuits
- General Class-Action Lawsuits
- Lawsuits Against Educational Institutions
- Insurance Bad Faith Claims
- Voting Rights Lawsuits
- Lawsuits versus Health Care Companies, Assisted Living and Nursing Homes
- Employee/Employer Lawsuits
- Cruise Line Lawsuits
- Six Flags
- Events
- Student Tax Refunds
- Amazon Employees
- Giant Eagle Facemask Lawsuit
- Lyft Lawsuit
- Price Gouging Lawsuits
- Prison System Lawsuits
- <https://topclassactions.com/>





# A Look at Losses

Business Interruption  
Proposed Legislation  
State & Federal





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Questions