

COVID-19 Resource Kit: Business Response

As companies, firms, and businesses prepare to resume operations following coronavirus (COVID-19) related shutdowns, lockdowns and quarantines, many business considerations emerge. This resource kit brings together vital guidance as businesses and companies move closer to normal operations. It also includes guidance to assist in planning for future events and interruptions.

Commercial Transactions and Contracting

This section brings together guidance related to contracts and commercial relationships impacted by the pandemic and resulting in disruptions to businesses. These resources provide guidance and address issues relating to how the coronavirus may impact performance obligations with respect to commercial contracts, the potential application of force majeure to existing contracts, drafting force majeure clauses in new agreements to cover pandemics, and disputes that may arise as a result of contract breaches triggered by the coronavirus.

Documents, Practice Notes and Analytical Content	Notes	Content Type
Force Majeure Clause Drafting for Pandemics Not a Lexis Practice Advisor subscriber? Access the PDF.	This article addresses how parties should address pandemic events, such as the novel coronavirus (COVID-19), in force majeure provisions in their future agreements to avoid being held in breach contract and incurring potential liability due to the inability to perform their contractual obligations.	Article
Seven Case Law Lessons regarding Force Majeure and COVID-19 Not a Lexis Practice Advisor subscriber? Access the PDF.	This article discusses seven critical lessons that every lawyer should consider in tackling force majeure and COVID-19. It shows that the judicial precedents dealing with past force majeure events provide context and perspective for the current pandemic, in each case contemplating specific circumstances that, if ignored, could lead to perilous results.	Article
Force Majeure Clause Drafting Not a Lexis Practice Advisor subscriber? Access the PDF.	Discusses force majeure clauses and issues to consider when drafting such clauses.	Practice Note
Coronavirus and Force Majeure Checklist Not a Lexis Practice Advisor subscriber? Access the PDF.	Provides guidance on issues and measures counsel should consider when determining the applicability of the coronavirus with respect to force majeure clauses in your clients' commercial contracts.	Checklist

COVID-19 Resource Kit: Business Response

Lexis Advance: 1 Corbin: Force Majeure and Impossibility COVID-19 § 1.02 The Legal Bases To Be Excused From Performance	Chapter provides an overview of the various legal bases that can be asserted to excuse contract performance, including force majeure, impossibility of performance, and frustration of purpose.	Treatise
Lexis Advance: 1 Corbin: Force Majeure and Impossibility COVID-19 § 1.03 Thorny COVID-19 Issues	Chapter addresses legal issues and obstacles presented when invoking force majeure to excuse contract performance	Treatise
Lexis Advance: COVID-19, Force Majeure and Frustration: Key Legal Principles and Industry Implications	This article addresses legal principles regarding frustration as it relates to force majeure in the context of COVID-19 and consequential issues for certain industries being affected by the pandemic.	Article
Lexis Advance: 62 Orange County Lawyer 32, Feature: Beyond Force Majeure And Frustration Of Purpose: How Else To Defend A Contract Claim Based On The Covid-19 Pandemic	Article discusses different legal theories and grounds that may be available to excuse contract performance when force majeure is unavailable	Article

Finance Considerations

Finance lawyers face many challenges in helping their clients navigate tightening loan markets and loan document compliance amid the COVID-19 pandemic and resulting economic downturn. The practical guidance in this section describes new sources of financing, such as the Fed's Main Street lending program, and how to seek and execute covenant relief packages.

New Sources of Liquidity

Documents, Practice Notes and Analytical Content	Notes	Content Type
Federal Reserve—Main Street Loan Facilities Not a Lexis Practice Advisor subscriber? Access the PDF.	Summarizes the term sheets and conditions for the Fed's Main Street Lending Programs to assist small and mid-sized businesses.	Article
Main Street Lending Program Offers Liquidity With Limits Not a Lexis Practice Advisor subscriber? Access the PDF.	Discusses the Federal Reserve's Main Street Lending Program, which promises relief for cash-starved businesses struggling amid the coronavirus pandemic, including larger companies that missed out on prior government aid, though	Article

COVID-19 Resource Kit: Business Response

	experts warn the central bank's loan effort is not a cure-all.	
Issues with the Main Street Lending Program Not a Lexis Practice Advisor subscriber? Access the PDF.	Discusses industry commentary and concerns for lenders and borrowers raised by the term sheets for the Federal Reserve's Main Street Lending Facilities.	Article
Lexis Advance: SBA Loan Stimulus Package will Trigger More Oversight, 2020 The Banking Law Journal § 2020-6.02	Discusses the implications of institutions issuing an unprecedented amount of Small Business Administration Section 7(a) loans through the CARES Act's Paycheck Protection Program. Lenders will need to be vigilant and adopt thorough recordkeeping and anti-money laundering compliance programs.	Analytical

Amendments, Waivers, and Covenant Compliance

Documents, Practice Notes and Analytical Content	Notes	Content Type
Market Trends 2020: COVID-19 Ramifications in Loan Documents Not a Lexis Practice Advisor subscriber? Access the PDF.	Discusses how the pandemic and the economic aftermath implicates a borrower's ability to comply with certain provisions of its loan documents.	Practice Note
COVID-19 Implications for the OTC Derivatives Markets Not a Lexis Practice Advisor subscriber? Access the PDF.	Discusses a number of issues that OTC market participants should take into account as they develop risk management strategies and adapt to ongoing developments.	Article
Lexis Advance: The Coronavirus and Similar Global Issues: How to Address Them, 2020 The Banking Law Journal § 2020-6.01	In this article, the author argues that the coronavirus will affect America in ways not seen since the Great Depression. He discusses how Congress and America's financial institutions are being impacted, and can help; and whether they will survive and still be standing when the virus has run its course.	Analytical

Real Estate

It's hard to think of an aspect of daily life that does not involve real estate – our homes, our businesses, our workplaces, a wide-range of activities from shopping and socializing to manufacturing and storage--all rely on real estate. As we plan for the next phase of life with the presence of COVID-19, it's not surprising that the potential issues and next steps for the real estate industry are also varied and far-reaching.

COVID-19 Resource Kit: Business Response

General Property Ownership Concerns

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>A Businessperson's Guide to Bankruptcy Concerns Arising out of Distressed Real Estate Capital Stacks</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This article provides an overview of the main questions arising among parties dealing with others in bankruptcy, and guidance as to how to evaluate these issues.</p>	Article
<p>Lexis Advance: Real Estate for the General Practitioner</p>	<p>This publication provides information on all aspects of real estate law and provides a general overview of the various aspects of real estate practice, including those that may arise in the course of other business pursuits or areas of the law.</p>	Analytical
<p>Lexis Advance: Transactions in Turbulent Times</p>	<p>A treatise on real estate transactions during turbulent times, including information on financing amendments, assignments, defaults and foreclosures, as well as, information on dissolution of entities that own real property and restructuring of real estate related companies.</p>	Analytical
<p>Seven Ways the CARES Act Impacts the Real Estate Industry</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This publication discusses ways the CARES Act affects the real estate industry.</p>	Article
<p>How Technology May be a Key X-Factor in the Real Estate Industry's Road to Recovery</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This article provides a real estate asset class-specific overview supporting the vision that PropTech industry growth will pick up pace as the Coronavirus the crisis lifts.</p>	Article

Lending Matters

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>Workouts of Commercial Real Estate Loans</p>	<p>This practice note describes the workout process for a commercial real estate mortgage loan from both</p>	Practice Note

COVID-19 Resource Kit: Business Response

<p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>the lender's and the borrower's perspective. When a commercial real estate mortgage loan goes into default, bankruptcy and foreclosure are not the only possible outcomes. In a workout, the lender and the borrower negotiate a solution to a defaulted or otherwise distressed commercial real estate mortgage loan.</p>	
<p>Commercial Real Estate Loan Defaults and Remedies</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note discusses borrower default and lender remedy provisions in commercial real estate financing documentation. A brief overview of commonly used workout options is also included. Where appropriate, the note includes negotiation tips for counsel to the borrower and the lender.</p>	Practice Note
<p>Lexis Advance: Real Estate Financing</p>	<p>A treatise on real estate financing, including "workouts" of such loans, or their sale or pledge. This treatise also covers real estate related mezzanine loans as well as residential loan requirements.</p>	Analytical
<p>Lexis Advance: Real Estate Financing-Text, Forms, Tax Analysis</p>	<p>This is an update to the treatise titled Real Estate Financing, above. This update includes discussion of COVID-19 related financing and financing trends.</p>	Analytical
<p>Forbearance Agreement (Short Form) (Commercial Real Estate Loan)</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This Forbearance Agreement form is designed for use in connection with commercial real estate loans, where borrower has defaulted on the loans and the lender agrees to forbear from exercising its rights and remedies.</p>	Practice Note

Leasing Matters

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>Force Majeure Clauses in the Face of COVID-19: Commercial Leasing Guidance (CA)</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>Explains what a force majeure clause is and how and under what circumstances a force majeure clause in a commercial lease may be invoked due to COVID-19 and California's Safer at Home Order.</p>	Article

COVID-19 Resource Kit: Business Response

<p>Landlord and Tenant Rights and Remedies after Default (Commercial Lease) (NY)</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note discusses default and remedy provisions that are commonly included in commercial leases in New York, focusing on office, retail, and industrial leases.</p>	<p>Practice Note</p>
<p>Landlord and Tenant Rights and Remedies after Default (Commercial Lease) (MA)</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note discusses default and remedy provisions that are commonly included in commercial leases in Massachusetts, focusing on office, retail, and industrial leases.</p>	<p>Practice Note</p>
<p>Lexis Advance: 7 Current Leasing Law and Techniques--Forms § 4D.12 (2020)</p>	<p>This section discusses the drafting and interpretation of force majeure clauses in commercial leases.</p>	<p>Analytical</p>
<p>Lexis Advance: 7 Current Leasing Law and Techniques--Forms § 4D.13 (2020)</p>	<p>This section discusses the use of alternative dispute resolution to settle commercial leasing disputes.</p>	<p>Analytical</p>
<p>Lexis Advance: 1 Corbin: Force Majeure and Impossibility COVID-19 § 1.03 (2020)</p>	<p>This section includes a discussion of the use of force majeure and impossibility of performance defenses to excuse performance under a commercial lease.</p>	<p>Analytical</p>

Foreclosure and Eviction

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>Foreclosure of Real Property</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note provides an explanation of the commercial and residential foreclosure process.</p>	<p>Practice Note</p>
<p>Commercial Mortgage Foreclosure (NY)</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note provides guidance on the commercial foreclosure process in New York.</p>	<p>Practice Note</p>
<p>Commercial and Residential Foreclosure (OH)</p>	<p>This practice note provides guidance on the commercial and residential foreclosure process in Ohio.</p>	<p>Practice Note</p>

COVID-19 Resource Kit: Business Response

Not a Lexis Practice Advisor subscriber? Access the PDF.		
Commercial and Residential Eviction (IL) Not a Lexis Practice Advisor subscriber? Access the PDF.	This practice note provides guidance on the commercial and residential eviction process in Illinois.	Practice Note
Residential Eviction (FL) Not a Lexis Practice Advisor subscriber? Access the PDF.	This practice note provides guidance on the residential eviction process in Florida.	Resource Kit
Lexis Advance: 1 Collections Manual for Credit Unions § 12.01 (2020)	This section includes guidance for lenders when dealing with borrower defaults in the wake of COVID-19.	Analytical
Lexis Advance: 12B Purchase and Sale of Real Property § 36.07 (2020)	This section discusses the foreclosure process generally.	Analytical
Lexis Advance: MB Practice Guide: CA Landlord-Tenant Litigation Publication Update (2020)	This update discusses COVID-related restrictions on eviction actions in California.	Analytical
Lexis Advance: 7 Current Leasing Law and Techniques--Forms § 4D.04 (2020)	This section discusses landlord remedies in commercial leases.	Analytical

Insurance

The impact of COVID-19 on both public health and business is triggering a barrage of insurance claims across the entire spectrum of traditional coverages. Because of the pandemic, clients are experiencing loss that arises from circumstances ranging from business interruption and event cancellation to illness and death. This activity also comes with a wide-sweeping regulatory aspect that is developing with staggering speed. Across jurisdictions, regulators continue to issue provisions that threaten to take products, sales and delivery systems, coverage, and claims handling outside traditional confines and into an extra-contractual realm. As a result, an attorney's "work" for the foreseeable future—whether that representation involves bankruptcies, business entities, corporate transactions, data security, the workplace, finance, real estate closings, civil litigation, or a myriad of other matters that occur within a general practice—is certain to include an insurance aspect.

Accordingly, we have curated the following Lexis Practice Advisor practice notes, checklists, and articles on various insurance topics. These resources will guide both law firm attorneys and corporate counsel through the key concepts and considerations that must be addressed in order to understand and act upon the insurance issues that may arise

COVID-19 Resource Kit: Business Response

as your clients get back to business in the post-COVID-19 landscape. The topic areas covered in this insurance segment of the LPA Back to Business Resource Kit include:

- Post-Pandemic Business Interruption Claims
- Other Post-Pandemic Coverage Claims Arising from COVID-19
- Compliance with New COVID-19 Operational Requirements
- Special Concerns in Post-Pandemic Insurance Litigation

Post-Pandemic Business Interruption Claims

Business closures mandated by the Shelter in Place orders entered in many jurisdictions in response to COVID-19 are resulting in a flood of business interruption claims. Because these claims traditionally require physical property damage under all but the most specialized insurance policies, state legislatures focused on providing support for financially challenged constituents have started to attack business interruption policy requirements—in addition to the virus exclusions in these policies. The following resources will assist attorneys with identifying and understanding the coverage issues that are involved in a business interruption claim arising from COVID-19, the details of business interruption coverage, and the various aspects of commercial property insurance, including applicable policy exclusions.

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>COVID-19 Claims Impact Entire Insurance Coverage Spectrum</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies the types of insurance that policyholders might pursue for coverage of a loss arising from coronavirus and the positions insureds and insurers are likely to take for and against coverage, so practitioners can consider a client's situation, address coverage weaknesses and gaps, and determine whether to litigate any coronavirus claim.</p>	<p>Article</p>
<p>COVID-19 Insurance Laws and Regulations Part IV: Business Interruption Coverage Mandates</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies and analyzes the various state and federal legislative and regulatory developments taking place nationwide as a result of the coronavirus pandemic, including legislation that would require coverage irrespective of policy language or exclusions, state notices that affirm the applicability of policy language and exclusions, a federal input on business interruption coverage, including a proposed federal backstop that is reminiscent of TRIA.</p>	<p>Article</p>
<p>Business Interruption Insurance</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Discusses the insurance that businesses purchase for situations when business is interrupted because of property damage or loss; includes issues relating to the elements necessary to establish a loss, various coverage extensions (such as government action/civil authority provisions), and</p>	<p>Practice Note</p>

COVID-19 Resource Kit: Business Response

	interpretation of the physical damage requirement which could preclude claims resulting from business interruption caused by the coronavirus.	
Endorsements, Exclusions, Exemptions, and Conditions Not a Lexis Practice Advisor Subscriber? Access the PDF.	Explores the use of various policy provisions that must be analyzed when considering how to expand, limit, exclude, or otherwise change insurance coverage that may be triggered by a coronavirus claim.	Practice Note
Commercial Property Insurance Not a Lexis Practice Advisor Subscriber? Access the PDF.	Discusses the commercial property-centric issues of supply chain disruption and the resulting interruption in business, which are the most highly reported commercial impacts of coronavirus; also includes details about marine insurance, which is being severely impacted by developments in the marine transport and oil-trading industries brought about by the coronavirus-driven decline in China's industrial production levels and importing requirements.	Practice Note

Other Post-Pandemic Coverage Claims Arising from COVID-19

In addition to business interruption claims, clients getting back to business will be engaging in activity that could result in claims across a wide variety of other available coverages. The following resources provide insight into a variety of key coverage issues, including insurance policy review and coverage opinions, denials of coverage and bad faith, and details on various lines of insurance that touch all types business activity, such as CGL coverage, D&O and E&O insurance, Employment Practices Liability Insurance (EPLI), and more.

Documents, Practice Notes and Analytical Content	Notes	Content Type
COVID-19 Claims Impact Entire Insurance Coverage Spectrum Not a Lexis Practice Advisor Subscriber? Access the PDF.	Identifies the types of insurance that policyholders might pursue for coverage of a loss arising from coronavirus and the positions insureds and insurers are likely to take for and against coverage, so practitioners can consider a client's situation, address coverage weaknesses and gaps, and determine whether to litigate any coronavirus claim.	Article
Business Insurance Policies Review Not a Lexis Practice Advisor Subscriber? Access the PDF.	Discusses the aspects of reviewing business insurance policies for all lines of business from both the policyholder and insurer points of view; enables a coverage determination for various potential losses arising from the coronavirus pandemic.	Practice Note

COVID-19 Resource Kit: Business Response

<p>Coverage Opinions</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Addresses the rendering of an insurance coverage opinion for first-party claims under property policies and third-party claims under liability policies; applicable in the context of a potential coronavirus claim, discussion includes recognizing the need for a coverage opinion and the points in time in the life of a claim or lawsuit when such an opinion is needed, obtaining information and researching legal principles needed to prepare the opinion, outlining the structure and drafting the content of an opinion, and understanding counsel may use the risk of coverage litigation to test the strength of a particular coverage opinion.</p>	<p>Practice Note</p>
<p>Denial, Disclaimer, and Declination of Coverage</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Discusses the distinctions between an insurance company's denial, disclaimer and declination of coverage and considers the common bases for denying coverage.</p>	<p>Practice Note</p>
<p>Insurance Bad Faith Claims</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Provides an overview of insurance bad faith claims, which may arise in the context of handling a coronavirus matter, including the insured's right, claim triggers, and the benefits of bringing a claim.</p>	<p>Practice Note</p>
<p>Commercial General Liability (CGL) Insurance</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Dives into the first line of protection that a business may have to protect itself from the risk of coronavirus-related liability claims; discusses specific risks within the ambit of a CGL policy, typical exclusions, and the duties and responsibilities of both insurer and insured.</p>	<p>Practice Note</p>
<p>Director and Officer (D&O) Insurance</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Reviews the coverage that businessowners may use when faced with liability claims from shareholders alleging the company acted unreasonably with respect to the coronavirus, with resultant economic loss; discusses the key elements of D&O policies, common exclusions, and provisions that impact the parties' rights and duties.</p>	<p>Practice Note</p>
<p>Employment Practices Liability (EPL) Insurance</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Provides an overview of the key elements of a typical EPL policy; discussion includes claims-made and third-party coverage, insuring agreements, important definitions, types of common exclusions, and conditions such as notice, consent to settle, application/rescission, the discovery period, and allocation.</p>	<p>Practice Note</p>

COVID-19 Resource Kit: Business Response

<p>Errors and Omissions (E&O) Liability Insurance</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>A review of the coverage that businesses may use when faced with liability claims from individuals who allege they were infected with coronavirus while on the company's property or because of some alleged action (or inaction) by the company; discusses the general scope of E&O coverage and typical exclusions, and gives examples of when E&O coverage may or may not apply.</p>	<p>Practice Note</p>
---	--	----------------------

Compliance with New COVID-19 Operational Requirements

Wide-sweeping legislative and regulatory activity has occurred in the insurance practice area across jurisdictions in the wake of COVID-19. The extent of these developments will require attorneys in a post-COVID-19 landscape to identify, analyze, and advise clients on changes that are taking products, sales and delivery systems, coverage, and claims handling outside traditional confines and into an extra-contractual realm. The following resources provide guidance on evolving operational requirements and related compliance obligations.

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>COVID-19 Insurance Laws and Regulations Part I: Insurance Operations Mandates</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies and evaluates noteworthy COVID-19 proposed legislation and regulatory guidance that impacts all manner of insurance operations, including solvency, products, sales and delivery systems, coverage, and claims handling.</p>	<p>Article</p>
<p>COVID-19 Insurance Laws and Regulations Part II: New Rules on Licensing, Notice, Premiums and Cancellations</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies and evaluates noteworthy COVID-19 regulatory guidance that is easing licensing requirements for insurance intermediaries and insureds, and mandating changes to the traditional premium, notice, and cancellation rules.</p>	<p>Article</p>
<p>COVID-19 Insurance Laws and Regulations Part III: Life / Health and Workers' Compensation Insurance and Liability Protections</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies and analyzes the various compliance directives and financial challenges taking place nationwide in the workers' compensation sector as a result of the coronavirus pandemic, including a discussion of wide-reaching state presumption laws that would offer protection to "front-line workers" at risk of contracting the coronavirus as a result of their employment, telemedicine coverage mandates, and regulatory activity surrounding insurer operations and the payment of benefits to immigrants.</p>	<p>Article</p>
<p>Solvency Regulation Framework for United States Insurers</p>	<p>Explores key components of the U.S. system of state-based insurance regulation to assure insurers' solvency, which is</p>	<p>Practice Note</p>

COVID-19 Resource Kit: Business Response

<p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>threatened in many coverage sectors because of the financial impacts from the coronavirus. Discussion includes capital requirements, statutory accounting and financial reporting, group supervision and the regulation of insurance holding companies, corporate governance and risk management and the companion own risk and solvency assessment (ORSA).</p>	
<p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p> <p>Insurance and Workers' Compensation Department Information State Chart</p>	<p>A list of contact information for both the insurance departments and the workers' compensation departments in the 50 states.</p>	<p>Practice Note</p>

Special Concerns in Post-Pandemic Insurance Litigation

The surge of coverage claims that have occurred as a result of the COVID-19 pandemic has resulted in a simultaneous outpouring of insurance-related litigation. Attorneys can expect to bring or defend lawsuits in a wide variety of categories, including:

- Exposure-based litigation (personal injury, wrongful death, negligence, failure to provide safe working environment, public nuisance)
- Breach of contract and deal litigation (alleging or denying that COVID-19 excuses contractual performance and for pre-pandemic negotiated deals)
- Consumer class actions and related litigation (event cancellations, consumer refunds, false advertising, price gouging, unfair trade practices, and privacy)
- Securities and derivative litigation -and-
- CARES Act litigation (statutory violations, common law claims, and antitrust)

All of these litigation categories trigger various types of coverages and coverage concerns.

The following resources will guide attorneys through the issues and concerns they must address when they conduct litigation in a post-pandemic business environment. These items discuss key insurance-related litigation concepts, such as the duty to defend and indemnify, an insured's right to independent counsel, reservation of rights, and bad faith.

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>COVID-19 Claims Impact Entire Insurance Coverage Spectrum</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>Identifies the types of insurance that policyholders might pursue for coverage of a loss arising from coronavirus and the positions insureds and insurers are likely to take for and against coverage, so practitioners can consider a client's situation, address coverage</p>	<p>Article</p>

COVID-19 Resource Kit: Business Response

	weaknesses and gaps, and determine whether to litigate any coronavirus claim.	
<p>Duty to Defend and Duty to Indemnify</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	Addresses these two major duties that an insurer commits to providing under an insurance policy, which may become more significant as a result of the anticipated increase in coronavirus-related litigation. A Duty to Defend and Duty to Indemnify Checklist that supplements this practice note is available below.	Practice Note
<p>Insured's Right to Independent Counsel</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	Outlines the circumstances that trigger an insured's right to independent counsel, which may occur more frequently as a result of the anticipated increase in coronavirus-related litigation. Includes a review of coverage issues that may create a conflict of interest between an insured and an insurer, an overview of states with nuanced coverage triggers, coverage defense, pros and cons of independent counsel and states with specific independent counsel requirements. An Insured's Right to Independent Counsel Checklist that supplements this practice note is available below.	Practice Note
<p>Reservation of Rights</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	Addresses the reservation of rights letter that must be drafted and issued to preserve the right to dispute coverage at a later date, which may become more significance as a result of anticipated increase in coronavirus-related litigation. The discussion includes information that should be contained in the letter, considerations to ensure the letter is prepared in accordance with best practices and properly issued and whether a reservation of rights letter creates a conflict of interest that requires the insurer to offer the right to independent counsel.	Practice Note
<p>Bad Faith Claims and Litigation Avoidance Checklist</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	A checklist that sets out advice on how to comply with state insurance statutes and regulations, and remain within the boundaries of applicable court decisions, in order to avoid bad faith claims and litigation.	Checklist

COVID-19 Resource Kit: Business Response

<p>Duty to Defend and Duty to Indemnify Checklist</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>A checklist that supplements the Duty to Defend and Duty to Indemnify practice note above. The checklist provides guidance on finding the two duties, basics of an insurance policy and the duties, the insuring clause, determining the policy's duty triggers, burden of proof, the duty to defend determination, the duty to indemnify, and steps for both the insured and policyholder practitioner.</p>	<p>Checklist</p>
<p>Insured's Right to Independent Counsel Checklist</p> <p>Not a Lexis Practice Advisor Subscriber? Access the PDF.</p>	<p>A checklist that supplements the Insured's Right to Independent Counsel practice note above. The checklist provides key considerations regarding this right, including reservation of rights, conflicts of interest, waiver, and a panel counsel for joint defense.</p>	<p>Checklist</p>

Energy & Utilities

This section brings together guidance related to lending relationships and derivatives trading within the energy sector, as both have been affected by the coronavirus pandemic. These resources provide explanation and guidance on traditional asset-based lending relationships, and the article discusses how such relationships are beginning to change in the face of economic uncertainty triggered by the coronavirus.

Documents, Practice Notes and Analytical Content	Notes	Content Type
<p>COVID, Contango, and Energy's New Economic Reality</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This article addresses the concept of contango caused by the Coronavirus, how it affects the energy marketplace, the difficulty of implementing domestic energy output restrictions, limitations on available storage for the oversupply of oil, and pressures placed on energy companies by banks holding reserve-based loans.</p>	<p>Article</p>
<p>Limitations on the Amounts of Reserves and Reporting Requirements</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note focuses on the methodology used by lenders when establishing the amount of hydrocarbon reserves a borrower has.</p>	<p>Practice Note</p>
<p>Reserve-Based Loans</p>	<p>This practice note focuses on the fundamentals of reserve-based loans, and how they are structured.</p>	<p>Practice Note</p>

COVID-19 Resource Kit: Business Response

<p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>		
<p>Facilities and Structuring Issues in Asset-Based Lending</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note discusses the detail associated with structuring an asset-based lending relationship, including how such facilities are operated.</p>	<p>Practice Note</p>
<p>Asset-based Facility Pricing</p> <p>Not a Lexis Practice Advisor subscriber? Access the PDF.</p>	<p>This practice note discusses the various methods by which lenders price asset-based lending facilities.</p>	<p>Practice Note</p>
<p>Lexis Advance: Drilling Down: A Deeper Look into the Distressed Oil & Gas Industry—Part I</p>	<p>Discusses how oil and gas companies fall victim to their own success, and how their borrowing bases eventually are depleted due to falling commodity prices.</p>	<p>Treatise</p>
<p>Lexis Advance: Rekindling the Flame: Oil and Gas Securitizations</p>	<p>Discusses how companies are seeking alternative financing strategies to traditional reserve-based lending.</p>	<p>Treatise</p>
<p>Lexis Advance: OCC Issues Handbook on Oil and Gas Exploration and Production Lending</p>	<p>Discusses new criteria utilized by the Office of the Comptroller of the Currency when evaluating the quality of loans made to energy companies.</p>	<p>Treatise</p>
<p>Lexis Advance: Damn the Torpedoes: Continuing to Finance U.S. Oil and Gas Operations in Tumultuous Times</p>	<p>Discusses how banks rationalize continued lending to energy companies during severe economic downturns, and what the terms of those lending relationships look like during an economic downturn.</p>	<p>Treatise</p>
<p>Lexis Advance: Acquiring Oil & Gas Assets from a Distressed Seller Outside of Bankruptcy</p>	<p>Discusses how a stronger company may acquire a weaker company or assets from a weaker company during distressed market conditions outside of a traditional Chapter 11 bankruptcy context.</p>	<p>Treatise</p>
<p>Lexis Advance: Distressed Assets and Companies—Financing Issues</p>	<p>Discusses how banks run into financing difficulties when their counterparties are distressed energy companies.</p>	<p>Treatise</p>