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Legal Implications of COVID-19: What Local Governments Need to Know

International Municipal Lawyers Association

Mid-Year Seminar 2020

GT SHAREHOLDERS:

Karen M. Kennard | Government Law & Policy
Elizabeth R. Hadley | Government Law & Policy
Franklin D. R. Jones, Jr. | Public Finance
Shira R. Yoshor | Labor & Employment
Michelle D. Gambino | Litigation
Gregory J. Casas | Litigation

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Karen M. Kennard, Shareholder

Karen Kennard is a Shareholder in the Austin, Texas office of Greenberg Traurig. Her practice focuses on government law, policy, regulatory, and legislative matters with an emphasis on municipal law issues.

Her experience spans more than three decades and includes positions as City Attorney for the City of Austin, Texas and General Counsel of the Texas Municipal League.

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Disaster Declarations:
2020 Pandemic Lessons Learned

Disaster Declarations

- Authority
  - State Constitution/Statutes
  - Charters
- Multiple Jurisdictions/Conflicts
  - Federal
  - State
  - Local/City & County
- Drafting/Amendment/Interpretation
  - Essential Services
  - Key Issues

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Disaster Declarations

- Emergency Powers
- State statues provide for Emergency Declarations
- City Charters contain Emergency Declaration requirements and powers
  - Natural Disasters v Pandemics

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Disaster Declarations

- Multiple Jurisdictions & Conflicts
- Texas Example:
  - City/County Orders
  - State Declaration

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Disaster Declarations

- Drafting/Amendment/Interpretation
  - Similar template as natural disasters
  - Numerous Amendments
  - Multiple interpretations

Essential Services

Key Issues (elections, public meetings/records/taxes/utilities/construction)

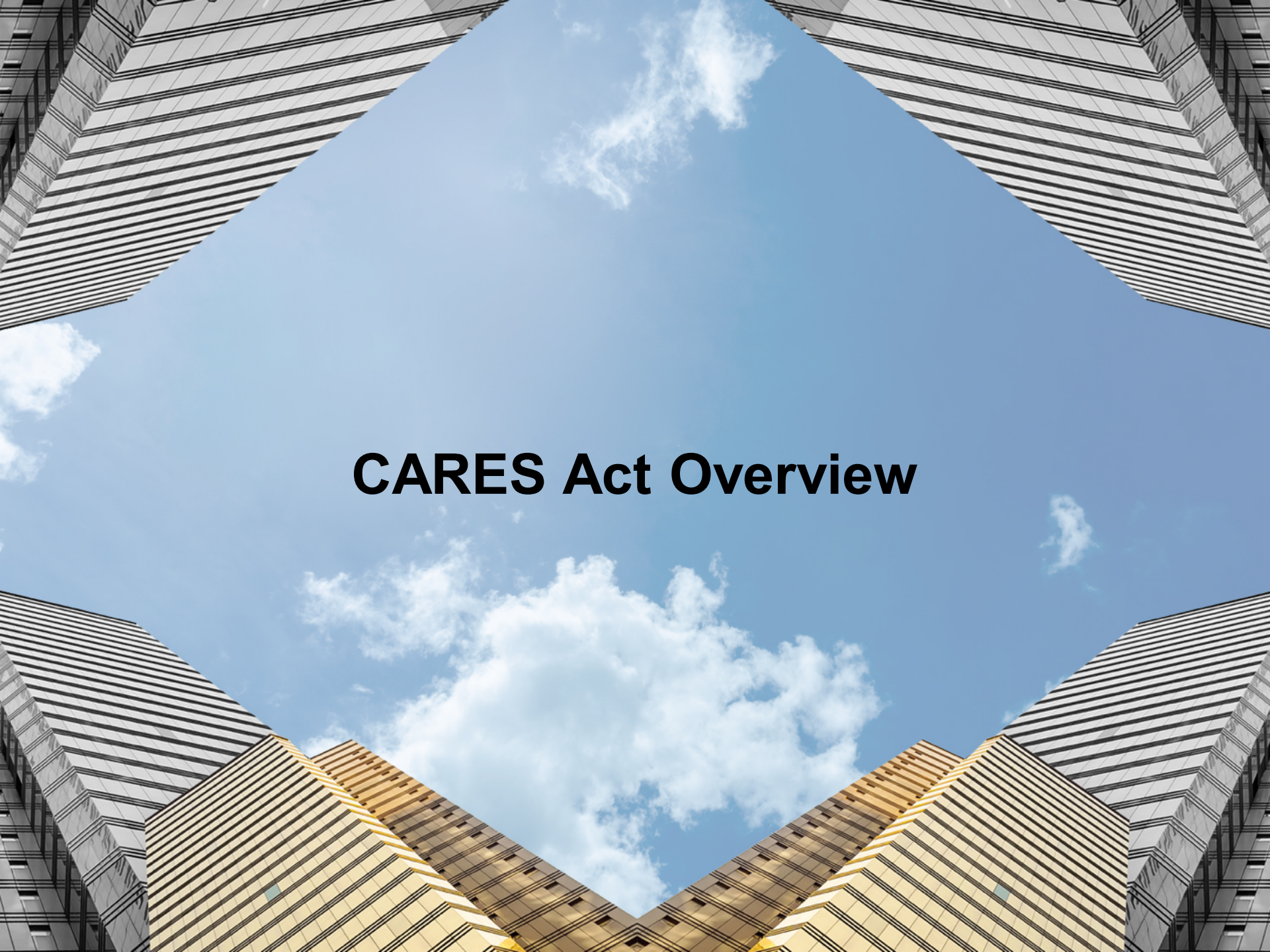
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Elizabeth R. Hadley, Shareholder

Elizabeth R. Hadley focuses her practice on both government law and policy and litigation matters.

Elizabeth's government practice includes representing clients with legislative, regulatory, and administrative issues across all policy areas, with an emphasis on insurance regulation, economic development, technology, health care, education, the Texas Public Information Act, and campaign finance compliance in Texas. She has an intimate understanding of legislative and government agency processes given her prior experience working within the U.S. Senate, the Texas State Senate, and the Texas Department of Agriculture. Elizabeth utilizes this knowledge to provide exceptional service to clients in their interactions with Texas government, including advocating for clients before the Texas legislature and assisting clients with the rule-making process and advising on regulatory matters before state agencies, boards and commissions.

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CARES Act Overview

CARES Act Overview

- On Friday, March 27, 2020, the U.S. House of Representatives passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which the U.S. Senate had passed by unanimous vote on Thursday, March 26, 2020. President Trump promptly signed the bill into law.
- The CARES Act is the latest, and most comprehensive yet, of three federal legislative efforts to combat COVID-19.
- The nearly $2 trillion relief package is the boldest action to date in response to the COVID-19 pandemic and is the single largest relief bill in U.S. history. The CARES Act includes: direct financial assistance to Americans; aid to small businesses and employees; efforts to stabilize the economy and keep people employed; and additional support for health care professionals, patients, and hospitals.

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CARES Act Overview

Phase I – March 6

- $8 billion
- boost funding for medical treatments and testing

Phase II – March 18

- $104 billion response package
- expand benefits for workers
- provide nutritional assistance to families

Phase III – March 27

- Coronavirus Aid, Relief, and Economic Security Act
- $2 trillion in economic stimulus
  - direct payments to Americans
  - tax and loan relief for businesses
  - funding for the health care industry
  - emergency unemployment insurance benefits

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CARES Act Overview

- The CARES Act, also known as "Phase III," follows a $104 billion response package signed into law on March 18 (H.R. 6201, "Phase II"), which aimed to expand benefits for workers and provide nutritional assistance to families, and a smaller $8 billion package (H.R. 6074, "Phase I") earlier this month to boost funding for medical treatments and testing.
- Further, lawmakers are already working to pass a fourth stimulus package, and there is even talk of a possible fifth package.

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CARES Act Overview

- $250 billion set aside for direct payments to individuals and families (with most American adults receiving $1,200 and most children $500)
- $377 billion in small business loans
- $260 billion in unemployment insurance benefits
- $500 billion in loans for distressed companies
- $150 billion to assist states and localities
- $150 billion for hospitals to invest in equipment and infrastructure

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CARES Act Overview - Unemployment

- Pandemic Unemployment Assistance through December 31, 2020
- Payment to states to reimburse nonprofit organizations, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay for unemployment benefits
- Additional $600 per week payment to each recipient of Pandemic Unemployment Assistance for up to four months, through July 31, 2020
- Additional 13 weeks of federally-funded unemployment insurance benefits beyond the normal 26 weeks through December 31, 2020 to help those who remain unemployed after state unemployment benefits are no longer available
- Provides states with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to quickly process unemployment claims

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CARES Act Overview – Medical Testing and Treatment

- Clarifies all testing for COVID-19 is to be covered by private insurance plans (without cost-sharing)
- Provides free coverage of a COVID-19 vaccine (without cost-sharing) within 15 days
- Provides $1.32 billion in supplemental funding to community health centers for testing and treating of COVID-19
- Reauthorizes grant programs that promote the use of telehealth technologies, including the expansion of telehealth access, insurance coverage, rural telehealth access, Medicare reimbursement for services, and others
- The emergency supplemental appropriations portion of the agreement contains $330 billion in new funding to address the pandemic

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Credit Support for State, Municipal, and Tribal Governments

- The CARES Act authorizes the Secretary of the Treasury to implement a program or facility to provide liquidity to the financial system that supports lending to States and municipalities
- The term "State" includes Indian Tribes, the District of Columbia, and U.S. Territories and Possessions



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Direct Assistance for State and Local Communities

- Provides $150 billion in direct funding for state and municipal governments
  - Each state is guaranteed $1.25 billion plus an amount equal to its portion of total national population
    - Funding will be allocated as a formula of each municipality's population share of the total state population
    - Funding will be subtracted from each state's allocation equal to the municipal petition
    - Local municipalities with a population of greater than 500,000 may petition Treasury directly for funding
    - Local municipalities with a population less than 500,000 will petition their state governors for funding

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Rulemaking

- The Department of Treasury is currently drafting rules that outline how the money will be distributed to governors, cities and counties.
- This money is expected to become available for disbursement beginning the week of April 27, 2020.*

*Subject to Change

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Direct Assistance – Overlapping Jurisdictions

- Some local governments may be entirely within the boundaries of a larger local government.
- The larger local government may include, for purposes of determining whether it meets the 500,000 threshold for *eligibility*, the population of the smaller, constituent local government.

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Direct Assistance – Overlapping Jurisdictions

- The population used to calculate the larger local government's payment amount will depend on whether any smaller, constituent local government that is eligible to receive a payment provides a certification for payment:
  - If the smaller, constituent local government does not provide a certification for payment, the entire population of the larger local government (including the population of the smaller local government) will be used for purposes of calculating its payment amount.
  - If the smaller, constituent local government provides a certification for payment, the population of the smaller local government will be subtracted from the population of the larger local government for purposes of calculating its payment amount.

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Table 1. Estimated Fund Allocations by State

* Tables from the Congressional Research Center "The Coronavirus Relief Fund (CARES Act, Title V): Background and State and Local Allocations" published April 1, 2020

State	Allocation ($ Billions)	Allocation %	Population	Population %
Alabama	1.901	1.4	4,903,185	1.5
Alaska	1.250	0.9	731,545	0.2
Arizona	2.822	2.0	7,278,717	2.2
Arkansas	1.250	0.9	3,017,804	0.9
California	15.321	11.0	39,512,223	12.1
Colorado	2.233	1.6	5,758,736	1.8
Connecticut	1.382	1.0	3,565,287	1.1
Delaware	1.250	0.9	973,764	0.3
Florida	8.328	6.0	21,477,737	6.6
Georgia	4.117	3.0	10,617,423	3.2
Hawaii	1.250	0.9	1,415,872	0.4
Idaho	1.250	0.9	1,787,065	0.5
Illinois	4.914	3.5	12,671,821	3.9
Indiana	2.610	1.9	6,732,219	2.1
Iowa	1.250	0.9	3,155,070	1.0
Kansas	1.250	0.9	2,913,314	0.9
Kentucky	1.732	1.2	4,467,673	1.4
Louisiana	1.803	1.3	4,648,794	1.4
Maine	1.250	0.9	1,344,212	0.4
Maryland	2.344	1.7	6,045,680	1.8
Massachusetts	2.673	1.9	6,892,503	2.1
Michigan	3.873	2.8	9,986,857	3.0
Minnesota	2.187	1.6	5,639,632	1.7
Mississippi	1.250	0.9	2,976,149	0.9
Missouri	2.380	1.7	6,137,428	1.9

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Table 1. Estimated Fund Allocations by State

State	Allocation ($ Billions)	Allocation %	Population	Population %
Montana	1.250	0.9	1,068,778	0.3
Nebraska	1.250	0.9	1,934,408	0.6
Nevada	1.250	0.9	3,080,156	0.9
New Hampshire	1.250	0.9	1,359,711	0.4
New Jersey	3.444	2.5	8,882,190	2.7
New Mexico	1.250	0.9	2,096,829	0.6
New York	7.543	5.4	19,453,561	5.9
North Carolina	4.067	2.9	10,488,084	3.2
North Dakota	1.250	0.9	762,062	0.2
Ohio	4.533	3.3	11,689,100	3.6
Oklahoma	1.534	1.1	3,956,971	1.2
Oregon	1.635	1.2	4,217,737	1.3
Pennsylvania	4.964	3.6	12,801,989	3.9
Rhode Island	1.250	0.9	1,059,361	0.3
South Carolina	1.996	1.4	5,148,714	1.6
South Dakota	1.250	0.9	884,659	0.3
Tennessee	2.648	1.9	6,829,174	2.1
Texas	11.243	8.1	28.995,881	8.9
Utah	1.250	0.9	3,205,958	1.0
Vermont	1.250	0.9	623,989	0.2
Virginia	3.310	2.4	8,535,519	2.6
Washington	2.953	2.1	7,614,893	2.3
West Virginia	1.250	0.9	1,792,147	0.5
Wisconsin	2.258	1.6	5,822,434	1.8
Wyoming	1.250	0.9	578,759	0.2
Total	139.000	100.0	327,533,774	100.0

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Table 2. Estimates of Counties with Direct Assistance Eligibility by State and Territory

State	Eligible Counties	Total Available Assistance ($ Billions)	% of State Allocation
Alabama	1	0.115	6.0
Arizona	2	0.965	34.2
California	16	5.796	37.8
Colorado	5	0.559	25.0
Connecticut	3	0.469	33.9
Delaware	1	0.323	25.8
Florida	12	2.472	29.7
Georgia	4	0.614	14.9
Hawaii	1	0.387	31.0
Illinois	5	1.395	28.4
Indiana	1	0.168	6.4
Kansas	2	0.216	17.3
Kentucky	1	0.134	7.7
Maryland	5	0.691	29.5
Massachusetts	7	1.017	38.1
Michigan	4	0.792	20.4
Minnesota	2	0.317	14.5
Missouri	2	0.296	12.4
Nebraska	1	0.166	13.3
Nevada	1	0.414	33.1
New Jersey	9	1.050	30.5
New Mexico	1	0.182	14.6
New York	6	2.408	31.9

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Table 2. Estimates of Counties with Direct Assistance Eligibility by State and Territory

State	Eligible Counties	Total Available Assistance ($ Billions)	% of State Allocation
North Carolina	3	0.481	11.8
Ohio	5	0.775	17.1
Oklahoma	2	0.253	16.5
Oregon	2	0.247	15.1
Pennsylvania	7	1.029	20.7
Rhode Island	1	0.339	27.1
South Carolina	1	0.091	4.6
Tennessee	2	0.285	10.7
Texas	12	3.205	28.5
Utah	2	0.315	25.2
Virginia	1	0.200	6.0
Washington	4	0.786	26.6
Wisconsin	2	0.260	11.5
United States	136	29.214	20.6

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Franklin D.R. Jones Jr., Shareholder

Franklin D.R. Jones Jr. is Co-Chair of the National Public Finance Practice and focuses his practice on public finance, sports and entertainment facilities development, project and infrastructure finance, urban development, and local and state governmental matters.

He has public law and municipal finance experience in various areas, including municipal financing, stadium and multi-purpose arena development and financing, and structuring public/private joint ventures.

His public finance practice consists of serving as bond and disclosure counsel for tax exempt financings for cities, counties and several local government corporations. In addition to bond and disclosure counsel engagements, Frank also represents national and regional investment banking firms as underwriter's counsel in bond transactions.

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Public Finance & Infrastructure

Alleviating Cash Flow Disruption

- Public finance provisions under the CARES Act
- Public finance options for cash flow relief?
- Restructuring options
- Positioning yourself now for when the markets reopen

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Bond Purchase Agreement “Outs”

- Excusing performance as a result of the pandemic: Are the exclusions or “outs” customarily in bond purchasing agreements sufficient or should these be updated to be COVID-19 specific?
  - Calamity or crisis - Force Majeure?
  - Suspension of trade on financial exchanges
  - Material disruption of commerce

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Mandatory and Voluntary COVID-19-Related Disclosures

- Reviewing existing continuing disclosure obligations
  - What triggers an obligation to disclose?
- Voluntary disclosures: Industry-specific considerations regarding the economic impact of the virus
  - Community-living facilities
  - Education
  - Airlines and transportations
  - Tourism
- Update on any virus-related pending defaults

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TEFRA Hearings: Satisfying Requirements While Social Distancing

- Overview of current TEFRA requirements and update on any IRS-issued guidance
- Best practices for affording reasonable access to the public in light of shelter-in-place orders and other restrictions

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Shira R. Yoshor, Shareholder

Shira focuses her practice on labor and employment matters. She also has experience with a wide variety of complex commercial litigation. She regularly represents management in virtually all aspects of labor and employment law. She counsels employers on managing workplace issues, drafts employment agreements, handbooks and policies, investigates and litigates whistleblower claims, discrimination and retaliation claims, and claims involving all sorts of restrictive covenants. Shira partners with her clients to help them achieve their strategic business and legal goals wherever they face challenges.

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Labor & Employment

Working From Home – Employer do's and don'ts

- Ensure security of your systems
  - Scams abound
  - Consider changing passwords and checking cybersecurity of your home network
  - Beware of phishing and malware
  - Confidentiality is key
- Establish a routine
- Dress the part

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Essential Business Operators – How to protect employees

- Review orders in each jurisdiction where you operate
- Fast-paced world with changes daily
- Letter for those who must travel should include:
  - Nature of the business and why it is essential (or otherwise within the orders that my apply)
  - Details specific to employee
  - Exceptions that may preclude normal application of quarantine rules
- But should employee travel or remote work a better option

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Changes to Pay and Schedule

- Do I need to provide notice?
  - Differs by jurisdiction
  - Timing
  - Form
- Nonexempt vs. Exempt employees
  - Need to track time and ensure approval for overtime for nonexempt
  - For exempt, if putting in pay cut or schedule change
    - What message to send
    - Potential of moving to nonexempt inadvertently

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Employees who need leave – FFCRA or other?

- Emergency responders are not eligible:
  - An employee who is necessary for the provision of transport, care, health care, comfort and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19.
  - Military or national guard, law enforcement officers, correctional institution personnel, firefighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.
  - This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

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Furlough or Layoff – What's the difference?

- Timing issues
- Notice – what is required
- Payout of PTO
- Unemployment compensation
  - Employer assistance with claims
  - Fast track
  - Is there money left after June in Texas?
- How do you bring back employees

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Michelle D. Gambino, Shareholder

Michelle D. Gambino is a first-chair trial attorney with a diverse practice focusing on highly sophisticated and complex commercial litigation matters with an emphasis in business, employment, construction, real estate and financial services disputes.

Michelle is highly regarded among her fellow colleagues, clients, and others in the legal industry. She is known for her personal and professional commitment to get things done in the best interests of her clients and is known as a "pit-bull" in the courthouse by her adversaries. Michelle is routinely selected to represent some of the most diverse clients in "bet-the-company" type disputes and/or in highly publicized matters. In addition to working with a broad client base, she works on both sides of the docket in state and federal courts, at both trial court and appellate levels.

Michelle is experienced both in drafting contracts and litigating cases involving land disputes, construction and design defects, valuation issues, bid protests, contractor defaults, termination, acceleration and delay claims, and indemnity matters. Michelle also has experience negotiating and drafting commercial leases and has represented owners and tenants in high profile lease related litigation.

Michelle represents clients on claims involving the Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), Equal Credit Opportunity Act, Fair Credit Reporting Act (FCRA), RICO, state consumer protection and unfair trade practices laws. She is also experienced litigating matters involving condemnation, mass tort, catastrophic losses, transportation, and telecommunications and license disputes.

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CARES Act Overview – Homeowners/Renters/ Commercial Tenants

CARES Act –Homeowner Protections

- Initial Moratorium on residential foreclosures:
  - Applies to "covered dwellings," which includes those dwellings on or in "covered properties." The Act defines a "covered property" as a property that: (1) participates in a "covered housing program" as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the "rural housing voucher program under section 542 of the Housing Act of 1949"; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan.
  - Temporary 60-day moratorium on foreclosures or foreclosure-related evictions (unrelated to state based protections)
  - Applies to all "Federally backed loans"
    - This includes HUD, FHA, VA, Dept of Ag, Fannie Mae/Freddie Mac owned or securitized
  - Includes initiating "any foreclosure process," which appears to include all stages of judicial and non-judicial foreclosures or post-foreclosure evictions (including notices of default, etc.)

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Key Provisions of the CARES Act

- Forbearance Mandate:
  - For single-family borrowers, 180 days immediately, **plus** additional 180 days upon request of borrower (so a one year deferral period).
    - Forbearance available **regardless of** delinquency status
  - For multi-family borrowers, 30 days immediately, plus right to two additional 30-day extensions (90 day total)
    - Forbearance only available if borrower current as of February 1, 2020
  - Servicers have an affirmative obligation to provide notice of forbearance right to borrowers

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Key Provisions of the CARES Act

- Additional Eviction Moratorium
  - 120-day moratorium on evictions for federally-backed properties (applies to all property insured, guaranteed, supplemented, protected, or assisted in any way by HUD, FHA, VA, Dept of Ag, Fannie Mae/Freddie Mac, or under USDA Rural Development Voucher Demonstration Program, Violence Against Women Act of 1994).

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Litigation Issues/Loopholes

- There is no federal exception built into the CARES Act for foreclosure proceedings that were taking place before the CARES Act
- The borrowers have low bar to request COVID forbearance and don't need to show proof of harm in repayment
- Lenders cannot charge increased late charges, fees, and other default type damages during the forbearance period.

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State and Local Eviction Moratoriums

- All states who have declared a State of Emergency have some sort of independent regulations relating to residential and commercial evictions that relate to private lending (non-govt. based):
  - Some states have flat out prohibitions on evictions of all sorts
  - Some leave it to the Counties and Cities to decide
  - Some punt to the Courts on what matters will be heard or suspended during certain periods
  - Directives also vary on time- some put a stop on evictions running from xx days from the various orders or directives, and some have extended eviction orders while others have run out, but courts still aren't hearing non-essential matters

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Residential Eviction Directives

- These states issued residential restrictions on evictions for some period of time (or, alternatively, their courts have suspended for some time hearing such matters):
  - Alaska, Arizona, CA (county based), CT, DE, DC, FL (county based), GA (county based), Hawaii, Idaho, Illinois (county based), Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri (county based), Montana, Nebraska, Nevada (county based), New Hampshire, New Jersey, New Mexico (if you can show that you don't have the $ due to COVID), New York, North Carolina, Ohio (county based), Oklahoma, Oregon, PA, RI, South Carolina, Tennessee, Texas (county based), Vermont, Virginia, Washington, West Virginia, Wisconsin.
- States who did **not** issue any residential foreclosure relief:
  - Alabama, Arkansas, Colorado, South Dakota, Wyoming

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Commercial Eviction Moratoria

- Commercial Tenants in these states get a reprieve temporarily from evictions (where by directive explicitly or in the Court's not taking such matters up at this time):
  - Alaska, Arizona, Connecticut, Hawaii, Idaho, Illinois (Cooke County), Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Missouri (county based), Nebraska, Nevada (county based), New Hampshire, New Jersey (pending vote), CA, New Mexico, NY, NC, OK, OR, PA, RI, SC, VT, Texas (Austin), VA, West VA, Wisconsin
  - California- depending on county most notably has income or size limitations on whether commercial evictions are stayed depending upon the county ordinance passed
  - Arizona- halts eviction only if they can qualify as a small business or are a nonprofit
  - New Mexico requires proof showing COVID prevents rent payments
  - No protections at all in the states that don't have residential stays on evictions.

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Residential Impact

- Residential property growth is likely going to flatten as a result of high unemployment and stay-at-home orders.
- New housing starts stalled with orders that construction was not "essential" in many states.
- Inspectors can't inspect/appraisers can't appraise.
- Travel restrictions also largely impact softening of residential rental properties. Some states require quarantining if coming from high risk area stunting travel from those areas to prevent the spread of COVID. Bookings are 75% down as compared to last year. Litigation will arise from cancelations of reservations—the "Cancellation Apocalypse".
- Borrower/lender litigation will rise

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Commercial Impact-Real Estate

- Buyers market will arise due to depressed valuations
- New lease considerations on the commercial side:
  - Landlords are working with lenders on amendments tied to workouts with tenants which defer LL loans.
  - Landlords are building in new structures on how loans will be serviced during the next phase should retail and commercial tenants again falter.
  - Landlords are seeking waiver of co-tenancy requirements and operating covenants tied to the pandemic.
  - Landlords are making it clear in leases now that in the event of a force majeure event, rent is still required to be paid, but operating covenants of tenant's are excused during such events.

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Commercial Impact – Real Estate

- Tenants:
  - Tenants in retail/service difficult time paying rent when margins are already narrow and they are closed or limited in operating:
    - Restaurants, malls, retail stores, hotels, travel fighting to survive
  - Occupancy limits will continue to depress sales into the future/which then drive down the percentage rent LL's expect
  - Sales flat and out of alignment with market rents which were calculated years prior without these restrictions
    - So tenants will seek reductions in rent for the short term or deferrals in rent until recovery occurs
    - LL's don't want to lose tenants (anchor) or large tenants so they are incentivized to often agree to work outs
  - Bankruptcy and distress actions/restructuring will increase

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Litigation Trends in Real Estate

- Rents not paid- tenants relying on:
  - Force majeure, impossibility, impracticability, public policy, and compliance with all laws arguments to excuse their performance
  - Some tenants also seek to terminate the lease altogether given the impact occupancy limits and restrictions will have on sales
  - New leases- tenants want rent relief for another shut down, changes to the force majeure clause, and operating covenants
- University Suits- dorm costs/schools need to find the money to give refunds
- Deals put on hold- litigation re to acquisition of properties/new appraisals/lower sales price – OH case

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Litigation Trends in Real Estate

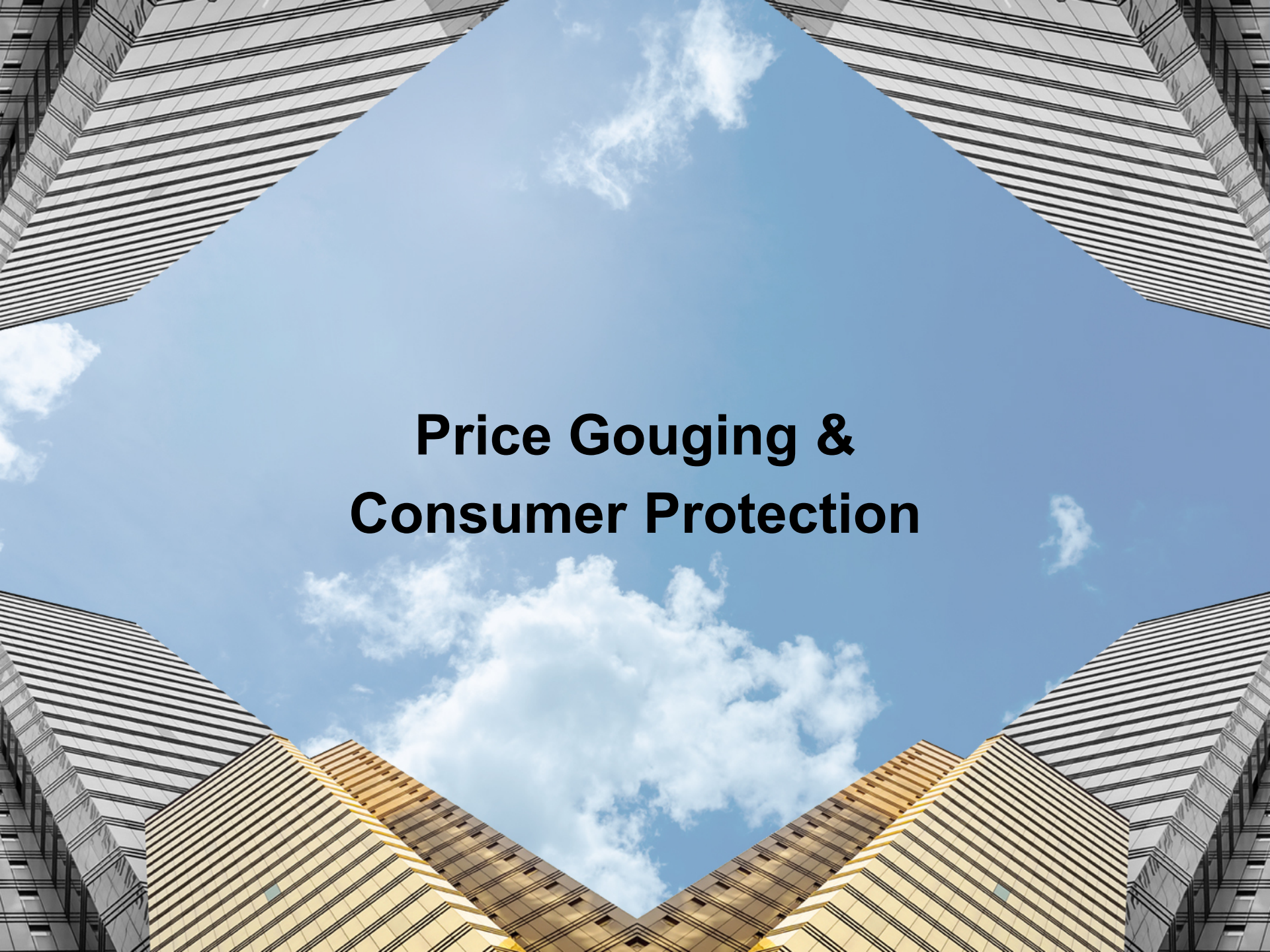
- Business Interruption lawsuits against insurers- *El Novillo Restaurant v. Underwriters at Lloyd's London*, No. 1:20-cv-21525 (S.D. Fla.). A purported nationwide class action of restaurants seeking a declaratory judgment of rights under their all-risk property insurance policies relating to business interruption coverage for COVID-19 related claims. Plaintiffs allege the policies do not include an exclusion for viral pandemic. Another purported nationwide class action alleging similar claims has been filed in Ohio state court (Torre Rossa). Meanwhile, a group of Illinois restaurants had brought a substantively similar class action in the Northern District of Illinois.
- Construction cases- delays in delivery, supply chain, LD clauses
- Fighting the cities and local govt. on continued directives to stay closed as arbitrary, capricious, or unconstitutional

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Gregory J. Casas, Shareholder

Gregory J. Casas is the Administrative Shareholder for the Austin office and focuses his practice on antitrust, complex business litigation, and energy and natural resources law. Greg's antitrust and complex business litigation practices are international in scope. His antitrust practice includes litigating price-fixing, bid-rigging, and market allocation claims, and providing counseling for DOJ/FTC investigations, joint venture formation, mergers and acquisitions, pricing plans, and other contractual relationships. Greg's complex business litigation experience includes class action defense, commercial disputes, and international dispute resolution in Latin America, Europe, and Africa. His energy experience includes litigating power plant construction disputes, oil and gas leases and joint operating agreement disputes. Greg has litigated cases in federal and state courts in Texas, California, Illinois, Georgia, Nevada, New York, New Jersey, Puerto Rico and the District of Columbia. He has handled appeals in Texas, Georgia, The Fifth Circuit, the Second Circuit and the District of Columbia Circuit.

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Price Gouging &
Consumer Protection

Price Gouging and Consumer Protection

- Price gouging
  - No federal cause of action
  - Defense Procurement Act via Executive Order - March 2, 2020
    - Focus on medical items and healthcare resources
    - Federal crime to accumulate in excess of reasonable needs or for purpose of selling in excess of market prices
- State laws will control
  - 10% rule
  - Unconscionable
  - Excessive and unjustified

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Price Gouging and Consumer Protection

- Sample cases:
  - Ohio AG files COVID-19 price-gouging suit against online seller of N95 masks
  - Online marketplaces remain a vulnerable forum for price-gouging scams
  - Price gouging, hoarding, fake cures, and scams continue to soar as pandemic progresses
  - New senate bill to crack down on price gouging during COVID-19

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Price Gouging and Consumer Protection

- Consumer Protection - Fees, Cancellations, Refunds:
  - Southwest, LATAM, and Volaris join United Airlines in getting hit with class actions alleging they failed to provide refunds for future flights
  - Students of University of Miami, Drexel, and Purdue face class actions led by students seeking to recover tuition and other costs for the shortened spring semester
  - Six Flags, Vail Resorts Management Co and multiple gyms and fitness centers, including Boston Sports Club, hit with class actions for continuing to charge members fees and dues, despite closures
  - A nursing conference organizer and Royal Caribbean International hit with a proposed class action in Florida federal court as planned attendees seek refund following cancellation
  - Major sports leagues' reluctance to offer full ticket refunds could invite lawsuits from fans and scrutiny from lawmakers

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Price Gouging and Consumer Protection

- False Advertising
  - Sanitizer lawsuits continue
    - new consumer class action suit against Target's sanitizer brand
  - False and misleading claims of COVID-19 cures and treatments on the rise:
    - a former NFL player's CBD line, and fake coronavirus websites, cures and treatments

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Questions?

For more information,

Visit: GT's Health Emergency Preparedness Task Force: COVID-19

Email: prepared@gtlaw.com