

UNITED STATES

As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?

- Is there special legislation on the effects of the crisis on civil justice?

Because the United States is a federal system, it is necessary to look to the emergency legislation and orders in place in each state. Congress has appropriated more than \$2 trillion to speed relief to various segments of the economy, but emergency limitations on commerce and movement are regulated by each state, and often within each state, at the local level.

There is no universal directive governing the federal courts, so it is necessary to consult the website for each court to determine its status. Almost all federal courts have suspended most public hearings and trials, but many courts are continuing to accept pleadings and motions, and are scheduling appearances on motions and pretrial conferences by video or telephone.

Similarly, there is no uniform practice in the state courts, even for different courts within the same state. Therefore, it is especially important to consult local counsel regarding the status of any pending proceedings, or to initiate a new case.

The link below attempts to provide a comprehensive summary report on the status of each of the principal federal and state courts, which changes daily:

<https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions>

- Statutes of Limitations

Although the federal government has proposed legislation to suspend or extend the statute of limitations in both civil and criminal cases, Congress has not yet acted on that request. Some federal district courts have unilaterally issued orders suspending the statute of limitations, but these orders could be challenged. Other federal district courts have not acted.

State law claims are typically governed by state limitations periods, even in federal courts. Many states have issued their own orders, but their details vary. Again, it is essential to consult local counsel who are familiar with the rules in each particular jurisdiction.

- Emergency relief for interim measures such as injunctions and freeze orders?

Virtually all courts are available to process emergency applications where there is an immediate threat to safety or property or the need to continue essential services. For the most part, hearings on such emergency applications are being conducted by telephone or video conferences.

- How do lawyers work during the crisis?

Although most law firm offices are closed on account of the public health emergency, the members of FraudNet in the United States are all working, available, and continuing to function remotely. Most have access to their law firm's electronic files through VPN (virtual private networks) and are continuing to represent their clients and to prepare for the time when the courts will resume more normal functioning.

Several states have taken action to make it easier to conduct business electronically. New York, for example, has an emergency order that allows notarization of documents by video appearance before the notary.

- How do banks work during the crisis?

The banking system in the United States is continuing to function as an "essential service." Although some banks and other financial institutions have limited services and hours, banking transactions are continuing to be processed on an on-going basis without significant restrictions or delays. The Federal Reserve Bank is taking extraordinary steps to ensure liquidity and continued functioning of the Treasury financing markets.

- Does the crisis have an effect on insolvency law?

For the most part, insolvency in the United States is governed by the federal Bankruptcy Act. Congress has adopted emergency legislation giving additional protection and options in cases governing small businesses and consumers. The national policy, however, has been to provide additional financing to institutions, businesses and consumers to avoid a spike in insolvency with the hope that the economy will recover once the emergency passes. It is too early to predict whether the massive financial aid will avoid the inevitable consequences of the disruption to the economy. Some industries, like oil and gas, are facing additional systematic risks that may lead to record insolvencies.

1. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?

- Which measures introduced during the crisis will be withdrawn immediately?

Virtually all of the emergency legislation and orders provide for their expiration following the end of the public health emergency. But the timing on when these emergency measures will be lifted or relaxed is uncertain at best. Nonetheless, there will be long-term consequences as policy makers and the courts need to sort out the rights of businesses and individuals adversely affected by the disruption to the economy.

- Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources? Do you expect a rise of new anti-corruption prosecutions after the crisis?

Experience shows that fraudsters inevitably seek to exploit economic disruption to their advantage. In addition, economic disruption often leads to the discovery of prior fraudulent practices. Consequently, we predict the need to remain vigilant and proactive to protect the victims of fraud.

- Will the ratio of third party funded matter rise?

The United States has been relatively liberal in supporting litigation finance as a means to equalize access to justice. We predict that the trend to level the playing field for those pursuing well-heeled defendants by obtaining financial support for litigation will continue.

FraudNet Members in the United States

Douglas A. Kellner
Kellner Herlihy Getty & Friedman LLP
470 Park Avenue South—7th Floor
New York, New York 10016
+1 212-889-2121
dak@khgflaw.com

Edward H. Davis
Sequor Law
1111 Brickel Avenue, Suite 1250
Miami, Florida 33131
+1 305-372-8282
edavis@sequorlaw.com

Christopher J. Redmond
Redmond Law Firm LLC
6731 W. 121st St., Suite 226,
Overland Park, Kansas 66209
+1 913-312-5675
christopher.redmond@christopherredmondlawfirm.com

Joseph J. Wielebinski
Winstead PC
2728 N. Harwood Street
500 Winstead Building
Dallas, Texas 75201
+1 214-745-5210
jwielebinski@winstead.com

Michael Jason Lee
Law Offices of Michael Jason Lee, APLC;
4660 La Jolla Village Drive, Suite 100
San Diego, California 92122
+1 858-550-9984
michael@mjlilaw.com