Working at the intersection of tort, insurance recovery, and public affairs, our attorneys are on the front lines of COVID-19 litigation.

In addition to the economic challenges caused by the COVID-19 pandemic, some businesses will face coronavirus-related tort litigation, as these claims typically increase with growing public awareness of a health crisis. Lawsuits involving COVID-19 already are common and, like the virus from which they emerge, will continue to spread rapidly. The claims in these tort-based, single-plaintiff and class action lawsuits range from wrongful death or personal injury to negligence, premises liability and even intentional infliction of emotional distress. Recent rulings indicate that plaintiffs may face a hard road to recover damages for contracting COVID-19, because it may be difficult to prove causation given community spread of the virus and problems in pinpointing the contagion source. Nevertheless, plaintiffs’ lawyers are increasingly aggressive and lawsuits are mounting.

Lathrop GPM is strategically positioned to help businesses manage risk and defend tort claims related to the COVID-19 pandemic, as our team’s expertise lies at the intersection of issues surrounding this type of litigation, including:

- Pulmonary damage / contaminants claims
- Personal injury / premises liability claims
- Class action claims
- Insurance recovery
- Employee claims and workers’ compensation
- Government relations / regulations

The targeted capability of Lathrop GPM’s tort team means that rather than working with multiple attorneys on regulatory, litigation and insurance recovery issues, our clients receive seamless representation across practice and geographic areas.

**Pulmonary Damage / Contaminants Claims**

Claims of bodily injury or property damage arising from the alleged exposure to toxic chemicals and hazardous substances are commonly brought against commercial enterprises. Coronavirus-related litigation is no different. Like other respiratory illnesses, COVID-19 can cause short- and long-term lung damage. Many COVID-19 lawsuits allege personal injury first presenting with symptoms similar to those of pneumonia. For example, a May 2020 wrongful death lawsuit was filed against a nursing home in Illinois alleging negligence because the facility failed to test residents and staff for COVID-19 infection, despite the appearance of pneumonia on a resident’s X-ray.

Our team has extensive experience with lung-related issues like asthma, pneumonia and other respiratory problems due to our years of litigating talc cases. We have been at the forefront of challenging plaintiff’s experts who attempt to establish that talcum powder contains asbestos and that long-term exposure to talc can cause lung cancer. In cases filed across the country, and in plaintiff-friendly venues, Lathrop GPM has developed a litigation strategy that has effectively reduced our clients’ financial exposure in talc cases. Based on our firm’s deep history in toxic tort cases, particularly those involving talc and pulmonary issues, we understand the science behind the coronavirus and the implications it can have for legal claims against businesses. We apply coordinated, trusted resources and experts in the fields of epidemiology, toxicology and medical monitoring when dealing with similar pulmonary issues in COVID-19 litigation.

**Personal Injury / Premises Liability Claims**

Personal injury, including wrongful death and premises liability claims from customers and other non-employees entering business premises are becoming more common in lawsuits filed during the COVID-19 pandemic. Most personal injury cases are based on a negligence theory of liability. The first cases to test these limits were brought by passengers who had been on cruise ships during the early weeks of the pandemic, as states and countries began closing their borders and ports. Business owners have a duty to ensure that their premises are kept in a reasonably safe condition, and will typically be responsible for injuries caused by unreasonably unsafe conditions they knew, or should have known, existed. The standard for the duty of care in a premises liability case may vary by jurisdiction and, in some states, there is an exception for obvious dangers - which raises the question of whether COVID-19 exposure is, or when it became, an “obvious danger.” Our lawyers have extensive experience defending premises liability cases for a wide variety of business owners likely to be targeted with such claims, including hospitality and restaurant companies, manufacturers and national travel center operators.
Class Actions
Class action filings remain prominent in our current legal landscape and, although personal injury class actions are difficult to certify, class actions based on COVID-19 may be an exception because the infectious nature of the disease adds a level of commonality required for class certification. Still, such claims would involve individualized issues including underlying co-morbidities, proof of where each person was infected and other potential routes of exposure. However, these problems do not deter plaintiffs from filing class actions, particularly in high-profile cases such as those against Princess Cruise Lines and its parent company, Carnival, by passengers alleging negligence in allowing passengers onboard when cruise staff knew that infected persons had traveled on prior voyages. Another example is Central Valley Meat Company, which is facing a class action involving tort and statutory claims based on its alleged failure to implement proper safety protocols at a facility in California. Our COVID-19 litigation team works diligently to develop case strategies that achieve our clients’ goals, whether that is to defeat a class certification, narrow or eliminate the plaintiffs’ case through motions, negotiate a creative and favorable settlement, or win at trial.

Insurance Recovery
With the wording on business interruption insurance policies being put to the test during the pandemic, commercial policyholders should not make any assumptions about their coverage (or lack thereof) for losses or damages associated with the coronavirus outbreak. Our team of attorneys who are dedicated to representing policyholders nationwide in matters involving property and casualty insurance coverage have observed an exponential uptick in lawsuits challenging coverage decisions by insurers. The state-by-state variance in policy interpretations and the U.S. Judicial Panel on Multidistrict Litigation’s August 2020 decision to reject efforts to transfer business interruption lawsuits to a single venue make it critical for businesses to seek insurance counsel. We have advised clients on the scope of available coverage for losses arising out of the coronavirus pandemic, including loss of business income and extra expense; general comprehensive liability insurance issues; facts and policy language that may present coverage issues and recommendations on actions a business can take to maximize recovery.

Employee Claims and Workers’ Compensation
Many COVID-related lawsuits involve employees who allege they were infected because their employer was negligent in providing workplace safety protections from the virus. Cases against Walmart, Safeway and Tyson Foods were some of the first such cases filed. Companies that have a high concentration of employees working in close quarters are at higher risk. Employees’ claims against employers may be limited by workers’ compensation laws, but plaintiffs’ lawyers are pushing the boundaries in these claims in an effort to escape the workers’ compensation environment and its limitations on recovery by employees. Some recent COVID-19 personal injury complaints seek to invoke an exception to the workers’ compensation system (gross negligence or intentional harm) by alleging that employees were denied access to adequate personal protective equipment, or that employees received false safety guidance at work. Furthermore, some states don’t require all businesses to participate in their workers’ compensation, subjecting them to traditional tort claims.

We were recently successful in obtaining dismissal of a lawsuit where our client Smithfield was facing claims of failing to comply with COVID-19 safety guidance for workers at a meat processing plant in Missouri. The judge ruled that issues of workplace safety should be handled by OSHA, not the courts, and that Smithfield had already taken protective steps against the coronavirus in the midst of continually evolving health and safety guidelines. In addition to our COVID-19 litigation team who handled this case, we have a deep bench of employment lawyers who help clients navigate complex relationships with employees, insurance companies and claims administrators due to COVID-based claims.

Government Relations/Government Standards
Through our long history of involvement in political affairs, both as participants and shapers of the process itself, Lathrop GPM has developed deep relationships with elected and appointed officials at all levels of government. Our attorneys have long-standing relationships on Capitol Hill and state legislatures, and work closely with Lathrop GPM Consulting, a subsidiary of Lathrop GPM that offers a bipartisan team with a unique mix of experience in lobbying, procurement and crisis management. As governmental regulations and interactions with businesses become increasingly more complex, solving client issues requires a greater range of strategies than traditional litigation or regulatory law alone can provide. Lathrop GPM Consulting was created to address that gap in legal services.

Lathrop GPM’s Coronavirus Task Force
Lathrop GPM is focused on helping clients solve their most pressing issues and navigate the challenges of the pandemic, including COVID-related litigation. We have a firmwide multidisciplinary task force focused on providing relevant, timely and solution-oriented responses to clients’ questions and needs, as well as providing proactive guidance on emerging issues and legal representation. More information can be found on our COVID-19 Client Resource Center, including contact information and all of our legal updates, webinar recordings, and articles/videos/other media in which our lawyers have appeared.