KEY CONSIDERATIONS DURING COVID-19
Commercial Litigation

Perkins Coie is focused on assisting businesses faced with legal and operational issues arising from the COVID-19 pandemic. This checklist identifies frequently discussed guidance relating to commercial litigation.

- Be prepared for the impact on current litigation.

Many state and federal district courts have postponed near term jury trials with the postponements expected to cause a cascading effect with other litigation. In addition, some litigants have questioned the need for in-person depositions at this time causing further delays, particularly when the depositions relate to key witnesses. All of this leads to the delayed resolution of current litigation.

- Understand the potential defenses for contractual non-performance.

Rarely invoked doctrines for non-performance, such as force majeure clauses, doctrines of impossibility and frustration, and material adverse change(s) clauses, are being asserted in a variety of situations. These are highly dependent on the particular language in each contract and should not be viewed using general assumptions.

- Be able to show that you took a reasonable approach.

It is likely that tort claims will be filed arguing that people or companies were exposed to COVID-19 because a counterparty failed to implement and/or exercise appropriate precautions. As your company considers its COVID-19 response and readiness plans, consider what information should be documented or discussed with outside counsel to show the reasonableness of your diligence, which could help in the defense of securities class actions against public companies affected by COVID-19 that allege the response was not robust enough.
Expect shareholder suits.

Many companies will face shareholder suits challenging their actions or disclosures in connection with COVID-19, such as the alleged failure to obtain insurance for pandemic-related losses, to close business operations “quick enough,” and to timely and accurately disclose the financial impact of COVID-19 to shareholders. You should consider actions now to mitigate those risks.