

# COVID-19: A Coming Wave of Life-Insurance Litigation?

By Moheeb H. Murray and Michael K. Steinberger



COVID-19 has affected nearly every facet of our lives—the way we see one another, the way we work, the way we do business. No industry has been spared, and

additional changes across the spectrum are certainly in the offing. The life-insurance industry has not been spared, and the industry and defense bar must be prepared for the resulting litigation.

This article explores the effect of the COVID-19 pandemic on the life-insurance industry, as well as the resulting potential for litigation that we foresee coming down the pike.

## Effect of COVID-19 on Life Insurance

In many respects, COVID-19 has brought significant changes to the life-insurance industry. But in others, the industry has escaped the pandemic with little disruption, particularly when compared to other types of insurance.

The most significant changes that COVID-19 has brought to the life-insurance industry involve the underwriting process. While a claim on an existing policy likely cannot be denied based on COVID-19, insurers are tightening their underwriting standards, including refusal to insure applicants over certain age groups at a higher risk for COVID-19-related death. Greg Iacurci, [Americans are 'panic buying' life insurance due to coronavirus pandemic](#), CNBC, Oct 14, 2020. Postponement of applications—without conditional coverage—have also become common to account for potential COVID exposures. Rachel Wait, [Life Insurance and COVID-19: All You Need to Know](#), Forbes, Oct 26, 2020. Application questions such as “Have you experienced coronavirus symptoms in the last 30 days?” and “Have you been advised to self-isolate in the last 30 days?” have also become commonplace. *Id.*

In addition, the pandemic has apparently caused a surge in applications for life insurance. Before 2020, insurance

sales had been declining for years. In 2020, just over half of American adults reported having a life-insurance policy, down from 63 percent in 2010. See Iacurci, *supra*. But in 2020, life-insurance companies have seen significant increases. For example, October 2020 saw a year-over-year increase of approximately nine percent, with younger buyers driving the surge. [Continued Growth in U.S. Life Insurance Activity Reports the MIB Life Index](#), MIB Group, Nov 6, 2020.

While the anticipated surge in liability from COVID-19-related deaths did not materialize, the most significant effects of COVID-19 on the life-insurance industry in terms of litigation are yet to come. It is essential for the defense bar to anticipate those challenges and prepare.

Interestingly, recent reports show that COVID-19 did not trigger a wave of life-insurance liability, despite an increase in deaths. Leslie Scism, [Those Dying from Covid-19 Are Least Likely to Own Life Insurance](#), The Wall Street Journal, Sept 28, 2020. Accordingly, insurers have been recently revising their liability projections downward. *Id.* The reason is that the pandemic has disproportionately affected groups without significant life-insurance policies—lower-income individuals and older individuals. *Id.*

## Litigation Effects on the Horizon

While the anticipated surge in liability from COVID-19-related deaths did not materialize, the most significant effects of COVID-19 on the life-insurance industry in terms of litigation are yet to come. It is essential for the defense bar to anticipate those challenges and prepare. We preview here some of the main areas of litigation that could arise in the life-insurance space in the coming months and years as a result of the pandemic.

### Increase in Lapsed Policies

A great deal of litigation in the life-insurance space stems from issues concerning the grace periods and lapse dates at the end of a policy period. As the financial squeeze of the pandemic and accompanying recession continue, we anticipate an uptick in individuals who allow their policies to lapse or who try to “game” the system by entering a grace period before renewing to delay payment. This will

necessarily lead to an increase in litigation, particularly if policyholders lose their coverage or pass away during a lapse period. Potential pitfalls include questions of coverage and potential agent-misconduct cases (with insureds saying agents were aware of the policy lapse or even encouraging it).

### ***Underwriting Litigation***

Undoubtedly, the COVID-19 pandemic will affect the way that underwriters view certain risks. As explained above, underwriters have already altered their processes to account for recent travel and coronavirus exposure, as well as refusing to insure certain population segments (for example, individuals over seventy years old) that are particularly at risk for COVID-19-related death. We anticipate the always-creative plaintiffs' bar to seize on any changes in underwriting standards to make allegations of discrimination in the underwriting process or to suggest that any changes represent "hidden fees." We would not be surprised to see these allegations take the form of class-based litigation.

### ***Advertising/Coverage Litigation***

We believe insurers may see a rise in litigation asserting that policyholders were misled by advertisements or by agents regarding policy rates or coverage offered. Particularly as the life-insurance industry reacts to the changing risk-profiles associated with those who had the coronavirus, or with those who may have had exposure close in time to their application, we anticipate that prospective insureds will purchase insurance without a thorough review of their contract, including potential exclusions. The contract should govern; insurers should be aware of the risk and

potential arguments. Here, again, class-based litigation is a distinct possibility.

## **Conclusion**

The issues discussed here are just a few of the most likely areas of litigation to develop from COVID-19's effect on the life-insurance sector. Being prepared to spot and address issues like these can make a critical difference in a client's outcome.

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