

## **LEGAL ALERT: NEW STUDY OF INTERIOR SPREAD OF SARS-COV-2 AND INSURANCE IMPLICATIONS**

**August 12, 2020**

A new article has just been published regarding a study of the spread of SARS-CoV-2 in interior airspace.<sup>1</sup> It has not yet been peer reviewed, but its findings are consistent with other reports that we have seen over the months. The study indicates that SARS-CoV-2 transmits through air inside of buildings, can transmit up to 16 feet away from an infected person if that person talks, coughs, or sneezes, that filtration systems are not effective in removing SARS-CoV-2 from the air (at least if an infected person is present), and that the current 6-foot distancing guidance is inadequate and misleading in conveying a sense that that distance is safe.

Here are some of the key takeaways:

- “[A]irborne transmission of viable SARS-CoV-2 is likely and plays a critical role in the spread of COVID-19.”
- “For aerosol-based transmission, measures such as physical distancing by 6 feet would not be helpful in an indoor setting and would provide a false-sense of security.”
- “The room [in which the air was sampled] had six air changes per hour and the exhaust air underwent triple filter treatment . . . , coil condensation (to remove moisture), and UV-C irradiation prior to recycling 90% of the treated air back to the room.”
- “[W]e have demonstrated the virus in aerosols can be viable, and this suggests that there is an inhalation risk for acquiring COVID-19 within the vicinity of people who emit the virus through expirations including coughs, sneezes, and speaking.”
- “[T]he public health implications are broad, especially as current best practices for limiting the spread of COVID-19 center on social distancing, wearing of face-coverings while in proximity to others and hand-washing. For aerosol-based transmission, measures such as physical distancing by 6 feet would not be helpful in

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<sup>1</sup> John A. Lednicky, *et al.*, “Viable SARS-CoV-2 in the air of a hospital room 1 with COVID-19 patients” (Aug. 4, 2020), <https://www.medrxiv.org/content/10.1101/2020.08.03.20167395v1.full.pdf>.

an indoor setting, provide a false-sense of security and lead to exposures and outbreaks.

Please also note that Dr. Robert Redfield, director of the CDC, has said, "Our best estimate right now is that for every case that's reported, there actually are 10 other infections."<sup>2</sup> This means that the number of cases in the U.S. actually may be more than **23 million**, not the 2.3 million reported.

Given that SARS-CoV-2 can spread from asymptomatic and pre-symptomatic people, the study's conclusion that "clear guidance on control measures against SARS-CoV-2 aerosols are needed" seems warranted.

We anticipate that plaintiffs' lawyers will seek to make use of this study and others in asserting claims for bodily injury (and perhaps property damage, should infected individuals spread SARS-CoV-2 on surfaces and airspace in their homes), claiming that defendants did not take appropriate steps to protect employees and third parties from contracting SARS-CoV-2 and developing COVID-19.

First-party insurance policies, such as property, cancellation, and disruption policies, typically state that insureds are to take steps to prevent or minimize loss. The common law doctrine of mitigation also calls for insureds to take such steps. And, the policies and the law typically require insurers to pay for such steps and the associated costs. The study and arguments that the plaintiffs' bar may make bolster the notion that insurers should pay for steps their insureds have taken, and may take, to minimize the spread of SARS-CoV-2 as reasonable steps to mitigate damages and loss. This should hold true for steps taken even before claims are made or suits are filed—after all, closures and other steps are expressly designed to "flatten the curve." Indeed, the study lends further support to the notion that closures, whether voluntary or mandated, may be the most effective mitigation step.

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<sup>2</sup> NBC News, "CDC says COVID-19 cases in the U.S. may be 10 times higher than reported" (updated June 25, 2020), <https://www.nbcnews.com/health/health-news/cdc-says-covid-19-cases-u-s-may-be-10-n1232134>.