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*Promoting justice. Providing solutions.*

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### SB 210 – COVID-19 Claim – Civil Immunity

**Position: Favorable**

**January 26, 2021**

Maryland Defense Counsel, Inc., (MDC) urges passage of SB 210 concerning liability for COVID-19. COVID-19 is a crisis unique in the life of any of us, not just because it is a pandemic but because the disease arose quickly with no chance for society to determine what constituted due care in the reasonable avoidance of exposure to the Novel Coronavirus.

Accordingly, SB 210 should be viewed as a legislative determination that the ordinary elements of a negligence claim never applied to COVID-19. Prior to the time of governmental action and regulations, there was no opportunity for a societal consensus to arise concerning due care regarding Novel Coronavirus. Likewise, the General Assembly can and should determine that there is no standard for determining the causation questions of reasonable foreseeability. Finally, standards for the defenses of assumption of risk and contributory negligence have had no chance to form. These critical elements of any negligence claim simply do not apply to Novel Coronavirus exposures during the state of emergency, and the General Assembly has the power to so state.

Thus, retroactive denial of an accrued cause of action does not apply if the General Assembly determines that no cause of action exists in this unprecedented circumstance. This is the proper decision in this situation, as is recognizing a cause of action for non-compliance with government mandates which results in cases of COVID-19, or action which is gross negligence or intentional wrongdoing.

Fortunately, this state of emergency will be lifted at some uncertain time in the future. MDC respectfully suggests that lifting the state of emergency will be too abrupt and unpredictable to instantly change the landscape for COVID negligence, so that a transition period of continued limited liability makes sense. That period may reasonably be less than the 180 days stated in SB 210, indicating that some shorter period of time might be adopted.

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