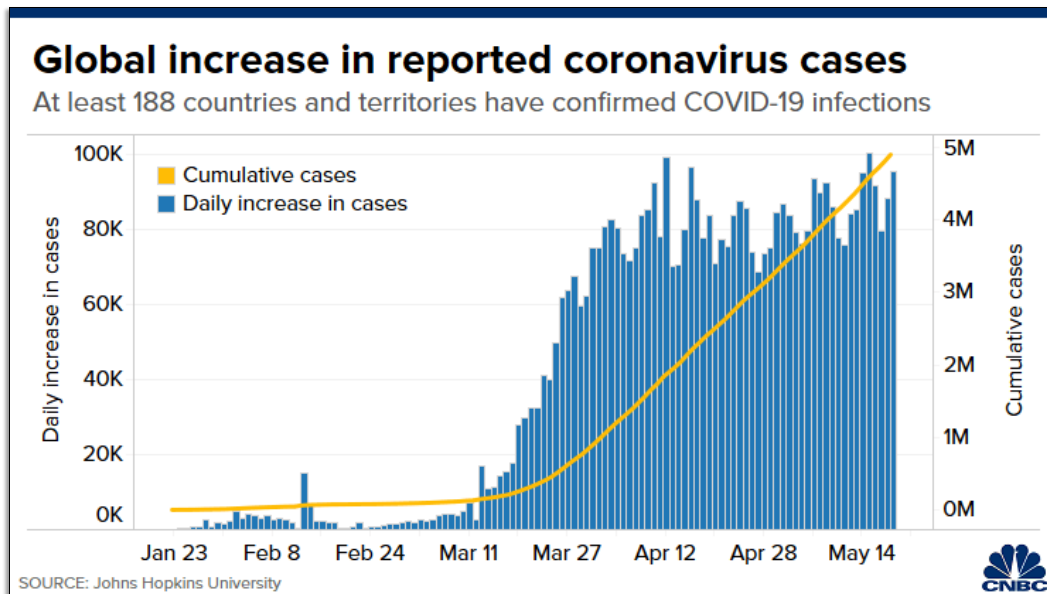


The Current State of COVID-19 Litigation

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MERLINOS & ASSOCIATES

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<https://www.cnbc.com/2020/04/02/coronavirus-live-updates.html>

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COVID -19

- Global cases: More than 40 million
- Global deaths: More than 1 million
- Top 5 countries: United States (8.1 million), India (7.5 Million), Brazil (5.2 Million), Russia (1.4 Million), Argentina (989,680)
- *The data above is per Johns Hopkins University site as of October 19, 2020, 8:24 am.*

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COVID -19

- It has been estimated that over 2000 lawsuits have been filed.
- One website places the number over 6,000 already, identifying about 300 health medicine related filings.
- Lawsuits against prisons, hospitals, grocery stores, retail stores, long-term care facilities, airlines, cruise lines, insurance disputes, coverage matters, states, etc.
- No reliable data on healthcare specific cases; Thought felt to be several hundred.

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Effect On Business

- Insurance litigation with respect to COVID-19 claims inevitably will be impacted by state and possible federal legislative initiatives currently being proposed.
- Businesses and insurers should particularly monitor legislative efforts at the state level designed to address civil liability claims derived from COVID-19 as businesses assess reopening scenarios and insurers assess the attendant potential litigation risks.

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Protection For Business

- Various states, including Georgia, North Carolina, Oklahoma, Utah, Wyoming, Louisiana and Kansas, have already adopted state legislation providing businesses with some type of limited civil liability immunity if customers and employees contract COVID-19 at their premises.
- In some of these states, the laws cover acts or omissions arising after the date of the emergency order, while in other states, the laws are effective from and after the date of adoption. For example, Iowa's legislature has approved a measure supported by the Iowa Insurance Institute and NAMIC that provides retroactive immunity from COVID-19 lawsuits.

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Protection For Business

- Under the legislation adopted in these states, businesses in compliance with state and federal guidance, such as that issued by the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, and/or the state's Department of Health, would be afforded liability shield protection for potential claims of persons alleging that they contracted COVID-19 on the businesses' premises. However, immunity typically would not be available if the business acted in a manner deemed to constitute gross negligence, recklessness, or the intentional infliction of harm.

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Federal Immunity: The PREP Act for Healthcare Providers.

[The Public Readiness Emergency Preparedness](#) (PREP) Act was enacted in 2005 by Congress. The PREP Act authorizes the Secretary of the US Department of Health and Human Services to issue a PREP Act declaration in response to a public health emergency.

The PREP Act authorizes the Secretary of Health and Human Services (HHS) to declare that certain "covered persons" are immune from liability (i.e., loss sounding in tort or contract) for taking certain "covered countermeasures" that are necessary to combat a public-health emergency such as COVID-19.

On March 10, 2020, Secretary of HHS Alex Azar issued such a declaration, effective February 4, 2020 ("Declaration").

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The PREP Act Declaration: Scope of Immunity

- Immunity includes:
 - Any claim, under federal or state law, for loss that has a causal relationship with the administration to or use by an individual covered by a countermeasure.
 - A loss is defined to include: death, personal injury, emotional injury, property damage, business interruption and fear of personal injury.
 - The protection is very broad and applies “without regard to the date of the occurrence, presentation or discovery of the loss.” With few exceptions.
 - Immunity from liability under the PREP Act is not available for death or serious physical injury caused by willful misconduct.

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The PREP Act Declaration: Covered Persons

- Declaration provides immunity for "covered persons" who include:
 - Program planners (individuals and entities involved in planning, administering, or supervising programs for distribution of a countermeasure)
 - Qualified persons
 - *Defined as licensed health care professionals or other individuals authorized to prescribe, administer, or dispense covered countermeasures under the law of the state in which the covered countermeasure is prescribed.*
 - Officials, agents and employees of any of these entities or persons

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The PREP Act Declaration: Recommended Activities

- "Recommended Activities" are to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.
- "Administration" is :
 - "physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purposes of distributing and dispensing countermeasures."

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Update on State Immunities

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States with Immunity Executive Orders

STATE	ORDER	EFFECTIVE DATE
ALABAMA	Proclamation	May 8, 2020
ALASKA	Senate Bill 241	March 28, 2020
ARIZONA	Executive Order 2020-27	April 9, 2020
ARKANSAS	Executive Order 20-34	April 13, 2020
CONNECTICUT	Executive Order No. 7V	April 5, 2020
GEORGIA	SB 359	August 5, 2020
HAWAII	Executive Order No. 20-05	April 16, 2020
IDAHO	Coronavirus Limited Immunity Act	August 27, 2020
INDIANA	Indiana Code 34-30-13.5	March 6, 2020
IOWA	Senate File 2338	June 18, 2020
KANSAS	House Bill 2016	June 10, 2020
KENTUCKY	Senate Bill 150	March 30, 2020
LOUISIANA	Senate Bill No. 491	June 6, 2020
MARYLAND	Maryland Public Safety Section 14-3A-06	March 5, 2020
MASSACHUSETTS	Bill S. 2640	March 10, 2020
MISSISSIPPI	Senate Bill 3049	July 8, 2020
NEVADA	Declaration of Emergency Directive 911	April 1, 2020
NEW HAMPSHIRE	Attorney General Opinion No. 2020-01	April 22, 2020
NEW JERSEY	Senate Bill S2333 Sa (1R)	April 13, 2020
NEW YORK	Emergency Disaster Treatment Protection Act (EDTPA)	August 3, 2020
NORTH CAROLINA	Senate Bill 704	May 4, 2020
OHIO	House Bill 606	September 14, 2020
OKLAHOMA	Senate Bill 300	May 12, 2020
PENNSYLVANIA	Executive Order	May 6, 2020
RHODE ISLAND	Executive Order 20-33	May 8, 2020
TENNESSEE	Tennessee COVID-19 Recovery Act	August 17, 2020
UTAH	Senate Bill 3002	April 22, 2020
VERMONT	Amended and Related Executive Order No. 01-20	June 15, 2020
VIRGINIA	Executive Order Sixty	April 28, 2020
WYOMING	Senate Bill 1002	May 20, 2020

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Overview of Senate Relief Bill Immunity Provisions

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SAFE TO WORK ACT (Proposed)

WHERE IT STANDS:

- In Committee (Senate – Judiciary)
- Negotiations are currently stalled over funding
- Mitch McConnell was the Original Sponsor
- Now 18 Co-Sponsors (All Republicans)

TWO TYPES OF IMMUNITY:

- For businesses (if in interstate commerce)
 - Covers Alleged Exposure to COVID-19
- For health care providers
 - Covers healthcare liability claims

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SAFE TO WORK ACT (Proposed)

Immunity for Businesses:

- Creates an Exclusive Federal Cause of Action (“Coronavirus Exposure Action”)
- Plaintiff Must Prove:
 - **Failure to make Reasonable Efforts to Comply with Applicable Standards/Guidance;**
 - **Gross Negligence or Willful Misconduct;**
 - **Actual Exposure to COVID-19; and**
 - **Causation and Personal Injury.**
- Covers Businesses Engaged in Interstate Commerce (or Otherwise Subject to Federal Regulation under the Spending Clause)

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SAFE TO WORK ACT (Proposed)

Immunity for Health Care Providers:

- Creates an Exclusive Federal Cause of Action (“Coronavirus-Related Medical Liability Action”)
- Plaintiff must prove:
 - **Gross Negligence or Willful Misconduct;**
 - **Direct Causation; and**
 - **Personal Injury.**
- Covers any HCP engaged in “Coronavirus-Related Health Care Services”:
 - Diagnosis, prevention, assessment of COVID-19; or
 - Care of any individual during the federal emergency, if the care is impacted by COVID-19
- “HCP” Includes SNF, but Unclear if it Includes AL

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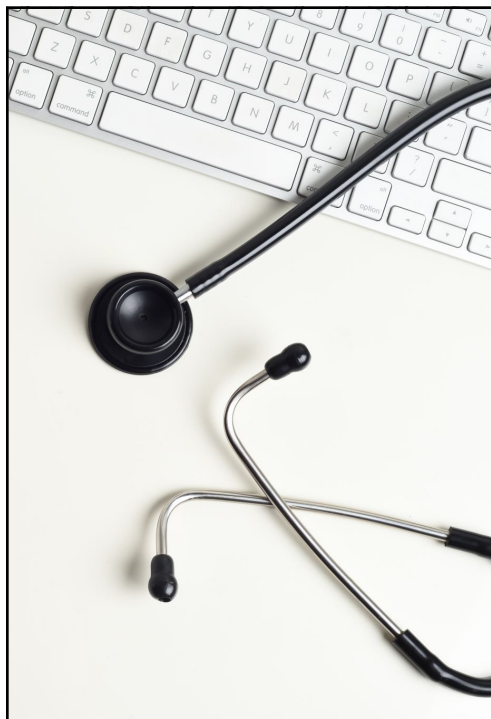
SAFE TO WORK ACT (Proposed)

Common Features of Both Actions:

- Burden of Proof is “Clear and Convincing Evidence;”
- Removable at Will by Any Defendant;
- 1 Year Statute of Limitations;
- Heightened Pleading Requirements;
- Limited Discovery until Defendants have a Chance to Dismiss;
- No Non-Economic Damages Allowed (unless willful);
- Punitive Damages Capped (1x Compensatory);
- Enhanced Appellate Rights; and
- No Joint & Several Liability (unless intent/fraud).

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Progression of Claims

1. LTC Facilities – NOW
2. Outrageous facts in provider or hospital care - NOW
3. General claims against providers – 1-2 years from NOW.

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Anticipated Claims

- From the tort exposure world, The plaintiffs' bar will attempt to circumscribe the scope of the immunity provided by targeting their efforts on non-included activities as well as alleging gross negligence or willful misconduct.

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Anticipated Claims

- We expect to experience a range of claims, such as:
 - Failure to secure and have appropriate prevention plans
 - Asserted negligence in “community spread”

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COVID-19 Issues Relating To Risk Management

- Coordinate creating a timeline
- Track national organizations, including CDC, OSHA, and other rulings and regulations
- Consolidate maintenance of tracked allocations, PPE supplies, and other materials

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COVID-19 Issues Relating To Risk Management

- Determine witnesses that can authenticate these documents and the need to be identified and prepare for their part in upcoming litigation
- Work with department heads and experts within your business

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COVID-19 Issues Relating To Risk Management

- Reach out to other business in your area, through your counsel, to ascertain their efforts to set down their journey creating experts that can be shared by way of affidavits to support summary judgments or eventual trial testimony
- Coordinate contacting your marketing department and capture video footage or photos and all safety measures taken to respond for social distancing
- Provide attorney-client protection, and in anticipation of litigation

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COVID-19 Issues Relating To Risk Management

- Identify experts in specialties based on current experiences and have them ready on COVID cases
- Maintain a legal medical data base
- Maintain a current social media to help recreate this “reality”

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COVID –Example Hospital Checklist

- *The following is a checklist of items you may consider maintaining if and when the Hospital is asked at a later date for documentation related to services provided during the COVID-19 pandemic. The form that each piece of information is maintained will depend on the hospital's current document management processes and the extent of readily available electronic storage. Regardless of the format, the hospital should consider maintaining the documentation in an easily accessible format for no less than ten (10) years.*

<input type="checkbox"/> State, federal and local guidance and Communications <ul style="list-style-type: none"> ✓ Preserve notifications and guidance from all sources (CMS, CDC, DPH, etc.) with notations of date issued and date implemented. ✓ Maintain survey documentation- survey materials, responses, other communication. 	<input type="checkbox"/> Training / In-Service Documentation <ul style="list-style-type: none"> ✓ Track and preserve evidence staff was trained / in-service, including copies of the documentation provided to staff, staff sign-ins, post-training tests, and results.
<input type="checkbox"/> Hospital Policies / Guidelines and Dates of Implementation <ul style="list-style-type: none"> ✓ Any new or revised Policies/Guidelines should ensure the dates of creation and revision clearly on the Policy/Guideline. For example: "COVID-19 Guideline re: Infection Control Measures: Policy implemented 3/13/2020, revisions 3/27/2020, 4/3/2020." ✓ Maintain prior versions of Policies/Guidelines in order to show the version in place at a date certain. 	<input type="checkbox"/> Infection Control Efforts and QAPI Process <ul style="list-style-type: none"> ✓ Include COVID-19 into QAPI process for Infection Control measures to identify and address specific risk areas. ✓ Maintain evidence of reviews by compliance or quality assurance committees.
<input type="checkbox"/> Incidents of COVID-19 Infection and Mitigation Efforts <ul style="list-style-type: none"> ✓ For affected residents and staff, track their individual circumstances and mitigation efforts. ✓ Maintain resident charts to include specific communication with the resident related to his/her diagnosis. ✓ Maintain transfer communications in the event of resident discharge/transfer. ✓ Admission/discharge logs of affected residents. ✓ Maintain floorplans or other documentation showing isolation efforts. 	<input type="checkbox"/> Communications <ul style="list-style-type: none"> ✓ Maintain notices, emails, and evidence of discussion, related to measures taken to allow and encourage family members to interact with residents in alternative ways, such as by phone or video. ✓ Preserve general information available on the website or copies of correspondence sent to families. ✓ Document individual interactions in that specific resident's chart. ✓ Preserve notices to staff. ✓ Preserve requests for resident record, with date/time stamp of receipt and date/time stamp of response.
<input type="checkbox"/> Screening <ul style="list-style-type: none"> ✓ Track resident, staff, visitor, and vendor screening. ✓ Maintain sign-in logs. 	<input type="checkbox"/> Waivers <ul style="list-style-type: none"> ✓ Waivers signed by residents/families related to risk of infection. ✓ Waivers signed by visitors/vendors related to the risk of infection.
	<input type="checkbox"/> Staffing <ul style="list-style-type: none"> ✓ Staff call-in logs. ✓ Employee schedules/ clock in/out reports.

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COVID-19 Issues Relating To Risk Management

We are developing a UNIFORM STRATEGY approach to be proactive in these areas. In considering this approach, we can forecast effective implementation of methods and strategies related to:

1. Consistent discovery responses
2. Deposition answers
3. Spoliation arguments
4. Arguments made on motions for summary judgment

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COVID-19 Issues Relating To Risk Management

- Draft uniform defenses to be filed with answers and considered in evaluation along with removal motions (where applicable)
- Draft standard removal practice
- Draft (Prepare) Federal and State Immunity motions to dismiss or application of applicable standard motions
- Draft discovery that would ferret out COVID-19 defenses
- Draft current notice provisions that can be placed in current charts to preserve the awareness of the “COVID-19 reality”

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COVID – Issues Relating To Risk Management

- Plan for the Correct 30(b)(6) Witness: We can foresee that your hospital will eventually have to produce a witness to testify about information known or reasonably available to the organization with respect to your COVID-19 response.
- We recommend you seize the opportunity to identify that witness and start to prepare the witness based on all the information developed in your Global COVID-19 Defense Strategy Road Map.
- This will afford your business a plausible and consistent message down the road in litigation, and to aggressively jump start your defense plans.

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"In terms of your five-star status, in terms of your staffing, in terms of whether you'd had a prior infection control violation, we couldn't find any kind of measure of facility quality that was correlated with having a COVID case," says Grabowski.

- David Grabowski, a professor of health policy at Harvard Medical School

<https://www.npr.org/2020/06/26/881935246/why-were-some-nursing-homes-spared-the-devastation-of-covid-19-depends-who-you-a>

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North Carolina



The screenshot shows the website for Riddle & Brantley, a law firm. The header includes the firm's logo, a phone number (800)525-7111, and a 'FREE CONSULTATION' button. The main heading is 'CORONAVIRUS LAWSUITS / COVID-19 LAWSUITS'. Below this, there is a sub-headline: 'Many governments and companies face lawsuits alleging negligence during the coronavirus public'. To the right of this text is a microscopic image of the coronavirus. Further right, a paragraph states: 'Millions of Americans have seen their lives upended by the coronavirus. The COVID-19 outbreak has resulted in "social distancing," "shelter-in-place" orders, stock market losses and unemployment on a scale unseen since the Great Recession. With so much disruption, many are seeking to file COVID-19 lawsuits or coronavirus lawsuits alleging negligence by companies, governments, employers and more.' Below this paragraph is an 'IMPORTANT' disclaimer: 'This article is intended solely to summarize a variety of coronavirus lawsuits and COVID-19-related lawsuits that are being filed or considered by plaintiffs affected by the pandemic. It is not intended to support or oppose any legal action.' A 'Click for Live Chat' button is also present. At the bottom, there is a Google search bar with a 5-star rating by Gary Latta (Oct 19, 2020). The footer shows the URL 'https://justicecounts.com/coronavirus-lawsuits-covid-19-lawsuits/', the date '6:29:12 PM 7/26/2020', and the browser information 'Google Chrome 84.0.4147.89' and 'Windows 10 Pro 64-bit Build 18363'.

RIDDLE & BRANTLEY

(800)525-7111
FREE CONSULTATION

MENU

CORONAVIRUS LAWSUITS / COVID-19 LAWSUITS

Many governments and companies face lawsuits alleging negligence during the coronavirus public

Millions of Americans have seen their lives upended by the coronavirus. The COVID-19 outbreak has resulted in "social distancing," "shelter-in-place" orders, stock market losses and unemployment on a scale unseen since the Great Recession. With so much disruption, many are seeking to file COVID-19 lawsuits or coronavirus lawsuits alleging negligence by companies, governments, employers and more.

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Click for Live Chat

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Google Chrome 84.0.4147.89 Windows 10 Pro 64-bit Build 18363

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Texas



The screenshot shows the website for The Carlson Law Firm. The header includes the firm's logo, a phone number 866-441-1417, and a 'FREE Consultation | Make a Payment' button. The main heading is 'Need a Nursing Home Coronavirus (COVID-19) Exposure Lawyer?'. Below this, there is a sub-headline: 'Contact Us For a FREE Legal Consultation'. To the right of this text is a photograph of a woman, likely a lawyer, with the text 'The Carlson Law Firm' and 'Hi, you may just be browsing, but we are available to answer your questions.' Below this is a 'Can We Help You?' section with 'YES' and 'NO' buttons. At the bottom, there is a 'Privacy & Cookies Policy' link, the URL 'https://www.carlsonattorneys.com/practice-area/nursing-home-coronavirus', the date '7:07:21 PM 7/26/2020', and the browser information 'Google Chrome 84.0.4147.89' and 'Windows 10 Pro 64-bit Build 18363'.

Call 866-441-1417 for a FREE Consultation | Make a Payment

The Carlson Law Firm

How Were You Injured? Practice Areas Our Team Locations More

Need a Nursing Home Coronavirus (COVID-19) Exposure Lawyer?

Contact Us For a FREE Legal Consultation

The Carlson Law Firm

Hi, you may just be browsing, but we are available to answer your questions.

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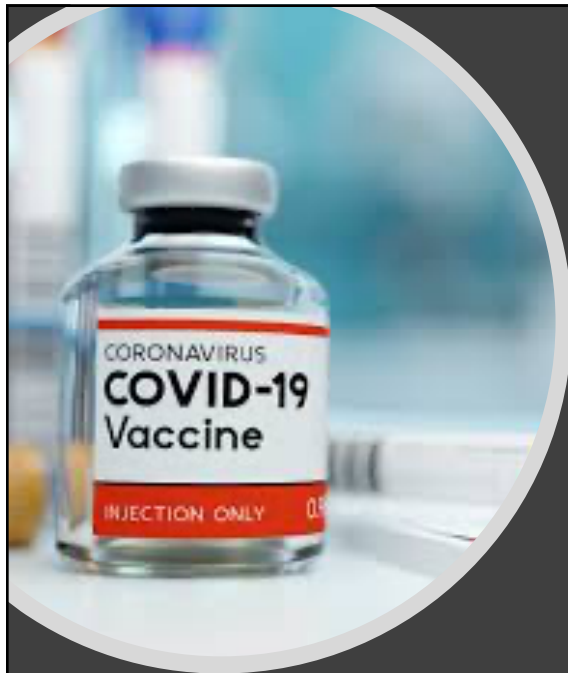
YES NO

Privacy & Cookies Policy

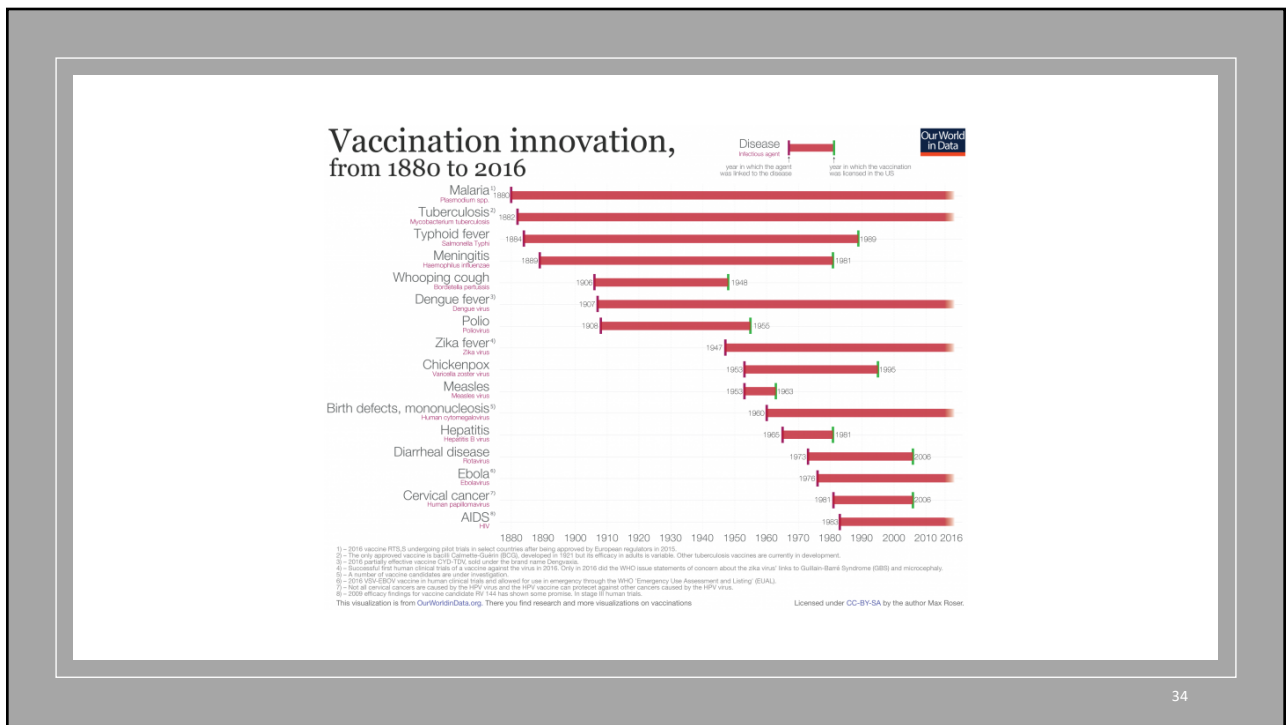
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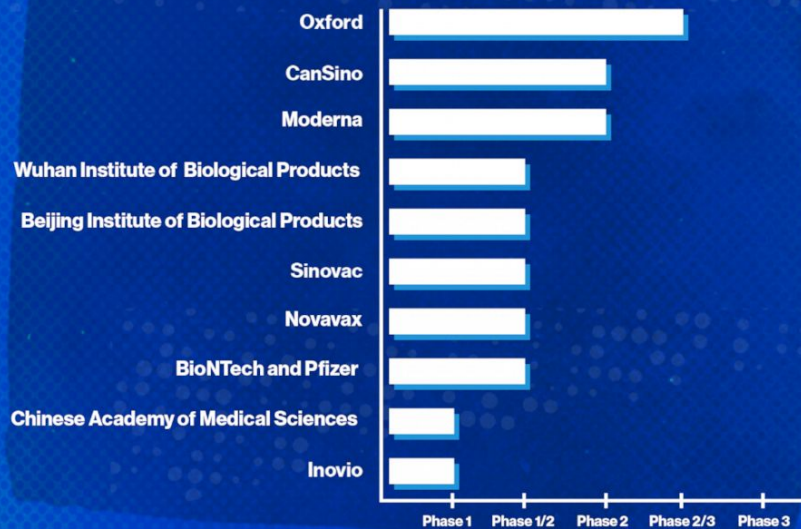


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COVID-19 VACCINES IN CLINICAL TRIALS



SOURCE: WHO

abc NEWS

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Conclusion

Thank you

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