



October 2021 to Early January 2023

PREP ACT UPDATE

[Public Readiness and Emergency Preparedness Act]

INCLUDES

Executive Summary

Detailed Summary of Articles, Podcasts and Relevant Court Cases

Listing of Additional Court Cases

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PREP Act Update

Overview of Cases Relating to Long-Term Care from October 2021 through Early January 2023

- In October 2021, the **Third Circuit Court of Appeals** affirmed the District Court's remand of the [Estate of Maglioli v. Alliance HC Holdings LLC](#). The *Maglioli* decision is cited in almost all other District Court decisions.
- In February 2022, the **Ninth Circuit Court of Appeals** affirmed the District Court's remand to state court for two cases, [Martin v. Filart](#) and [Saldana v. Glenhaven Healthcare LLC](#).
- In March 2022, the **Fifth Circuit Court of Appeals** remanded [Mitchell v. Advanced HCS, LLC](#) and [Perez Ex Rel. Estate of Lozano v. Southeast SNF](#).
- In June 2022, the **Seventh Circuit Court of Appeals** remanded [Martin v. Petersen Health Operations, LLC](#).
- In July 2022, the **Fifth Circuit Court of Appeals** remanded [Manyweather Ex Rel. McGraw v. Woodlawn Manor, Inc.](#)
- In August 2022, the **United States Court of Appeals, District of Columbia Circuit** dismissed appeals by the defendants in two cases ([Cannon v. Watermark Retirement Communities, Inc.](#) and *Beaty v. Fair Acres Geriatric Center*) from the U.S. District Court, E.D. Pennsylvania.
- In September 2022, Glenhaven Healthcare of California requested that the [U.S. Supreme Court](#) take up the *Saldana* case.
- On November 21, 2022, the **Ninth Circuit** remanded [Garcia v. Welltower](#) back to district court to determine if there is alternative ground for state jurisdiction.
- On November 21, 2022, the **United States Supreme Court** declined to hear the *Saldana v. Glenhaven Healthcare* case. For now, lawsuits against nursing homes for alleged improper treatment of residents during the pandemic are more likely to be heard in state courts unless another case in the court of appeals is taken up by SCOTUS in the future. Leading defense attorneys discussed the impact of this in a January, 2023 [podcast](#).
- In a review of District Court decisions since the beginning of October 2021, over 50 cases have been remanded to state court.
- Many cases cite that the defendant's failure or inaction to use "countermeasures" does not fall under the PREP Act.
- Nothing in the language of the PREP Act precludes the defendant from asserting immunity or other statutory defenses in state court (as noted by the District Court, N.D. CA).
- Many states issued legal protections and immunity orders for health care facilities early in the pandemic. Some have extended protections, while others have been repealed. Most state statutes of limitations for filing COVID related cases are two years.
- The following tables provide summaries of articles and selected court decisions and a listing of additional recent court decisions with hyperlinks for reference. Cases heard in the various Circuit Courts of Appeals or SCOTUS are highlighted for ease of reference.

PREP Act Update – Early January 2023

(PREP Act, State Immunity, and Relevant Case Notes since *Maglioli* Ruling in October 2021)
 Court of Appeals Cases are Highlighted

Date	Summary
10/20/21	<p data-bbox="310 401 951 428"><u>ESTATE OF MAGLIOLI v. ALLIANCE HC HOLDINGS LLC</u></p> <p data-bbox="310 434 1136 462">United States Court of Appeals, Third Circuit. Nos. 20-2833, 20-2834.</p> <p data-bbox="310 506 1404 604">The Third Circuit affirmed the District Court’s remand to state court. The Court noted that “There is no COVID-19 exception to federalism” and “nearly every federal district court to confront these cases has dismissed for lack of jurisdiction and remanded to the state court”.</p> <p data-bbox="310 648 1404 926">The plaintiffs allege that the residents’ deaths were a direct result of the nursing homes’ negligence by failure to monitor food preparation, failing to provide PPE, failing to diagnose and treat Covid-19 in a timely manner, and permitting visitors and employees to enter facilities without temperature checks or masks. The nursing homes argue that the District Court has three independent grounds for federal jurisdiction: federal-officer removal, complete preemption of state law, and the presence of a substantial federal issue. The District Court remanded to state court, and the defendants appealed. Excerpts from the 34-page Opinion by the Third Circuit Court:</p> <ul data-bbox="310 970 1421 1816" style="list-style-type: none"> <li data-bbox="310 970 1421 1213">• <u>Federal-officer-removal statute:</u> <ul style="list-style-type: none"> <li data-bbox="407 1010 1421 1213">○ To remove under this statute four requirements must be met, including the defendant is “acting under” the United States, its agencies or officers. The court notes the nursing homes are private parties, not federal actors. The nursing homes argument that they are heavily regulated by CMS and the CDC does not rise to the level of being a government contractor or providing a service the government would otherwise provide. <li data-bbox="310 1224 1421 1430">• <u>Complete federal preemption:</u> <ul style="list-style-type: none"> <li data-bbox="407 1264 1421 1430">○ The nursing homes argued that the estates’ state-law negligence claims are federal claims under the PREP Act. However, the estates alleged only negligence, not willful misconduct. Therefore, the Third Circuit determined they do not fall within the scope of the exclusive federal cause of action and are not completely preempted, so they belong in state court. <li data-bbox="310 1440 1421 1816">• <u>Willful misconduct:</u> <ul style="list-style-type: none"> <li data-bbox="407 1480 1421 1541">○ To remove to federal court, the nursing homes also must show that the state-law claims fall within the scope of the exclusive federal cause of action. <li data-bbox="407 1551 1421 1650">○ The PREP Act also provides a rule of construction: the willful-misconduct requirement “shall be construed as establishing a standard for liability that is more stringent than a standard of negligence in any form or recklessness.” <li data-bbox="407 1661 1421 1816">○ The estates allege negligence, not willful misconduct. In contrast, a claim for willful misconduct under the PREP Act requires wrongful intent, knowledge that the act lacked legal or factual justification, and disregard of a “known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.”

	<ul style="list-style-type: none"> • <u>Compensation fund:</u> <ul style="list-style-type: none"> ○ The nursing homes argue that the PREP Act’s compensation fund—not just the willful-misconduct cause of action—completely preempts the estates’ negligence claims. ○ The court held only that (1) the estates’ negligence claims based on New Jersey law do not fall under the PREP Act’s narrow cause of action for willful misconduct, and (2) the PREP Act’s compensation fund is not an exclusive federal cause of action triggering removal jurisdiction. • <u>Federal issue:</u> <ul style="list-style-type: none"> ○ The nursing homes argue that the estates’ claims raise a substantial federal issue. To remove a case under federal-question jurisdiction, a defendant must show the case “aris[es] under” federal law. The estates do not assert a federal cause of action. <p>In conclusion, the Third Circuit Court affirmed the District Court’s order, stating, “Federal courts have limited jurisdiction. We may decide only cases or controversies that the Constitution and Congress say we may decide. Here, the estates of the deceased filed wrongful-death lawsuits against the nursing homes. They filed in state court and asserted only garden-variety state-law claims, so state court is where these cases belong”.</p> <hr/> <p>COVID lawsuit bounced back to state court, leaving nursing home cases open to ‘inconsistent’ interpretation (10/22/21)</p> <p>Drew Graham, Hall Booth Smith:</p> <ul style="list-style-type: none"> ○ Disappointed in the Third Circuit’s ruling, but confident that state courts will uphold the law as it is provided under the PREP Act. ○ The decision means that providers now run the risk of more inconsistent application of immunity provisions if cases are left to state courts. ○ Believes cases need to be looked at on a case-by-case basis.
10/20/21	<p>Fox V. Cerritos Vista Healthcare Center LLC United States District Court, C.D. California</p> <p>It is largely irrelevant that federal courts have exclusive jurisdiction under the PREP Act because none of the claims in the complaint, on its face, are brought under that Act. If Defendant believes that some or all of Plaintiff's state law claims are barred by the PREP Act, the appropriate response is to file a demurrer in state court. If the state court dismisses the state law claims, Plaintiff could then decide if she wishes to file claims under the PREP Act in the District of the District of Columbia, the court with exclusive jurisdiction over such claims. (Countermeasures Injury Compensation Program) Otherwise, the Court declines to find that Congress has completely occupied the field of actions or inactions related to COVID-19 spread and treatment to such a degree that all state law claims related to that topic are subject to removal.</p> <p>Remanded to State Court</p>

<p>11/18/21</p>	<p>Rachal v. Natchitoches Nursing & Rehabilitation Center Western District of Louisiana</p> <p>In Rachal v. Natchitoches Nursing & Rehabilitation Ctr., LLC, the Court found that the PREP Act expressly preempts state law by comparing it to the Air Transportation Safety and System Stabilization Act (the "ATSSSA"), a recovery statute passed after the September 11, 2001, terrorist attacks which the Second Circuit held expressly preempted state law claims. The purpose of the ATSSSA was to provide relief to the victims of the attacks and created a Victim's Compensation Fund under which those injured by the attacks could recover. In Rachal, this Court found that the PREP Act, which also established relief through a compensation fund, was analogous to the ATSSSA and therefore, is also a complete preemptive statute. However, the case was remanded to 10th Judicial District Court for Natchitoches Parish on 11/18/21</p>
<p>11/29/21</p>	<p>States struggling with COVID-19 Liability Limits</p> <ul style="list-style-type: none"> • Florida: considering extending legal protections for healthcare providers through June 1, 2023. Would shield them from liability related to the transmission of COVID-19 and the treatment of people with COVID. <ul style="list-style-type: none"> ○ Plaintiffs would have to prove gross negligence or intentional misconduct • New York: proposal reversing any remaining policies that limit liability of nursing homes. <ul style="list-style-type: none"> ○ Amend the law to hold nursing homes liable for negligence resulting in wrongful death of residents during a public health emergency through 2035. ○ Would allow claims in personal injury or death to be filed for up to two years after the bill passes.
<p>12/8/21</p>	<p>Cases are in the Fifth and Ninth Circuit Courts</p> <p>The Fifth Circuit Court in New Orleans Monday appeared unlikely to counter previous rulings on whether COVID-19 wrongful death suits ultimately belong in federal court (Third Circuit ruling).</p> <p>In this case, a larger issue may be whether PREP was intended to cover all COVID situations or only those related to use of "countermeasures."</p> <p>Plaintiffs are claiming that the facility failed to implement proper infection control practices. "There is no allegation in the complaint or in the notice of removal that any of the deaths of the 18 people who died at this nursing home was because of how a covered countermeasure was administered to or used by someone," said the plaintiff's attorney. "This statute is ... designed to encourage the use of covered countermeasures, it is not to give you blanket immunity to decide whether or not you use covered countermeasures."</p> <p>(continued)</p>

	<p>“The primary basis for rejection of the PREP Act is that that Act applies to the use of countermeasures rather than the failed use of countermeasures, “The allegations are that the facilities failed to use certain countermeasures to prevent or reduce the spread of COVID.”</p> <p>In a Ninth Circuit case the district retained jurisdiction rather than remanding to state court.</p> <p>The Court denied the motion to remand and held that the PREP Act is a complete preemption statute and governs any conduct related to countermeasures. That decision, known as <i>Garcia</i>, relied heavily on an early 2021 HHS Counsel Advisory Opinion and affirmed the PREP Act is a complete preemption statute and clarified the scope of the PREP Act relative to the ongoing pandemic.</p> <p>Based on <i>Garcia</i>, nursing home defendants could be successful in removing cases from state to federal court and defeat failure to act claims under the PREP Act (per Craig Conley, healthcare litigator, Baker Donelson)</p>
<p>12/16/21</p>	<p><u>ESTATE OF MELISSA LINDSAY, Plaintiff, v. GULF SHORE FACILITY, INC.</u> United States District Court, M.D. Florida, Tampa Division.</p> <p>...only two courts have found that the PREP Act provides federal jurisdiction under the complete preemption doctrine (<i>Rachal v. Natchitoches Nursing & Rehab. and Garcia v. Welltower</i>). The undersigned agrees with the weight of authority finding that the PREP Act is not a complete preemption statute for the reasons set forth above. The undersigned therefore recommends that this Court "join the nearly unanimous consensus among the district courts across the country that have addressed the issue and have held that the PREP Act is not a complete preemption statute."</p> <p>Case remanded to State Court, Sixth Judicial Circuit for Pinellas County, Florida.</p>
<p>12/20/21</p>	<p><u>PREP Act Preemption:</u> “There is no COVID-19 Exception to Federalism” <i>Estate of Maglioli v. Alliance HC Holdings LLC</i> The wrongful death actions arose from the treatment of residents at nursing homes where it was alleged that the residents' deaths were a direct result of the nursing homes' failures to take measures to protect them at the facilities from the coronavirus and/or medical malpractice (including failure to provide personal protective equipment, to timely diagnose and treat the disease and permitting visitors and employees to enter the facilities without taking their temperatures or requiring masks.)</p>

<p>12/22/21</p>	<p>More Big Law Firms Join Nursing Homes, Hospitals in Fight Over Liability for COVID-19 Deaths</p> <ul style="list-style-type: none"> • Appeals are pending in DC, Second, Third, Fifth, Sixth, Ninth and Eleventh Circuits • Providers argue cases belong in federal court under the PREP Act • District courts have mostly sided with the estates, with appeals in the above circuits • PA case: federal judge ruled in August 2021 that the PREP Act doesn't extend immunity to the nursing home because the suit doesn't contend that the death was caused by the "use or administration" of countermeasures, but by a failure to prevent the virus' spread. (<i>Beaty v Fair Acres Geriatric Center</i>) • The Third Circuit Court is the only federal appeals court that has issued an opinion on the jurisdictional matter that the PREP Act didn't warrant the removal of negligence claims to federal court ("a blow to the industry") • Providers argue the PREP Act offers broad immunity. <ul style="list-style-type: none"> ○ Estates have countered that protection extends to the "use or administration" of countermeasures, ○ but long-term care facilities are accused of doing the opposite, not taking steps to prevent the spread of COVID-19. ○ Providers, meanwhile, contend the act does provide a shield for failures to take action, or non-use of countermeasures. If courts accept the latter argument, facilities would be immune from nearly all COVID-19 wrongful death suits ○ Several states amid the pandemic enacted legislation shielding nursing homes from claims, too, but most exempted gross negligence, recklessness and willful misconduct allegations and had a short duration for immunity. The PREP Act is more far-reaching: It allows only willful misconduct claims to go forward, and all other injuries from covered countermeasures can be resolved through an emergency fund in the U.S. Treasury rather than the courts. ○ "If the PREP act is found to be applicable to the non-use of measures ... then it preempts a wide variety of state claims," ...You potentially have a situation where there's no accountability for even recklessness and gross negligence."
<p>12/23/21</p>	<p>Nursing Home Litigation Trends and the PREP Act</p> <p>Few courts had interpreted or applied the PREP Act in any appreciable way prior to the Covid-19 pandemic.</p> <p>In October 2021, the U.S. Court of Appeals for the Third Circuit ruled on PREP Act jurisdictional issues as a matter of first impression among federal appellate courts in an order that many defense attorneys view as a hit to their ability to keep nursing home Covid-19 cases in federal court.</p> <p>In <i>Maglioli v. Alliance HC Holdings LLC</i>, the Third Circuit noted that the "story in all of these cases is essentially the same. Estates of deceased nursing-home residents sue the nursing homes in state court, alleging the nursing homes negligently handled Covid-19. The nursing</p>

homes remove to federal court based on a combination of federal-officer removal, complete preemption, and a substantial federal issue. Nearly every federal district court to confront these cases has dismissed for lack of jurisdiction and remanded to state court.”

Several of the most powerful arguments for keeping nursing home cases in federal court were thereafter rejected in the *Maglioli* opinion. The Third Circuit held that HHS advisory opinions interpreting the PREP Act were entitled to no deference;

- that federal officer removal was improper because nursing homes were not “acting under” a federal officer;
- that the PREP Act does not completely preempt state law negligence claims—only “willful misconduct” claims;
- and that there was no federal question jurisdiction pursuant to the *Grable* test on the grounds that state-law negligence claims do not “necessarily raise” the PREP Act.

For defense attorneys that have raised or planned to raise similar or identical arguments in factually similar litigation, the *Maglioli* opinion can be read as a blow to their chances of remaining in federal court. However, the door is not shut on the issues ruled upon in *Maglioli*—and, what’s more, several aspects of the opinion can almost certainly be used in defendants’ favor.

Further, and important for those cases that ultimately are remanded to state court, the Third Circuit’s opinion was limited to the jurisdictional arguments presented: It did not address “whether the PREP Act preempts the estates’ claims under ordinary preemption rules. That is for the state court to determine on remand.”

Consider Viability of Removal for Willful Misconduct Claim

Defense attorneys representing nursing homes in the Third Circuit facing state-law claims that potentially implicate PREP Act immunity would be well served to continue to consider the viability of removal. *Maglioli* confirmed that the “PREP Act’s language easily satisfies the standard for complete preemption of particular causes of action.”

The Third Circuit made clear that to determine whether removal was proper, courts should assess whether the estate “could have brought their claims under the PREP Act’s cause of action for willful misconduct.” Defense attorneys should carefully examine the allegations in each complaint to discern whether they could have been brought under the PREP Act’s willful misconduct cause of action. If so, those “state-law claims fall within the scope of the exclusive federal cause of action,” and are completely preempted.

For PREP Act litigation outside the Third Circuit, defendants have continued to grapple with *Maglioli* as negative persuasive authority. However, *Maglioli* is often overlooked as a source of positive persuasive authority: Defendants can and should use the “willful misconduct” analysis in the opinion as a sword by seeking to box plaintiffs into disclaiming allegations that raise the specter of complete preemption.

	<p>Further, it remains important to consider levying similar arguments for removal as those rejected on appeal in <i>Maglioli</i>. Appeals of PREP Act remand orders remain pending in the Second, Fifth, Sixth, Ninth, Eleventh, and D.C. circuits.</p> <p>There is no obligation on the part of any other federal appellate court to resolve these issues as the Third Circuit did. Careful consideration should be given to the allegations in each complaint to discern whether it is appropriate to seek a stay of a remand order (or of ongoing state or federal court proceedings) pending the resolution of threshold PREP Act jurisdictional and immunity issues by the pertinent federal appellate court with binding authority.</p>
<p>12/27/21</p>	<p><u>SINGER V. MONTEFIORE</u></p> <p>United State District Court, N.D. Ohio, Eastern Division</p> <p>Complete preemption for purposes of removal under the PREP Act requires covered countermeasures. Although Plaintiffs base their allegations, in part, on Defendants' alleged failure to mask, falsification of Covid-19 test results, and inadequate or improper testing, Defendants have not placed sufficient information in the record from which the Court can determine that these countermeasures meet the statutory definition or the Secretary's emergency declaration. Nor have Defendants made anything more than conclusory arguments that these measures meet those definitions.</p> <p>Federal officer removal: complying with federal laws and regulations does not amount to “acting under” a federal officer. Private parties must show that their actions “involve an effort to assist, or to help carry out, the duties or tasks of the federal superior.</p> <p>Case remanded to State Court.</p>
<p>12/29/21</p>	<p><u>JALILI-FARSHCHI v. ALDERSLY</u></p> <p>United States District Court, N.D. California.</p> <p>Plaintiff sued retirement care facility and construction companies alleging elder abuse, medical negligence and other related claims causing the death of the parent from COVID-19.</p> <p>Defendants removed the case on the theory of the PREP Act and that the acts were undertaken at the direction of a federal officer.</p> <p>Per the judge:</p> <ul style="list-style-type: none"> ○ Jurisdiction of the federal courts is limited to what is authorized by the Constitution and statute ○ Any doubts about the propriety of removal should be resolved in favor of a remand to state court ○ The defendant always bears the burden of demonstrating that removal was proper ○ Complete preemption is rare. SCOTUS has identified only three statutes that meet these criteria: Labor Management Relations Act, ERISA, and the National Bank Act. <ul style="list-style-type: none"> ○ Consensus is emerging that the PREP Act is not “a fourth member of the complete preemption family.”

	<ul style="list-style-type: none"> ○ A “federal statute must provide the ‘exclusive cause of action’ for complete pre-emption to apply.” The PREP Act does not do that. ○ Nothing in the language of the PREP Act precludes the defendant from asserting immunity or other statutory defenses in state court. ○ The defendant’s reliance on an advisory opinion published by HHS is misplaced. <ul style="list-style-type: none"> ○ An agency’s commentary is no substitute for Congress’s intent as expressed in the plain language of the statute. ○ HHS acknowledged its Advisory Opinion “does not have the force or effect of law.” ○ Re: federal officer removal: <ul style="list-style-type: none"> ○ Defendant said it responded to COVID-19 consistent with directives from SDS, SMS and Calif DOH. ○ “Simply complying with the law does not bring a private actor within the scope of the federal officer removal statute.” <p>Case was remanded to the Superior Court of California for the County of San Francisco.</p>
<p>1/2/22</p>	<p>NJ to pay families \$53M over veteran deaths</p> <p>The state of NJ enacted broad immunity measures that protected nursing homes early in the pandemic.</p> <p>Accused two veterans nursing homes of</p> <ul style="list-style-type: none"> ○ Not instituting proper infection measures when the pandemic began ○ Waiting too long to isolate covid positive residents ○ Allowing exposed staff to continue working ○ Not conducting timely covid testing
<p>1/4/22</p>	<p>AHA and US Chamber of Commerce file amicus brief in 2nd Circuit Court of Appeals to overturn a district court decision refusing to allow a case to proceed to federal court under the PREP act and sent the case back to state court.</p>
<p>1/4/22</p>	<p>MARIE LILLY, Individually and as a Representative of the Estate of Edna Spells, Plaintiff, v. SSC HOUSTON SOUTHWEST OPERATING COMPANY LLC</p> <p>United States District Court, S.D. Texas, Houston Division.</p> <p>January 4, 2022.</p> <p>Plaintiff filed this lawsuit in Texas state court, alleging state-law medical negligence claims against SSC. The case was removed to federal court on the basis of federal question and diversity jurisdiction.</p> <p>The thrust of the lawsuit is that SSC failed to properly monitor and care for Spells, which ultimately led to her exposure to, contraction of, and death from COVID-19. More specifically,</p>

the lawsuit alleges that SSC was negligent in its care, treatment, and provision of services to Spells. In particular, the lawsuit claims that SSC:

- a. Fail[ed] to institute an infection control program;
- b. Fail[ed] to implement an infection control program;
- c. Fail[ed] to observe, intervene, and care for EDNA SPELLS;
- d. Neglect[ed] EDNA SPELLS to such a degree that she was exposed to COVID-19;
- e. Fail[ed] to provide the medical and nursing care reasonably required for [Spells] known conditions [; and]
- f. Fail[ed] to provide the appropriate supervision and training to its staff and personnel that were providing care to [Spells] including appropriate care related to EDNA SPELLS' treatment needs at all relevant times.

SSC has filed a Motion for Summary Judgment, arguing that the Public Readiness and Emergency Preparedness Act ("PREP Act") provides it with immunity from Plaintiff's claims.

In its motion for summary judgment, SSC contends that it is entitled to immunity from Plaintiff's medical negligence claims because SSC is a "covered person" under the statute, and Plaintiff's claims arise out of or relate to the administration or use of covered countermeasures in response to the COVID-19 pandemic. In simple terms, SSC argues that it is immune from state tort claims arising out of Spells's death because it utilized Personal Protective Equipment, implemented certain COVID-19 protocols at the facility, and provided COVID-19 tests for staff and residents, including Spells.

Plaintiff argues that PREP Act immunity does not apply because the claims in this lawsuit are based entirely on SSC's alleged inaction—that is, SSC's failure "to take certain action with respect to the care of Edna Spells, which neglect permitted her to contract the COVID-19 illness."

Nowhere in the live pleading does Plaintiff allege that Spells's death was causally connected to the administration or use of any covered countermeasure, such as COVID-19 tests, N95 respirators, or face shields. Instead, Plaintiff alleges precisely the opposite—that it was SSC's inaction, rather than action, that caused Spells's death.

"Nothing in the language of the Act suggests that it was intended to more broadly displace state-law causes of action for, e.g., malpractice or substandard care." *Estate of Maglioli v. Andover Subacute Rehab.*

Because Plaintiff's claims are based on SSC's failure to take preventative measures to stop the spread of COVID-19, none of SSC's conduct, as alleged by Plaintiff, qualifies as the administration or use of a covered countermeasure within the meaning of the PREP Act.

The judge concluded that the PREP Act's immunity does not save SSC from facing Plaintiff's state-law medical negligence claims in federal court.

<p>1/4/22</p>	<p>ESTATE OF RAYMOND STANLEY MOORE, SR., et al., Plaintiffs, v. FH & HF-TORRANCE I, LLC United States District Court, C.D. California. Wrongful death case against a SNF. Plaintiffs allege:</p> <ul style="list-style-type: none"> ○ Breach of the implied warranty of habitability ○ Elder abuse and neglect ○ Negligence ○ Violation of patient rights ○ Wrongful death ○ Concealment <p>Defendants argued the case arises under the PREP Act, the case presents a substantial, embedded question of federal law and the federal officer removal statute confers jurisdiction.</p> <p>The judge, citing several cases, including Maglioli, noted the PREP Act does not completely preempt the state law claims presented, the Complaint does not raise a substantial, embedded question of federal law and federal officer jurisdiction is lacking.</p> <p>The case was remanded to Los Angeles County Superior Court.</p>
<p>1/6/22</p>	<p>The Future of Health Care in the US – Seyfarth Shaw Podcast</p> <p>Podcast notes: Courts not recognizing the application of PREP in NH/AL facilities. All but one court has rejected PREP preemption. Not a complete preemption statute. Judiciary does not see it as broad as HHS/Executive branch.</p> <p>Still think there’s opportunity for health care organizations to avail themselves to PREP Act. Directly connected to the administration of countermeasures. (Vaccines, respirators, testing) PREP Act is very broad. Designed to protect with use of countermeasures</p> <p>Not a lot of state court level decisions to date – ex Connecticut court concluded PREP Act did apply immunity</p> <p>All is not lost – defendant can still avail itself to the Prep Act</p> <p>Federal court mostly looking at the jurisdictional point, not on the merits point</p>
<p>1/7/22</p>	<p>Tenth Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19</p> <p>HHS publishes the Tenth Amendment to the PREP Act expanding the scope of authority for licensed pharmacists to order and administer and qualified pharmacy interns to administer seasonal influenza vaccines.</p>
<p>1/13/22</p>	<p>The PREP Act and COVID-19: Limiting Liability for Medical Countermeasures</p> <p>Updated document from Congressional Research Service - January 13, 2022</p>

	<ul style="list-style-type: none"> ○ Overview of the Act ○ The CICIP – Countermeasures Injury Compensation Program ○ HHS Declaration and Amendments (through Tenth Amendment on 12/30/21)
<p>1/13/22</p>	<p><u>KULHANEK V. PENASQUITOS</u> United States District Court, S.D. California</p> <p>Remanded to State Court</p> <p>A claim for willful misconduct under the PREP Act "is narrow" and "has several elements." Maglioli, "The plaintiff must show (1) 'an act or omission,' that is taken (2) 'intentionally to achieve a wrongful purpose,' (3) 'knowingly without legal or factual justification,' and (4) 'in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.' Moreover, the action must be (5) 'against a covered person,' (6) 'for death or serious physical injury' that is (7) 'proximately caused by [the covered person's] willful misconduct.'"</p> <p>But alleging a claim for willful misconduct by itself is insufficient for Maglioli's holding to apply. Rather, for Maglioli's holding to apply, the first amended complaint must specifically allege the "narrow" form of willful misconduct provided for under the PREP Act.</p> <p>Because Plaintiffs' claims do not involve the alleged use of any covered countermeasures, their claims do not fall within the scope of the PREP Act's narrow willful misconduct cause of action.</p> <p>Further, defendants failed to establish the federal question of jurisdiction (Grable) or federal officer jurisdiction.</p>
<p>1/20/22</p>	<p><u>PIROTTE V. HCP PRAIRIE VILLAGE KS OPCO LLC</u> United States District Court, D. Kansas</p> <p>Remanded to State Court</p> <p>In this case the court decided whether plaintiff's claims arise under federal law for purposes of federal question jurisdiction by considering the doctrine of "complete preemption" and determining whether plaintiff's state court allegations fall within the scope of the PREP Act</p> <p>The plaintiff's do not allege willful misconduct, so they do not fall within the scope of the PREP Act. Also, the allegations do not assert "injuries directly caused by the administration or use of a covered countermeasure," so the claim falls outside the scope of the PREP Act.</p> <p>In deciding whether "inaction claims" (as asserted by the plaintiff) can fall within the PREP Act's scope, the court finds that some inaction claims can fall within the scope of the PREP Act's remedial scheme, but only if the inaction claim has a "causal connection between the injury and the use or administration of covered countermeasures.</p>

	<p>This court did not agree with the Garcia v. Welltower conclusion that the PREP Act preempted the state law claims and provided complete preemption. Garcia relied on the HHS Advisory Opinion, and this court, joining other district courts, concluded “the HHS Advisory Opinion should not receive unfettered deference.”</p>
<p>1/31/22</p>	<p>ROSEN V. MONTEFIORE United States District Court, N.D. Ohio Remanded to State Court</p> <p>Re: the PREP Act the judge noted, “None of Plaintiffs' claims fall under the PREP Act because Plaintiffs' do not assert that Decedents' deaths were "caused by, arose out of, related to, or resulted from" the "administration" or "use" of the identified "covered countermeasures.”</p> <p>Re: Federal Officer Removal, the judge indicated, “Defendants cannot show that they acted under federal authority... At most, the nursing home and its employees complied with regulations and orders promulgated by CMS during the pandemic. Defendants, however, are not government contractors, are not delegated federal authority, and do not provide a service that the federal government would otherwise provide.”</p>
<p>2/4/22</p>	<p>PREP Act Liability Coverage Extended to Pharmacists and Interns for Flu Vaccination</p> <p>Review of the changes in the Tenth Amendment to the PREP Act published in January. The new PREP Act amendment authorizes qualifying pharmacists and interns to prescribe, dispense or administer seasonal influenza vaccines in any jurisdiction where the PREP Act applies, excluding the state where the individual is licensed or certified. The article notes that “HHS aims to alleviate the strain that seasonal influenza could have on U.S. hospitals and health care providers already overwhelmed by the COVID-19 pandemic.”</p>
<p>2/11/22</p>	<p>Florida Legislature extends COVID liability protections. Are they still needed?</p> <p>A bill to extend liability protections for healthcare providers through June 1, 2023, is being sent to the governor for signature. Under the bill, families or residents seeking to sue a health care provider for a COVID-19 related injury or death would need evidence that there was intent to harm or a conscious disregard for the infected person’s life. The plaintiff must also obtain a doctor’s statement backing their claim.</p>
<p>2/14/22</p>	<p>COVID-19 liability protections for long-term care providers extended by Florida Legislature</p> <p>The COVID-19-related Claims Against Health Care Providers bill, which limits liability for healthcare providers, including assisted living facilities, if signed by the governor would extend the law to June 1, 2023. Industry groups including the Florida Senior Living Association and Florida Health Care Association support the protection provided by the law.</p>

2/17/22

CRUPI V. HEIGHTS OF SUMMERLIN, LLC

United States District Court, D. Nevada

Remanded to State Court

Allegations:

The plaintiff alleged eight causes of action under Nevada state law:

- (1) Negligence/Negligence
- (2) Negligent Hiring, Training, Retention, and/or Supervision
- (3) Abuse and Neglect of an Older/Vulnerable Person
- (4) Breach of Contract
- (5) Negligent Misrepresentation
- (6) Fraud/Intentional Misrepresentation
- (7) Wrongful Death; and
- (8) Professional Negligence.

The plaintiff further alleges that reports from HHS, CMS, and various state agencies revealed deficiencies in the defendant facility's COVID-19 response.

Complete Preemption:

Defendants allege that the PREP Act is a complete preemption statute under the Ninth Circuit's complete preemption test because the PREP Act provides Plaintiff with two available remedies:

- (1) the PREP Act allows injured individuals to seek compensation from the HHS's Covered Countermeasure Process Fund, and
- (2) the PREP Act provides an injured individual an exclusive federal cause of action for injuries proximately caused by the covered person's willful misconduct, after exhausting administrative remedies through the Compensation Fund.

Numerous other courts have found that "the PREP Act is an administrative remedy that was created to shield covered persons from liability, not to displace a state-law cause of action."

In this case, Defendants identify the PREP Act's exclusive cause of action for willful misconduct as a substitute cause of action, but do not illustrate how Plaintiff could have brought her state law negligence claims under it. Further, since willful misconduct and negligence are separate claims, it is unlikely that Defendants would have been able to illustrate this even if they had attempted to do so.

Defendants have not met their burden to overcome the strong presumption against removal because they demonstrated neither that Congress intended the PREP Act to displace a state-law cause of action, nor that it provides a substitute cause of action.

Covered Countermeasures:

Plaintiff argues that the PREP Act is not implicated by her Complaint because the Complaint does not allege that the death resulted from Defendants' use of a covered countermeasure, but rather that "Defendant[s] failed to follow or implement an infection control program and failed to adhere to local and state guidelines on COVID-19."

	<p>The Complaint alleges that Defendants failed to implement a COVID-19 response policy, which includes the use of PPE. Just because the Complaint mentions some covered countermeasures as examples of Defendants' failure to enact a COVID-19 response policy, it does not rise to the level of alleging that the death was specifically caused by Defendants' use (or misuse) of covered countermeasures. Accordingly, the Court finds that this case does not allege any claim or loss related to the administration or use of a covered countermeasure, and thus, does not fall within the scope of the PREP Act.</p> <p>Covered Persons: Under the PREP Act, "the term `covered person,' when used with respect to the administration or use of a covered countermeasure means. . . a program planner of such countermeasure. . . [or] a qualified person who prescribed, administered, or dispensed such countermeasure." However, because the Court finds that the administration or use of a covered countermeasure is not at stake in this case, Defendants can neither qualify as a program planner nor qualified person.</p> <p>Conclusion: The judge wrote, "even if the PREP Act was a complete preemption statute, this case does not fall within the scope of its protection because the Complaint does not allege that the use of covered countermeasures caused Ms. Porcaro's death and Defendants are not covered persons. Therefore, complete preemption is not an avenue to federal question jurisdiction in this case, the Court finds that it lacks subject matter jurisdiction, and Plaintiff's Motion to Remand is granted.</p>
<p>2/18/22</p>	<p>HUNTINGTON V. YATE HOLDINGS, LLC United States District Court, D. Nevada</p> <p>Remanded to State Court</p> <p>The judge wrote "Even assuming the PREP Act enjoys "complete preemption" status and Yate Holdings is a "covered person" under the statute, it is immaterial since the court recently held in <i>Ossowski v. St. Joseph Transitional Rehab. Center</i>, (D. Nev. Oct. 6, 2021), that isolation and social distancing are not "covered countermeasures" under the plain meaning of the statute." (Some citations omitted)</p>
<p>2/22/22</p>	<p>SALDANA V. GLENHAVEN HEALTHCARE LLC United States Court of Appeals, Ninth Circuit</p> <p>Remanded to State Court</p> <p>Conclusion (Honorable Karen E. Schreier United States District Judge for the District of South Dakota) Glenhaven did not act under a federal officer or carry out a federal duty when it provided care to Ricardo Saldana. The PREP Act does not completely preempt the Saldanas' claims, and the possible preemption of one claim cannot be determined by this court or the district court. And there is no embedded federal question in the Saldanas' complaint. Thus, the district court lacked subject matter jurisdiction, and the suit was properly remanded to state court.</p>

<p>2/22/22</p>	<p><u>9th Circuit Keeps Nursing Home COVID-19 Lawsuit in State Court, Aligning With 3rd Circuit</u></p> <p>The U.S. Court of Appeals for the Ninth Circuit ruled that a COVID-19 wrongful death lawsuit against a nursing home belongs in state court.</p> <p>The Saldana family accused Glenhaven Healthcare (CA) of willful misconduct, in addition to wrongful death, negligence and elder abuse. The defense argued that the willful misconduct claim should be removed to federal court in the District of Columbia, while the others should be dismissed or resolved through the compensation fund. The judges wrote, “but finding that one claim may be preempted is different than finding that the ‘federal statutory scheme is so comprehensive that it entirely supplants state law causes of action’ (elder abuse, custodial negligence, and wrongful death). The judges also noted the federal officer removal statute did not apply because the nursing home was “merely following recommendations” from CMS, “not acting under the agency.”</p> <p><u>SUMMARY OF OPINION</u></p>
<p>2/23/22</p>	<p><u>LaMONICA V. HEIGHTS OF SUMMERLIN LLC</u> United States District Court, D. Nevada Remanded to State Court</p> <p>Overview of Order:</p> <ul style="list-style-type: none"> • LaMonica's claims primarily derive from state law and allege, inter alia, that Heights of Summerlin acted negligently in failing to establish and follow proper COVID-19 safety protocols and procedures. • Heights of Summerlin argues that this court's jurisdiction is proper because the PREP Act "completely preempts" all state tort claims against "covered persons" using "covered countermeasures." It argues that since LaMonica's claims hinge on the alleged failure to appropriately enforce COVID-19 safety protocols and procedures, the claims necessarily implicate the use (or non-use) of covered countermeasures—thus "axiomatically" triggering federal jurisdiction under the PREP Act. <p>The judge wrote, “Even assuming that Heights of Summerlin is a "covered person" under the statute and that the PREP Act enjoys "complete preemption" status, it is immaterial since LaMonica's state law tort claims do not include the alleged use of any "covered countermeasures" as defined under the Act—nor does Heights of Summerlin point to any such countermeasures in LaMonica's complaint.</p> <p>The court finds Heights of Summerlin's argument overbroad. The PREP Act's purpose is to shield entities from liability stemming from their administration of a covered countermeasure like a vaccine, not to shield them from liability for traditional state-law claims merely because the alleged actions occurred during a public health emergency.</p>

	<p>Referencing the Maglioli decision, the court joins "nearly every federal district court" in rejecting similar creative attempts to manufacture federal-court jurisdiction under the auspices of the PREP Act.</p> <p>Re: Federal Officer Jurisdiction: It is well established that a private firm's compliance (or noncompliance) with federal laws and regulations does not by itself fall within the scope of the phrase "acting under" a federal "official."</p>
<p>2/24/22</p>	<p>COVID wrongful death suit returned to state court in another nursing home setback</p> <p>The U.S. Court of Appeals for the Ninth Circuit Court rejected the argument that nursing homes' pandemic response and actions were covered under the PREP Act. The article notes some legal experts believe that the immunity provisions provided by the PREP Act cover claims in both federal and state courts and these rulings "shouldn't be too much cause for concern."</p>
<p>2/25/22</p>	<p>MARTIN V. FILART United States Court of Appeals, Ninth Circuit</p> <p>Plaintiffs appealed the district court's order remanding the case to state court, arguing federal jurisdiction on grounds of federal officer removal, complete preemption of state law and presence of an imbedded federal question.</p> <p>The Court of Appeals agrees with the district court. Remanded to state court.</p>
<p>2/28/22</p>	<p>Florida extends COVID-19 lawsuit protections for assisted living providers</p> <p>Florida Gov. Ron DeSantis signs the bill extending pandemic liability protections for AL, nursing homes, hospitals, and physicians through June 1, 2023.</p>
<p>3/10/22</p>	<p>MITCHELL V. ADVANCED HCS, L.L.C. United States Court of Appeals, Fifth Circuit</p> <p>Affirmed the District Court's decision and Remanded to State Court</p> <p>Regarding the PREP Act, the court noted, "Because the compensation fund created by the Act does not satisfy this Circuit's test for complete preemption, and because Mitchell could not have brought his claims under the willful-misconduct cause of action, those claims are not completely preempted. We therefore agree with the district court and affirm its holding." The court further noted that <i>Grable</i> does not apply, and that Wedgewood (Advanced HCS) does not fall under the federal officer removal statute.</p>

<p>3/11/22</p>	<p><u>Ninth Circuit Ruling Expands Nursing Home COVID-19 Venue Fight</u></p> <p>In regard to the <i>Saldana</i> ruling in the Ninth Circuit, attorneys from Quarles & Brady wrote that the decision was “a win for deceased nursing home residents’ families, since the Ninth Circuit is home to the second-largest number of nursing home residents in the country.”</p>
<p>3/15/22</p>	<p><u>Ninth Circuit Deviates from Third Circuit: Declines Removal Jurisdiction Based on PREP Act Even with Presence of Willful Misconduct Claims</u></p> <p>The Ninth Circuit ruled that claims of willful misconduct are not removable to federal court under the PREP Act. The Third Circuit ruling suggested otherwise. The article notes “One significant result of this ruling, especially if followed by other circuits, is that nursing homes may not see a significant reduction in the number of willful misconduct claims as was hoped following the Third Circuit's decision.”</p>
<p>3/22/22</p>	<p><u>WALSH V. SSC WESTCHESTER OPERATING COMPANY LLC</u> U.S. District Court, N.D. Illinois, Eastern Division</p> <p>Plaintiffs allege Westchester violated the Illinois Nursing Home Care Act by knowingly exposing residents to nursing staff who displayed symptoms or tested positive for COVID-19 and failing to implement policies to mitigate the spread and treat COVID-19 patients. They claim negligence and willful-and-wanton conduct in the deaths of their family members. The defendant argued that they are immunized from suit under the Illinois governor’s executive order and the PREP Act and filed a motion for judgement.</p> <p>Regarding immunity under the Illinois Executive Order, that provides partial civil immunity to nursing homes for deaths and injuries that occur with the nursing homes are “rendering assistance” in connection with COVID-19, the judge noted, “Whether the mere existence of policies amounts to “rendering assistance” requires factual development.” “Understanding the facts around the policies' role in patient care at Westchester's facilities would inform how Westchester's conduct applies to the executive order. That is reason enough to deny a motion for judgment on the pleadings.”</p> <p>With regard to the PREP Act, the plaintiffs allege that the deaths were caused by defendant’s <u>inaction</u>. The judge referred to similar cases where courts have considered whether the PREP Act covers claims of inaction, including <i>Maglioli</i>, <i>Ruiz</i> and <i>Dupervil</i>. Defendants argued that HHS Advisory Opinion 2021-01 states that non-use of covered countermeasures that is the result of “conscious decision-making” triggers immunity. The judge noted that this language was taken out of context, as the Opinion is discussing allocation of resources.</p> <p>The judge ruled the plaintiff can bring a willful-and-wanton conduct claim; defendant is not entitled to immunity under the PREP Act; and the current facts are not sufficiently developed to determine if the defendant has immunity under the governor’s executive order.</p>

<p>3/23/22</p>	<p>The PREP Act and COVID-19: Two Years Later Arnold & Porter provides an overview of the PREP Act and subsequent amendments and HHS Advisory Opinions.</p>
<p>3/27/22</p>	<p>Aided by many states, nursing homes fend off lawsuits filed by families over COVID deaths USA Today article</p>
<p>3/31/22</p>	<p>PEREZ EX REL. ESTATE OF LOZANO V. SOUTHEAST SNF, L.L.C. United States Court of Appeals, Fifth Circuit</p> <p>The Fifth Circuit affirmed the District Court’s remand to state court.</p> <p>Southeast SNF had argued the cases should be in federal court based on 1) federal-officer removal, 2) complete preemption of state law claims under the PREP Act, and 3) the <i>Grable</i> doctrine.</p> <p>As to the federal officer removal, the Court noted Southeast failed to “convince us that such conditions and guidance were more than a ‘difference in the degree of regulatory detail.’”</p> <p>Regarding the PREP Act, the Fifth Circuit “determined in <i>Mitchell v. Advanced HCS, L.L.C.</i> that the PREP Act ‘does not completely preempt...state-law negligence claims.’” Further, the compensation fund created by the PREP Act provides no cause of action to supersede state law claims.</p>
<p>3/31/22</p>	<p>MASSAMORE V. RBRC, INC. United States District Court, W.D. Kentucky, Paducah Division</p> <p>Remanded to state court.</p> <p>The decision states that the “Defendants haven’t identified any federal appellate or incircuit district-court decision holding that the PREP Act, enacted in 2005, completely preempts state-law wrongful-death claims. The court noted the plaintiff’s “wrongful-death claims aren’t completely preempted because they alleged negligence, not willful misconduct.” The court references the recent Circuit Court decisions (<i>Mitchell</i>, Fifth Circuit, <i>Maglioli</i>, Third Circuit and <i>Saldana</i>, Ninth Circuit.)</p> <p>The court notes that the Complaint alleges that “... the nursing home was aware of the risk associated with Covid-19 because it “shut down its facility to outside visitors due to the coronavirus outbreak.” This alleges unreasonable conduct in the face of a known risk, not the willful creation of a risk.”</p> <p>In addition, the court stated that Advisory Opinion 21-01 by HHS is “not entitled to this Court’s deference” and “doesn’t come close to carrying the force or effect of law.” Further,</p>

	<p>“...the PREP Act supplies Defendants with (at most) a defense they may assert in state court, not a ticket to federal court.”</p> <p>The court also found the Defendants did not act under federal officer removal.</p>
<p>4/13/22</p>	<p>The PREP Act and COVID-19, Part 1: Statutory Authority to Limit Liability for Medical Countermeasures</p> <p>The PREP Act and COVID-19, Part 2: The PREP Act Declaration for COVID-19 Countermeasures</p> <p>The Congressional Research Service prepared a two-part Legal Sidebar for members and committees of Congress. Part 1 reviews the statutory structure of the PREP Act and provides an overview of Countermeasures Injury Compensation Program. Part 2 reviews the HHS Declaration related to the COVID-19 pandemic to explain the scope of the PREP Act’s liability immunity as it applies to COVID-19 countermeasures.</p>
<p>4/14/22</p>	<p>KOVACS V. MEK ORWOOD PINES, LLC</p> <p>United States District Court, E.D. California</p> <p>Remanded to state court.</p> <p>Defendants requested removal on the grounds that subject matter jurisdiction exists based on 1) the Federal Officer Removal Statute, 2) the PREP Act, and 3) existence of an embedded federal question.</p> <p>The judge rejected the removal referencing the Ninth Circuit’s decisions in <i>Saldana v. Glenhaven Healthcare</i> and <i>Martin v. Filart</i>.</p>
<p>4/14/22</p>	<p>WIMBERLY V. MONTEFIORE</p> <p>United States District Court, N.D. Ohio, Eastern Division</p> <p>Remanded to state court</p> <p>The court found Wimberly’s claims fall outside the PREP Act “because Wimberly does not assert that her mother's death was "caused by, arose out of, related to, or resulted from" the "administration" or "use" of the identified "covered countermeasures." ...First, to the extent Wimberly's claims are based on Defendants' failure to provide appropriate infection control and prevention measures, including by failing to provide medical services, provide appropriate staffing, and establish protocols and policies, as well as care standards for physicians and nurses, such claims fall outside the scope of the PREP Act... Policies, procedures, protocols, and staffing assignments are not covered countermeasures. ...Second, Wimberly's claims are based on Defendants' inaction, not the "administration" or "use" of covered countermeasures. The Secretary defines "administration" of a covered countermeasure to mean the "physical provision of the countermeasures to recipients."</p>

	<p>...Here, the crux of Wimberly's claims is that her mother died because Defendants <i>failed</i> to take reasonable steps to protect her mother, and other residents, by implementing infection control and prevention policies and procedures. Defendants' failure to act cannot be construed to be administration — i.e., physical provision — of any kind of covered countermeasure. ...Moreover, falsifying COVID-19 test results is not the "administration" or "use" of a covered countermeasure.</p>
4/14/22	<p>ESTATE OF SPRING V. MONTEFIORE United States District Court, N.D. Ohio, Eastern Division</p> <p>Remanded to state court</p> <p>The court found the claims do not fall under the PREP Act.</p>
4/14/22	<p>BURRIS V. MONTEFIORE United States District Court, N.D. Ohio, Eastern Division</p> <p>Remanded to state court</p> <p>The court found the claims do not fall under the PREP Act.</p>
4/21/22	<p>BRANCH V. LILAC HOLDINGS, LLC United States District Court, S.D. California</p> <p>Remanded to state court</p> <p>The defendant removed the action to federal court in April 2021 and the plaintiff did not challenge the removal. The case was dismissed in April 2021 and final judgement was entered in June 2021. However, the court agreed to now consider the plaintiff's motion challenging subject matter jurisdiction "in light of the recent Ninth Circuit decision, <i>Saldana v. Glenhaven...</i>"</p>
5/9/22	<p>Covid-Related Nursing Home Lawsuits to 'Skyrocket' With Protections on Shaky Ground</p> <p>Attorneys note there have been 700-800 Covid-related lawsuits filed in the health care industry, which includes skilled nursing. New York and Illinois are leading the way.</p>
5/26/22	<p>TESTA V. BROOMALL OPERATING COMPANY United States District Court, E.D. Pennsylvania</p> <p>Motion to remand denied due to diversity of jurisdiction and the amount in controversy exceeds \$75,000.</p>

<p>5/31/22</p>	<p><u>BARREIRO V. AG REDLANDS LLC</u> United States District Court, C.D. California</p> <p>Remanded to State Court</p> <p>The District Judge noted, “Courts within this District have decided nearly two dozen cases concerning federal jurisdiction under the PREP Act in cases—like this one— that involve wrongful death and negligence claims arising from the COVID-19 death of a skilled nursing facility resident. Every court in this District that has considered a remand under Defendants’ theories, except for one, has held that federal courts lack jurisdiction, therefore making removal improper and mandating remand.” Further, “Except for <i>Garcia</i>, those rulings are consistent with the conclusions of district courts nationwide in legally identical cases.” Concluding, “The wide consensus in this District regarding the absence of federal jurisdiction under the PREP Act is resounding.”</p>
<p>6/1/22</p>	<p><u>Defending Against COVID-19 Liability Claims</u> <i>Provider Magazine - Long Term & Post-Acute Care</i></p> <p>The author discusses how the PREP Act, and some state protections, can assist nursing centers in defending against COVID-19 cases. He notes that federal courts have largely found that state courts should decide these cases. Further, facilities must be prepared to measure their performance against standards of care that were in place at the time of the alleged event.</p>
<p>6/8/22</p>	<p><u>WHITEHEAD V. PINE HAVE OPERATING LLC</u> Supreme Court, Columbia County, New York</p> <p>Court granted Defendant’s motion to dismiss under the cause of action for negligence per se (Third Cause of Action) but denied the motion to dismiss under PREP Act immunity provisions and immunity under the Governor of New York’s Temporary Executive Order.</p>
<p>6/15/22</p>	<p><u>MARTIN V. PETERSEN HEALTH OPERATIONS, LLC</u> United States Court of Appeals, Seventh Circuit</p> <p>Remanded to state court. The Circuit Judge, referencing the other appellate court rulings and over 80 district court decisions, indicated that the defendants failed to meet the federal officer removal standard, preemption under the PREP Act, and the conditions for federal jurisdiction under <i>Grable</i>.</p>

<p>6/21/22</p>	<p><u>RIVERA V. EASTCHESTER REHABILITATION AND HEALTH CARE LLC</u> United States District Court, S.D. New York</p> <p>The court granted the plaintiff’s motion to remand to state court, noting “The Third, Fifth, Seventh, and Ninth Circuits, as well as <i>dozens</i> of district courts across the country — including many in this Circuit — have already addressed the same arguments about the preemption under PREP Act, the federal officer removal statute, and the <i>Grable</i> doctrine in the context of the COVID-19 pandemic and the <i>overwhelming</i> consensus is that none of these confer jurisdiction over state law claims like Plaintiff’s.” Further, the judge indicated that the Defendant was relying on <i>Garcia v. Welltower</i>, which was “obviously wrongly decided” as the reasoning in that decision was overruled by the Ninth Circuit in the <i>Saldana</i> case.</p>
<p>6/22/22</p>	<p><u>ARBOR MANAGEMENT SERVICES, LLC V. HENDRIX</u> Court of Appeals of Georgia, Third Division</p> <p>The court ruled that the plaintiff’s claims are not predicated on the use or non-use of a “covered countermeasure”, rather on allegedly wrongful conduct in relation to visitation, staffing, recreation, and socialization. Therefore, this court agreed with the trial court ruling that the action falls outside the scope of PREP Act immunity and preemptive effect. However, the court noted that the “amended complaint does not set out a factual basis for a claim of gross negligence or willful misconduct sufficient to overcome the immunity provided for in the GCPBSA” (Georgia COVID-19 Pandemic Business Safety Act). Based on the Georgia law, the Appeals Court determined the trial court erred by denying AMS’s motion to dismiss.</p>
<p>6/24/22</p>	<p><u>CRISEL V. STEARNS NURSING AND REHABILITATION CENTER</u> United States District Court, S.D. Illinois</p> <p>Case remanded to state court. The judge’s discussion focused on the recent decision in the Seventh Circuit Court.</p>
<p>6/27/22</p>	<p><u>ESTATE OF MARTINEAU V. COUNTRY VILLA ASSISTED LIVING IN PULASKI, INC.</u> United States District Court, E.D. Wisconsin</p> <p>Remanded to state court. The judge noted, “Bound by Seventh Circuit precedent, and further persuaded by the reasoning of the Third, Fifth, and Ninth Circuits, the Court reaches the same conclusion here: Plaintiffs’ state law claims are not preempted because they could not have brought their claims under the PREP Act’s cause of action for willful misconduct.”</p>
<p>7/7/22</p>	<p><u>MANYWEATHER EX REL. MCGRAW V. WOODLAWN MANOR, INC.</u> United States Court of Appeals, Fifth Circuit</p> <p>The plaintiffs framed their suit as a “wrongful death, loss of chance of survival, and survival action,” and asserted that Woodlawn’s negligence or gross negligence caused their mother’s</p>

	<p>death. Woodlawn removed to federal court asserting in part that the PREP Act preempted the claims and immunized them from liability for its pandemic response.</p> <p>The judge notes, “We already have decided that the PREP Act does not preempt state-law negligence claims. Yet those are what our plaintiffs pleaded. Those claims cannot confer original federal jurisdiction.” The judge noted that <i>Mitchell v. Advanced HCS</i> presented almost identical facts.</p> <p>Woodlawn asserted that the plaintiffs also pleaded a willful-misconduct claim, so the action could be transferred to the federal district court for the District of Columbia. The judge disagreed, noting the plaintiffs’ claims do not include the strictly defined willful misconduct under the PREP Act.</p> <p>The judge also noted that they plaintiffs asserted that Woodlawn’s <i>failure</i> to administer or use countermeasures caused their mother’s death, not the use of a countermeasure as stated in the PREP Act.</p> <p>The opinion further states, “None of that means that Woodlawn is not entitled to immunity under the PREP Act. It may be; the state court will have the option to decide that question on remand.”</p>
<p>7/18/22</p>	<p><u>CARRE V. ALLIANCE HC 11 LLC</u> United States District Court, D. New Jersey</p> <p>Remanded to state court. The District Judge noted that the Defendants in this case had previously removed a complaint asserting the same set of facts and negligence and wrongful death claims in <i>Maglioli v. Alliance HC Holdings LLC</i> in the Third Circuit Court. The District Judge reiterated the points in the Third Circuit decision rejecting the PREP Act preemption as well as federal-question and federal-officer theories of removal.</p>
<p>7/19/22</p>	<p><u>ROEDER V. POLOVITCH</u> United States District Court, E.D. Pennsylvania</p> <p>Allegations: The Plaintiff’s husband was injured, and eventually died shortly after he received his first COVID-19 vaccination at a store pharmacy. The Defendant instructed the Plaintiff’s husband to stay in the store for fifteen minutes but said he could use the restroom and shop around the store. The Defendant did not instruct the husband to lie down or stay seated in the pharmacy area according to CDC guidelines. The husband was found unconscious in the restroom, was taken to the emergency department, and put into a medically induced coma. He died seven months later.</p> <p>Defendants argue the PREP Act completely preempts Plaintiff’s state law claims and raises federal issues. The judge noted the Plaintiff’s allegations are negligence, not willful misconduct, therefore the claims do not fall within the PREP Act’s scope. The judge also concluded the claims do not meet the “<i>Grable</i> test” for federal jurisdiction.</p>

<p>7/27/22</p>	<p>STORMENT V. WALGREEN, CO. United States District Court, D. New Mexico</p> <p>Plaintiff’s Complaint Dismissed with Prejudice. Plaintiff alleged negligence due to injuries she sustained from becoming dizzy and falling in a Walgreens’ parking lot after receiving a COVID-19 vaccination. Defendant argues immunity under the PREP Act. The court discusses the Covered Countermeasure Process Fund that was created to compensate eligible individuals for covered injuries directly caused by the administration or use of a covered countermeasure. It was noted there are numerous claims pending with the CICP based on fainting following a COVID-19 vaccination. The judge notes the “Plaintiff’s injuries actually resulted from administration of the COVID-19 vaccine. The PREP Act therefore applies.”</p> <p>New Mexico Federal Court Makes the PREP Act Right Again Reed Smith LLP review of the <i>Storment v. Walgreen, Co.</i> opinion.</p>
<p>8/2/22</p>	<p>FDA Allows Pharmacists to Prescribe the COVID-19 Antiviral Paxlovid</p> <p>In July, the FDA revised its emergency use authorization (EUA) to all pharmacists to prescribe Paxlovid to allow quicker and easier access for patients. Under the PREP Act, pharmacists have also had authorization to administer COVID-19 tests and vaccines. Under the EUA, pharmacists must 1) determine if a patient is at high risk, 2) have “sufficient information”, 3) assess drug interactions, 4) have proper recordkeeping, 5) follow FDA reporting requirements, 6) keep up to date with authorizations and 7) review the FDA fact sheet for health care providers.</p>
<p>8/4/22</p>	<p>Citing Dismissal Of Underlying Suit, 2nd Circuit Tosses COVID Death Suit Appeal</p> <p>Defendant’s motion to dismiss was granted as the plaintiff discontinued the original state court action until he was appointed estate administrator. The Second Circuit panel stated, “that because Dupervil ‘voluntarily’ dismissed the underlying suit in state court, the Second Circuit ‘can no longer order any effective relief.’”</p>
<p>8/5/22</p>	<p>CANNON V. WATERMARK RETIREMENT COMMUNITIES, INC. United States Court of Appeals, District of Columbia Circuit</p> <p>In two separate cases (<i>Cannon v. Watermark</i> and <i>Beaty v. Fair Acres Geriatric Center and Delaware County</i>) in the U.S. District Court in E.D. Pennsylvania defendants’ motions to dismiss based on PREP Act immunity were denied. Defendants invoked a provision of the PREP Act [paragraph €(10)] that claims this court has jurisdiction over these appeals. The court notes “They are mistaken... It does not authorize interlocutory appeals from orders otherwise allowing claims over objections from defendants that they are immunized by the Act. We accordingly lack jurisdiction and dismiss both appeals.”</p>

<p>8/9/22</p>	<p><u>Appeals court declines to hear COVID-19 wrongful death lawsuits under federal immunity protection law</u></p> <p>In two Pennsylvania cases, “the circuit court was asked to review decisions that denied motions to dismiss due to the PREP Act immunity. The circuit court noted that appeals from the District Court for the Eastern District of Pennsylvania typically are heard by the 3rd Circuit, not the D.C. Circuit. The D.C. Circuit court found that it lacked jurisdiction and dismissed both appeals.”</p>
<p>8/10/22</p>	<p><u>All COVID-19 Nursing Home Cases Pending in New York State Courts to be Transferred to Coordinated Proceedings</u></p> <p>New York’s Litigation Coordinating Panel determined that cases against nursing homes and similar facilities will be coordinated for pre-trial proceedings before a single judge. The venue has yet to be determined. Several NY state cases which cited the PREP Act were remanded to state court and are now pending appeal in the Second Circuit Court of Appeals.</p>
<p>8/17/22</p>	<p><u>What happens in NC now that the COVID state of emergency has expired</u></p> <p>The COVID-19 state of emergency in North Carolina expired August 15, 2022. NC’s state of emergency went beyond the PREP Act and shielded workers from lawsuits that could arise from inadequate staffing or supplies.</p>
<p>8/18/22</p>	<p><u>Senior living provider cites federal immunity protections in COVID-related lawsuit</u></p> <p>Benchmark Senior Living in New Hampshire filed a motion with the US District Court in Concord, NH arguing that the case brought by a family alleging their facility did not follow CDC guidelines for infection control and prevention, should be moved to federal court under the PREP Act. In 2021, New Hampshire passed a law protecting health care facilities from liability because of attempts to comply with emergency orders related to COVID-19.</p>
<p>8/18/22</p>	<p><u>TESTA v. BROOMALL OPERATING COMPANY, L.P.</u></p> <p>The District Court judge denied the defendant’s motion to dismiss, noting that the PREP Act does not immunize the defendant from liability nor are the plaintiff’s claims preempted by the PREP Act. The judge indicated that all the claims related to the <u>non-use</u> of covered countermeasures, therefore the immunity does not apply. Further, the plaintiff brought state law negligence and wrongful death claims, specifically not willful misconduct, which would be preempted by the PREP Act.</p>

<p>9/9/22</p>	<p>Nursing Home Death Suit Could Put PREP Act Before Supreme Court Glenhaven Healthcare in California has asked the US Supreme Court to consider taking up the Saldana case, contending the claims are completely preempted by the PREP Act. The 9th Circuit upheld the decision to keep the case in state court.</p>
<p>9/12/22</p>	<p>U.S. Supreme Court may consider nursing home’s COVID-19 immunity appeal McKnights reports that if SCOTUS grants the petition from Glenhaven, it could decide “once and for all” whether all such cases covered by the PREP Act will be decided at the federal or state level. Drew Graham of Hall, Booth, Smith noted “...resolving the question of the proper court for these cases is important to providing clarity for our healthcare providers involved in the emergency response to COVID-19.</p>
<p>9/15/22</p>	<p>Legal Foundation Argues for Cert of PREP Act Preemption in COVID Death Suit The Atlantic Legal Foundation filed an amicus curiae brief with the U.S. Supreme Court in support of Glenhaven’s writ of certiorari, arguing that “removing COVID-19 wrongful death and personal injury suits to federal court under the PREP Act is essential to prevent health care workers from being ‘deterred from volunteering for essential, frontline duty during public health emergencies’ if they are at risk for liability in state courts.”</p>
<p>9/21/22</p>	<p>2022 Supreme Court Preview AARP reviews healthcare issues which may be considered by the Supreme Court, including the Patient Protection and Affordable Care Act (ACA) and COVID-19 and Immunity under the PREP Act.</p>
<p>10/3/22</p>	<p>AHA, others urge Supreme Court to review PREP Act immunity case Several organizations provided an Amicus Brief urging the Supreme Court to review the 9th Circuit decision holding the PREP Act does not provide complete immunity.</p>
<p>10/6/22</p>	<p>3 Nursing Home Legal Issues to Watch in 2022 and Beyond Staffing mandates, changes in temporary programs during the PHE, and the issue of PREP Act immunity are challenges facing the long-term care industry.</p>
<p>10/10/22</p>	<p>A Federal District Court Judge Ruled that a Nursing Home Cannot Use the Public Readiness and Emergency Preparedness Act as Shield from COVID Liability The court agreed with the plaintiff that the PREP Act does not provide immunity to the facility in Pennsylvania as the defendant failed to use a covered countermeasure.</p>

10/13/22	<p><u>Court Allows COVID-19 Negligence Claim to Proceed Against Long-Term Care Facility</u></p> <p>The U.S. District Court for the Eastern District of Pennsylvania determined the PREP Act and the Pennsylvania emergency management services code (PEMSC) do not immunize nursing homes from negligence claims. The nursing home argued the PREP Act shielded it from liability due to the HHS advisory opinion that a facility’s decision to not use a covered countermeasure fell with the scope of the PREP Act. The court noted the HHS advisory opinion is not binding on a federal court.</p>
10/21/22	<p><u>COVID Lawsuit Have Arrived: Which Doctors Are at Risk?</u></p> <p>A September report indicates 245 claims with patients having confirmed or suspected COVID have been filed since the beginning of the pandemic, with most allegation relating to delay in treatment or diagnosis. LTC facilities and hospitals face the most claims, followed by emergency medicine, primary care, and ob/gyn. Many COVID related claims against physicians include allegations of gross negligence and/or combine with allegations unrelated to the pandemic in order to avoid application of PREP Act or state immunity.</p>
10/22/22	<p><u>Heirs Ask High Court To Deny Review OF PREP Act Preemption in COVID Death Suit</u></p> <p>On October 18, a respondents’ brief was filed by the heirs of Ricardo Saldana in opposition to Glenhaven Healthcare’s petition for a writ of certiorari. They noted that state-law claims should be remanded to state court because complete preemption does not exist under the PREP Act. In February 2022, the Ninth Circuit panel determined Glenhaven failed to substantiate its claims that it was authorized to act for a federal officer and that the PREP Act did not completely preempt state law claims.</p> <p>The question presented by Glenhaven before the court is “Does the PREP Act completely preempt state-law claims against a covered person relating to the administration or use of a covered countermeasure, such that the claims may be removed to a federal court?”</p>
10/28/22	<p><u>Federal COVID cases with Major LTC implications headed for November action</u></p> <p>Oral arguments are schedule in the Ninth Circuit on November 15, 2022, in the <i>Garcia</i> case, currently the only case currently on appeal at the federal level. Also, in November there is potential that the U.S. Supreme Court will take up a case from Glenhaven Healthcare.</p>
10/28/22	<p><u>Care Home Seeks 9th Circuit Reversal in Row Over PREP Act Preemption in COVID Suit</u></p> <p>P&M Healthcare Holdings, Inc. filed its opening brief with the Ninth Circuit U.S. Court of Appeals seeking reversal of a district court’s remand to state court of a COVID death suit filed against the nursing home. They assert that tort law claims related to measures used to prevent the spread of COVID are completely preempted by the PREP Act.</p>

<p>10/28/22</p>	<p><u>Communication, documentation key in COVID litigation defense, legal experts say</u> Legal experts speaking at the LeadingAge Annual Meeting recommended providers review and update their policies, maintain a heightened focus on quality and safety, and document everything.</p>
<p>11/21/22</p>	<p><u>U.S. Supreme Court rebuffs dispute over nursing home COVID suits</u> The U.S. Supreme Court declined to hear California nursing home operator Glenhaven Healthcare’s bid to avoid a lawsuit filed in state court over the COVID-19 death of a resident.</p>
<p>11/22/22</p>	<p><u>SCOTUS denies nursing home petition – keeping COVID care cases out of federal court – for now</u> The U.S. Supreme Court announced it will not take up the case of <i>Saldana v Glenhaven Healthcare</i> without comment. As a result, lawsuits against nursing homes for allegedly improper treatment of residents during the pandemic will most likely be heard in state courts. Some attorneys note that future cases moving through the courts of appeals may be situated for consideration by the Supreme Court.</p>
<p>11/22/22</p>	<p><u>SCOTUS Decision in Nursing Home PREP Act Suit Slings Case Back to State Court</u> The U.S. Supreme Court declined to hear the bid from Glenhaven to avoid a lawsuit under federal immunity provisions under the PREP Act. Attorneys for the provider hoped that SCOTUS could have provided guidance to state courts about applying the immunities. Also on November 21, the 9th Circuit remanded the <i>Garcia v. Welltower</i> case back to district court to determine if there is alternative ground for state jurisdiction. There are approximately 50 other COVID wrongful death cases in the 9th Circuit, which attorneys for the plaintiffs believe will end up in state court. Most state statutes of limitations are two years, so it is unlikely there will be “a flood” of additional COVID nursing home cases.</p>
<p>11/30/22</p>	<p><u>COVID-19 PREP Act Litigation: The Tip Of The Liability Iceberg</u> The author suggests that cases may be filed beyond the long-term care sector to include biopharmaceutical manufacturers, distributors, pharmacies, and other providers along the COVID-19 supply chain.</p>
<p>12/4/22</p>	<p><u>An analysis of PREP Act immunity for LTC facilities</u> The author notes that the recent Supreme Court decision to pass on <i>Saldana</i> will force more cases to be heard in state court and the split in the various federal courts will remain.</p>

<p>12/12/22</p>	<p><u>SHUMLAI v. GLAD INVESTMENTS, INC.</u> U.S. District Court, E.D. California. The judge noted, “defendant Eretz [Eretz Chico Properties, LLC] has had several opportunities to substantively address why it believes the <i>Saldana</i> decision does not require remand of this action. Despite those opportunities, and despite the court's orders to show cause explicitly directing defendant Eretz to address that question, defendant Eretz has refused to do so and instead has unnecessarily wasted the limited judicial resources of this court.”</p>
<p>12/13/22</p>	<p><u>COWEN v. WALGREEN CO.</u> (N.D. Oklahoma) (This is not a long-term care case.) Plaintiff alleges she requested a flu vaccination from Walgreens but was administered a COVID-19 vaccine without her knowledge or consent. Walgreens contends the claims are barred by the immunity provided under the PREP Act. The plaintiff did not allege death, serious physical injury nor willful misconduct by Walgreens. The court noted “...Plaintiff’s injuries actually resulted from administration of the COVID-19 vaccine. The PREP Act therefore applies.” Walgreens motion to dismiss was granted.</p>
<p>12/19/22</p>	<p><u>COLEMAN v. INTENSIVE SPECIALITY HOSPITAL, LLC</u> (W.D. Louisiana, Shreveport Division) The judge denied the defendant’s motion for complete preemption. The plaintiffs’ claims are categorized as 1) “failure to act to provide treatment as ordered” and 2) “failure to adhere to standard of care interventions for prevention of Covid 19.” The Court notes the defendant “cannot assert PREP Act immunity for failure to administer the ordered respiratory treatment.” Further, Plaintiffs allege ISH failed to take any action to prevent the decedent, or other patients, from contracting Covid 19. Defendant argued HHS’ Fourth Amendment to the Declaration and Advisory Opinion relating to “inaction” applies, however, the judge notes “further allegations establishing a causal connection between the inaction and the resulting harm are necessary to implicate the PREP Act. ISH’s Motion to Dismiss was denied.</p>
<p>12/21/22</p>	<p><u>25 governors call on feds to ‘move on’ from pandemic, end COVID-19 public health emergency</u> The coalition of governors is asking that the PHE be allowed to expire in April 2023, which could impact telehealth, staff training waivers and potential PREP Act protections.</p>
<p>1/9/23</p>	<p>In a recent <u>McKnights podcast</u>, Drew Graham of Hall Booth Smith and Tara Clayton of Marsh discuss the impact of the Supreme Court’s decision not to intervene in PREP Act cases at this time and how the end of the PHE will impact COVID lawsuits.</p>



PREP Act – Long Term Care

Links to Additional District Court Cases (October 2021 – Early January 2023)

Case	State/Status
<u>APONTE V. OUR LADY OF CONSOLATION NURSING AND REHABILITATIVE CARE CENTER</u> (December 22, 2022)	E.D. New York Remanded to State Court
<u>DRUCKMAN V. MORNINGSIDE ACQUISITION I, LLC</u> (November 30, 2022)	S.D. New York Remanded to State Court
<u>CARRE V. ALLIANCE HC II LLC</u> (November 28, 2022)	D. New Jersey Denied Defendants’ Motion to Stay Remand
<u>FISHER V. ROME CENTER LLC</u> (November 15, 2022)	N.D. New York Remanded to State Court
<u>PRATT V. JACC HEALTHCARE CENTER OF NORWICH LLC</u> (November 10, 2022)	Connecticut Remanded to State Court
<u>IANNUZZELLI V. ALLIANCE HC 11 LLC</u> (November 8, 2022)	New Jersey Remanded to State Court
<u>FELICIANO V. WAYNE CENTER FOR NURSING AND REHABILITATION LLC</u> (November 2, 2022)	S.D. New York Remanded to State Court
<u>LAYNE V. ESPLANADE GARDENS SENIOR, INC.</u> (October 24, 2022)	W.D. Texas, San Antonio Defendant’s Motion to Dismiss Denied
<u>CONSTANTINE V. TRESTLES LLC</u> (October 6, 2022)	E.D. California Remanded to State Court
<u>MOORE V. COVENANT LIVING WEST</u> (October 4, 2022)	E.D. California Order continuing stay pending Supreme Court action in Saldana
<u>LEVERT V. MONTEFIORE HOME</u> (September 30, 2022) Allegations include falsifying COVID-19 test results.	N.D. Ohio, Eastern Division Remanded to State Court
<u>HUERTA V. COVINA CARE CENTER, INC.</u> (September 29, 2022) Allegations include COVID vaccine adverse reaction.	C.D. California Remanded to State Court
<u>SANTUCCI V. BALBOA HEALTHCARE, INC.</u> (September 29, 2022)	S.D. California Remanded to State Court

<u>NEMETH V. MONTEFIORE</u> (September 21, 2022)	N.D. Ohio, Eastern Division
<u>MILAN EX REL. BOYD V. SHENANGO PRESBYTERIAN SENIORCARE</u> (August 23, 2022)	W.D. Pennsylvania Remanded to State Court
<u>GERBER V. FOREST VIEW CENTER</u> (August 22, 2022)	E.D. New York Remanded to State Court
<u>KROL V. COTTAGES AT GARDEN GROVE</u> (August 22, 2022)	N.D. New York Remanded to State Court
<u>DeANGELO V. ARTIS SENIOR LIVING OF ELMHURST, LLC</u> (August 15, 2022)	N.D. Illinois, Eastern Division Remanded to State Court
<u>PALMA V. CABRINI OF WESTCHESTER</u> (August 15, 2022)	S.D. New York Remanded to State Court
<u>MARTINEZ V. NOVATO HEALTHCARE CENTER, LLC</u> (July 28, 2022)	N.D. California Remanded to State Court
<u>MORRA V. 700 MARVEL ROAD OPERATIONS, LLC</u> (July 25, 2022)	D. Delaware Remanded to State Court
<u>ZALMAN V. WINDSOR VALLEJO CARE CENTER, LLC</u> (July 22, 2022)	E.D. California Remanded to State Court
<u>CAGLE v. NHC HealthCARE-MARYLAND HEIGHTS, LLC</u> (July 20, 2022)	E.D. Missouri, Eastern Division Remanded to State Court
<u>RANIERI V. PROVIDENCE REST NURSING HOME</u> (July 19, 2022)	S.D. New York Remanded to State Court
<u>WESTBROOK V. SAN PABLO HEALTHCARE & WELLNESS CENTER</u> (June 9, 2022)	N.D. California Remanded to State Court
<u>BATTISTA V. BROOMALL OPERATING COMPANY</u> (June 1, 2022)	E.D. Pennsylvania Remanded to State Court
<u>STENSON V. LODI SKILLED NURSING SERVICES INC.</u> (May 20, 2022)	E.D. California Remanded to State Court
<u>ESCOBAR V. MERCY MEDICAL CENTER</u> (March 7, 2022)	E.D. New York Remanded to State Court

<u>OLMES V. SAN MARINO GARDENS WELLNESS CENTER</u> (March 4, 2022)	C.D. California Remanded to State Court
<u>LaMONICA V. HEIGHTS OF SUMMERLIN LLC</u> (February 23, 2022) <i>*See notes in Update</i>	Nevada Remanded to State Court
<u>CRUPI V. HEIGHTS OF SUMMERLIN, LLC</u> (February 17, 2022) <i>*See notes in Update</i>	Nevada Remanded to State Court
<u>O'NEAL V. CF WATSONVILLE WEST LLC</u> (February 11, 2022)	N.D. California Remanded to State Court
<u>RAMIREZ V. WINDSOR CARE CENTER NATIONAL CITY, INC.</u> (February 9, 2022)	S.D. California Remanded to State Court
<u>ROSEN V. MONTEFIORE</u> (January 31, 2022) <i>*See notes in Update</i>	Ohio Remanded to State Court
<u>SHANKLE V. HEIGHTS OF SUMMERLIN, LLC</u> (January 31, 2022)	Nevada Order Denying Motion to Stay Order Remanding Case back to State Court
<u>DGONZALEZ V. CF WATSONVILLE WEST, LLC</u> (January 26, 2022)	N.D. California Remanded to State Court
<u>PIROTTE V. HCP PRAIRIE VILLAGE KS OPCO LLC</u> (January 20, 2022) <i>*See notes in Update</i>	Kansas Remanded to State Court
<u>HANSEN V. BRANDYWINE NURSING AND REHABILITATION CENTER, INC.</u> (January 19, 2022)	Delaware Remanded to State Court
<u>KULHANEK V. PENASQUITOS</u> (January 13, 2022) <i>*See notes in Update</i>	California Remanded to State Court
<u>BOYLE V. MEYER</u> (December 20, 2021) Defendant is a physical therapist	Pennsylvania Remanded to State Court
<u>GONZALEZ V. REDWOOD SPRINGS HEALTHCARE CENTER</u> <u>KANE V IXIA HOLDINGS, LLC</u> (December 15, 2021)	California Cases are stayed pending Ninth Circuit ruling on <i>Saldana v. Glenhaven</i>

<p><u>SEGAL V. SUNRAY HEALTHCARE CENTER</u> (December 12, 2021)</p>	<p>California Remanded to State Court</p>
<p><u>HEREFORD V. BROOMALL OPERATING COMPANY</u> (December 9, 2021)</p>	<p>Pennsylvania Remanded to State Court</p>
<p><u>OSTRANDER V. THE HEIGHTS OF SUMMERLIN, LLC</u> <u>SMITH V. THE HEIGHTS OF SUMMERLIN, LLC</u> <u>SHANKLE V. THE HEIGHTS OF SUMMERLIN, LLC</u> December 1, 2021</p>	<p>Nevada Remanded to State Court</p>
<p><u>SORACE V. ORINDA CARE CENTER, LLC</u> November 9, 2021</p>	<p>California Remanded to State Court</p>
<p><u>THOMAS V. CANTEX HEALTH CARE CENTERS III LLC</u> November 4, 2021</p>	<p>Texas Remanded to State Court</p>
<p><u>HOLMAN v. KNOLLWOOD NURSING HOME, LLC</u> (October 22, 2021) <u>United States District Court, S.D. Alabama, Southern Division. <i>Civil</i></u></p>	<p>Alabama Remanded to State Court</p>
<p><u>HIE v. LA MIRADA HEALTHCARE, LLC</u> (October 20, 2021) <u>United States District Court, C.D. California.</u></p>	<p>California Remanded to State Court</p>
<p><u>RIVERA-ZAYAS v. OUR LADY OF CONSOLATION GERIATRIC CARE CENTER</u> (October 12, 2021) <u>United States District Court, E.D. New York.</u></p>	<p>New York Defendants appealed, sought a stay of the remand. Stay denied.</p>
<p><u>LAWLER v. CEDAR OPERATIONS, LLC</u> (October 7, 2021) <u>United States District Court, C.D. California, Eastern Division.</u></p>	<p>California Remanded to State Court</p>
<p><u>OSSOWSKI v. ST. JOSEPH TRANSITIONAL REHABILITATION CENTER, LLC</u> (October 6, 2021) <u>United States District Court, D. Nevada.</u></p>	<p>Nevada Remanded to State Court</p>
<p><u>EATON v. MANOR</u> (October 5, 2021) <u>United States District Court, W.D. Louisiana, Monroe Division.</u></p>	<p>Louisiana Remanded to State Court</p>



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