



ALFA International
THE GLOBAL LEGAL NETWORK

2022 Workers' Compensation Seminar

March 23-25, 2022

COVID-19 UNPLUGGED

Jeff Laudenbach

Moderator

GERMAN, GALLAGHER & MURTAGH, P.C.

Philadelphia, Pennsylvania

laudenbachj@ggmfirm.com

Meredith Rainey

MORRISON MAHONEY LLP

Boston, Massachusetts

mrainey@morrisonmahoney.com



ALFA International
THE GLOBAL LEGAL NETWORK

Workers' Compensation in the **GARDEN** OF **GOOD**, AND **EVIL**?

ALFA INTERNATIONAL 2022 WORKERS' COMPENSATION SEMINAR

MARCH 23-25, 2022

JW MARRIOTT PLANT RIVERSIDE DISTRICT

SAVANNAH, GEORGIA

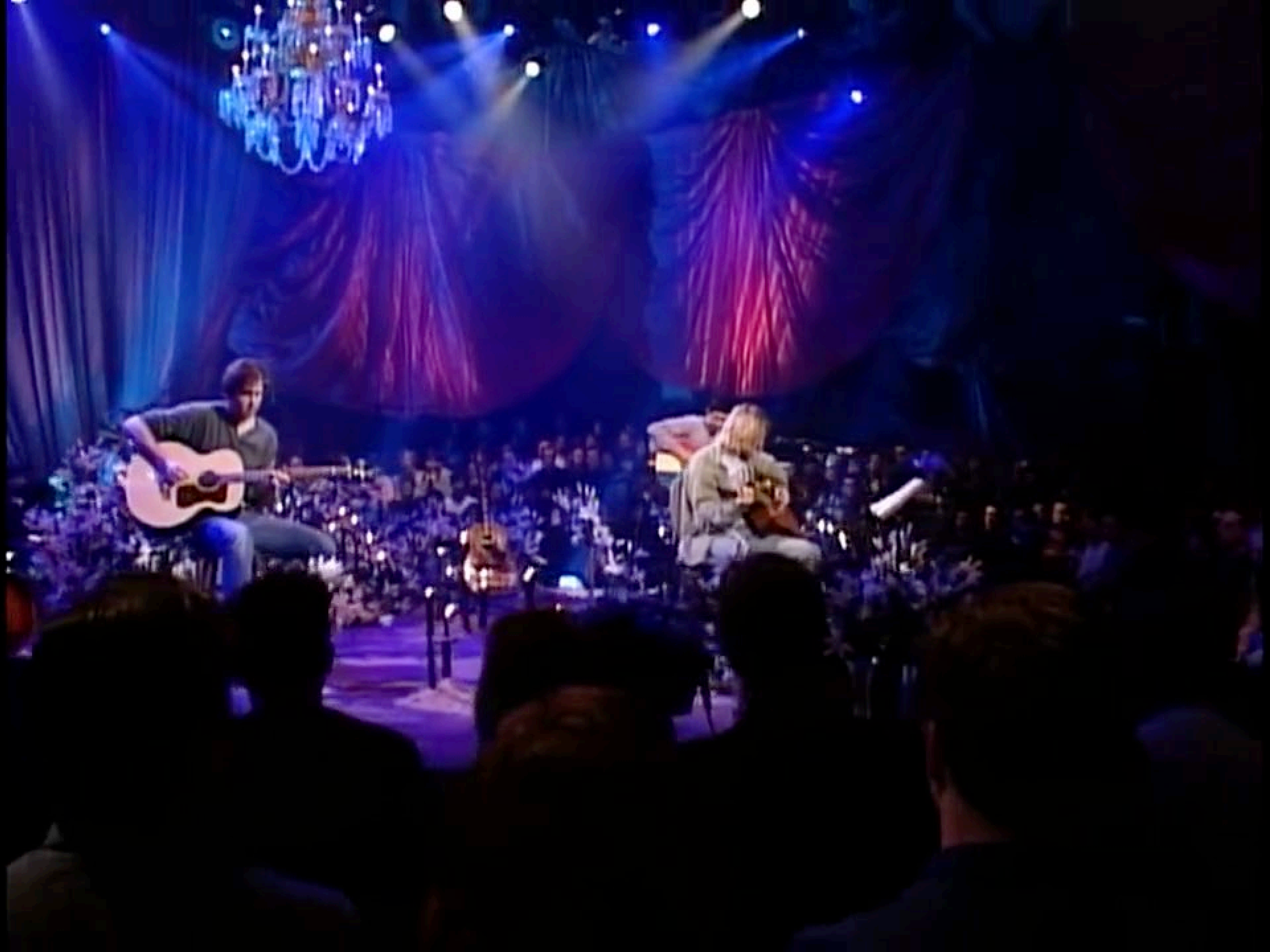
www.alfainternational.com



ALFA International
THE GLOBAL LEGAL NETWORK

Workers' Compensation in the **GARDEN OF GOOD, AND EVIL?**
ALFA INTERNATIONAL 2022 WORKERS' COMPENSATION SEMINAR

COVID UNPLUGGED





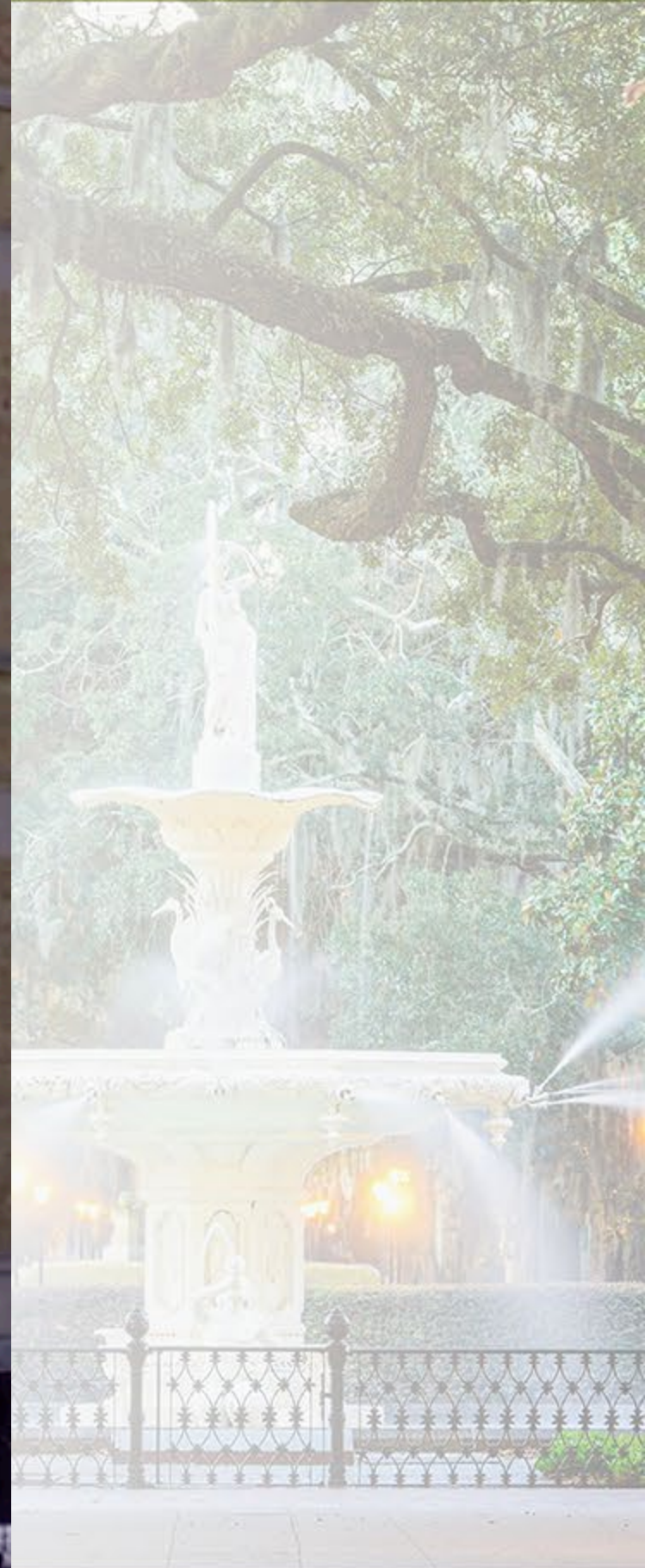
Covid-19 Employer Experience

- Covid-19 March 2020
- Biggest unknown or unexpected problems





Causation



©2020 National Broadcasting Company, Inc. All Rights Reserved.



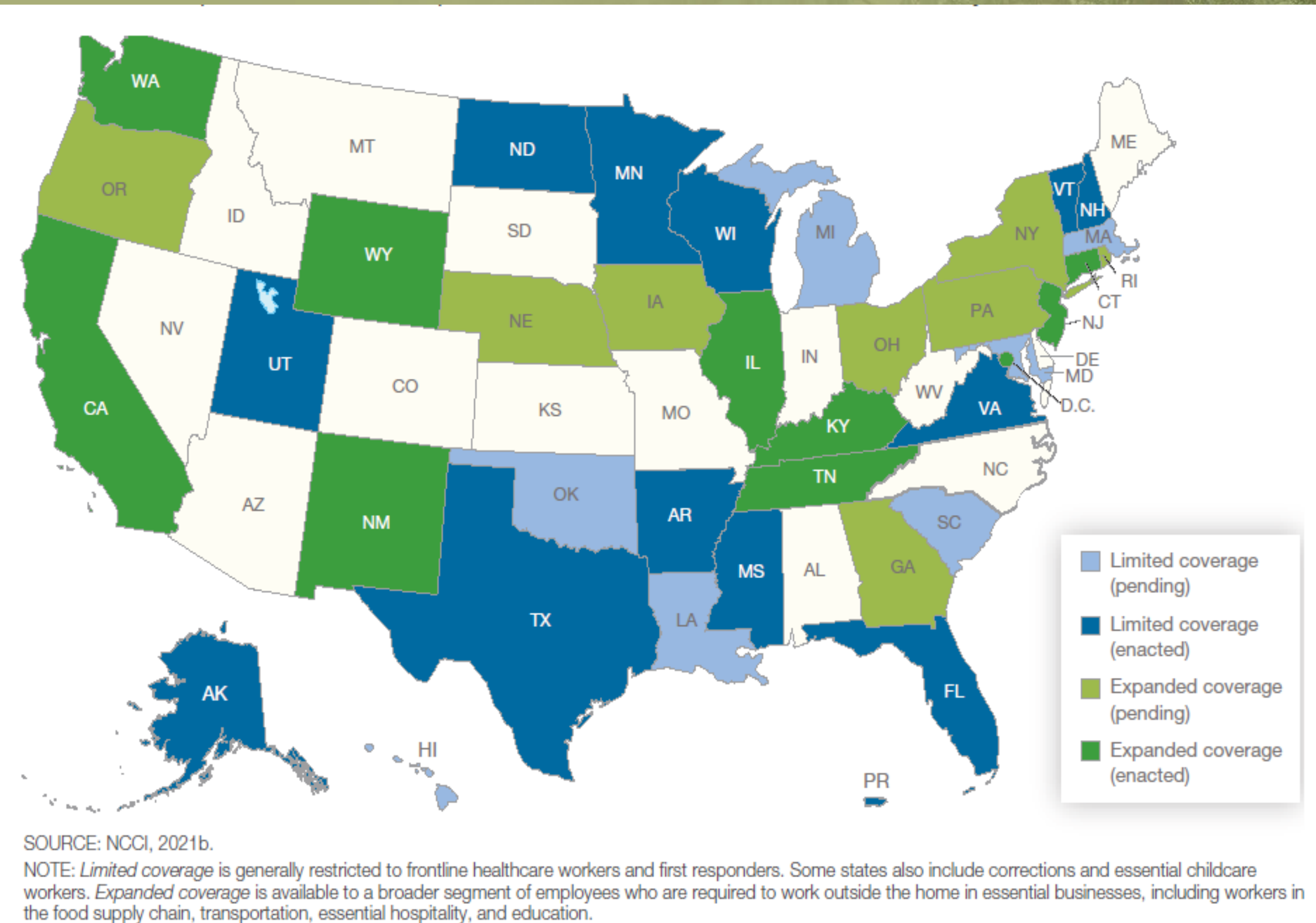
Legal Changes Due To Covid-19

- Occupational Disease – substantially greater exposure in industry v. general population
- State Law presumption changes
 - As of July 31, 2021, 36 states, D.C. and Puerto Rico have implemented or are considering changes to make coverage of Covid-19 claims easier
 - Some states offer broad coverage versus narrow acceptance for segments of workers
- Claim exposure is state specific
- Per NCCI, nearly 12 states have legislation pending to expand rebuttable presumptions beyond Covid-19 to other infectious diseases.
- 6 states - any adverse reaction from a mandated vaccine would be WC compensable
- Legislation was temporary but states are now extending the presumption on a permanent basis
- Each exposure will be fact specific and detailed timeline is needed



Workers' Compensation Covid-19 Presumptions Across the United States as of July 31, 2021

- Presumptions are generally restricted to frontline healthcare workers and first responders. Some states also include corrections and essential childcare workers.
- Expanded coverage is available to a broader segment of employees who are required to work outside the home in essential businesses, including workers in the food supply chain, transportation, essential hospitality, and education.



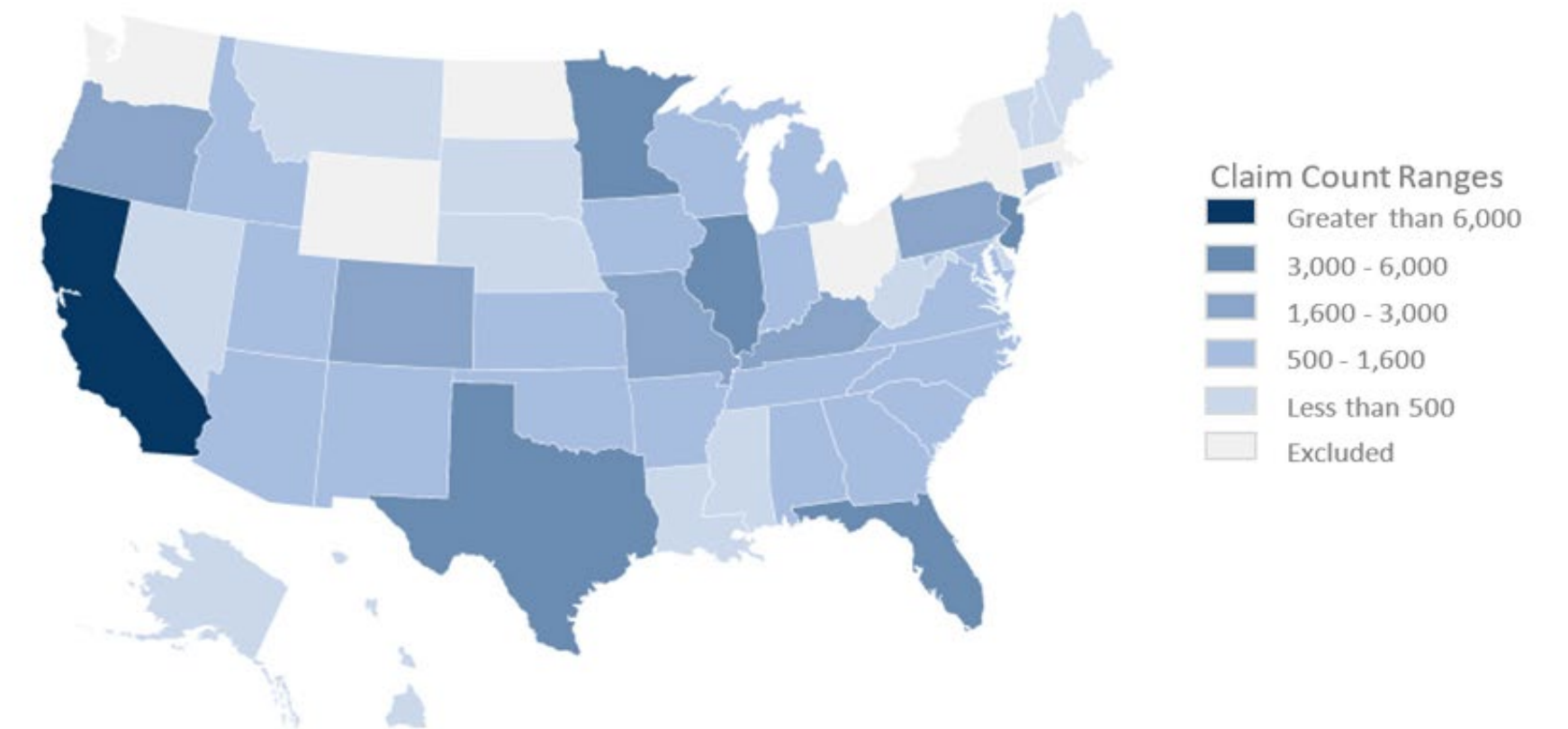


NCCI Covid-19 Survey Results

- Insured Clients - Self-insured employers excluded
- 11.0% of total claims counts, but only 3.5% of incurred losses.
- COVID-19 claims that remained open have relatively higher case reserves due to the uncertainty of COVID-19
- COVID-19 indemnity claims closed more quickly than non-COVID-19 indemnity claims
- California

Covid-19's Impact on Workers Compensation— A Multi-Bureau Collaboration

45 jurisdictions, representing approximately
\$630M in incurred loss dollars across
80K COVID-19 claims



Indemnity-only claims emerged as a **significant share** of reported COVID-19 claims.



In aggregate, **COVID-19 claims that remained open** have relatively **higher case reserves**.



COVID-19 indemnity claims closed **more quickly** than non-COVID-19 indemnity claims.



The ratio of **paid to paid + case losses** on **COVID-19 claims** is **lower** than that for non-COVID-19 claims.





Types of Covid-19 Claims

- Nominal versus Catastrophic Exposure
- Wage loss, Medical, Permanency
- Complex and changing causation analysis that changed State by State
- Multiple claims arising from an outbreak
- Potential 3rd Party Liability based on workplace precautions
- Co-habitation exposure
- Vaccine related
- <https://www.alfainternational.com/covid-19>



Vaccinations/Masks

- Mandatory Vaccinations for employees and business operations
 - Federal mandates v. Employer mandates
 - Exceptions to Mandates (religious and ADA)
- Local government changing guidance
- Pre-employment vax requirement
- Job market
- Return to work job offers

First professional soccer player vaccinated



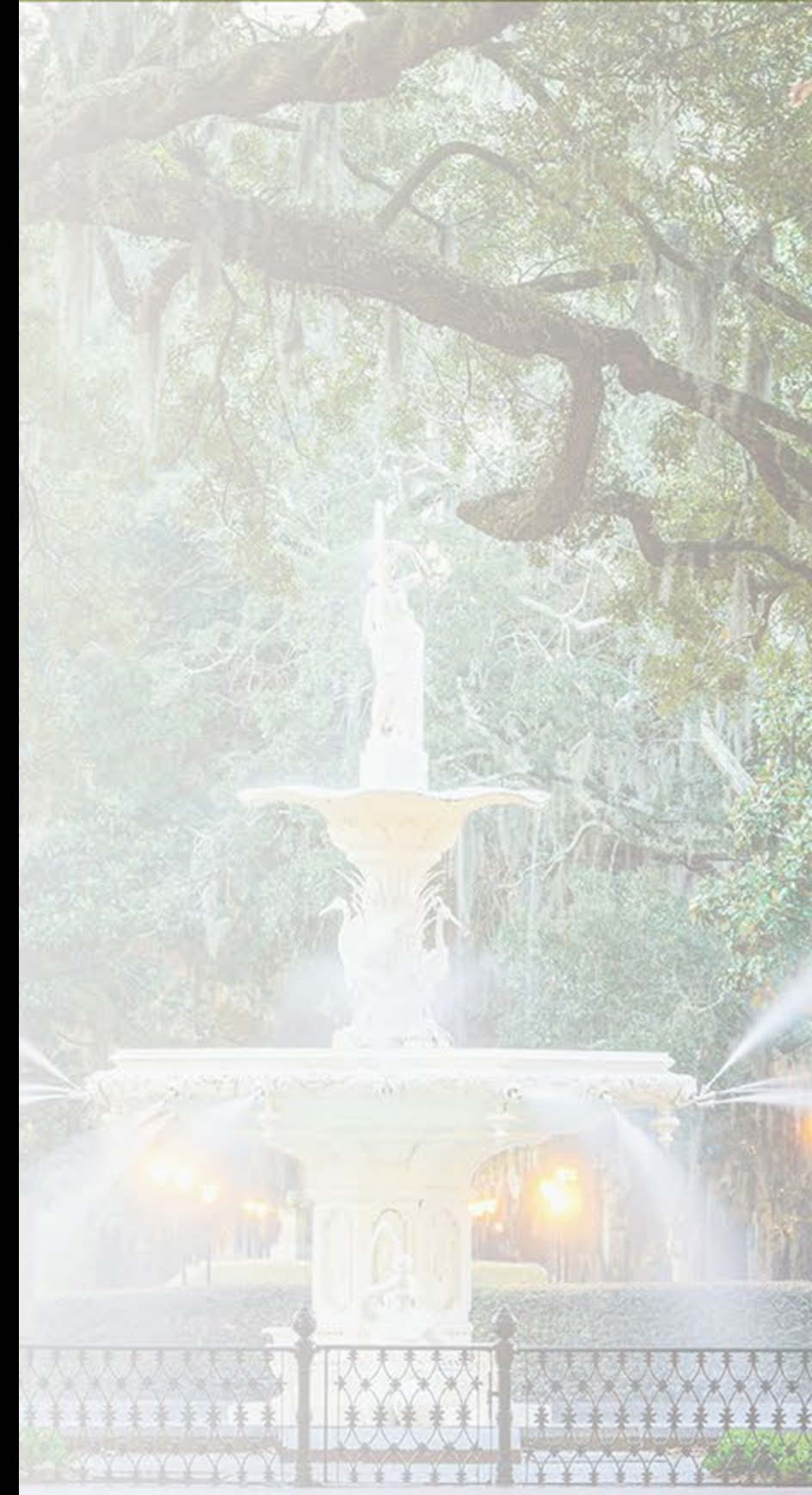
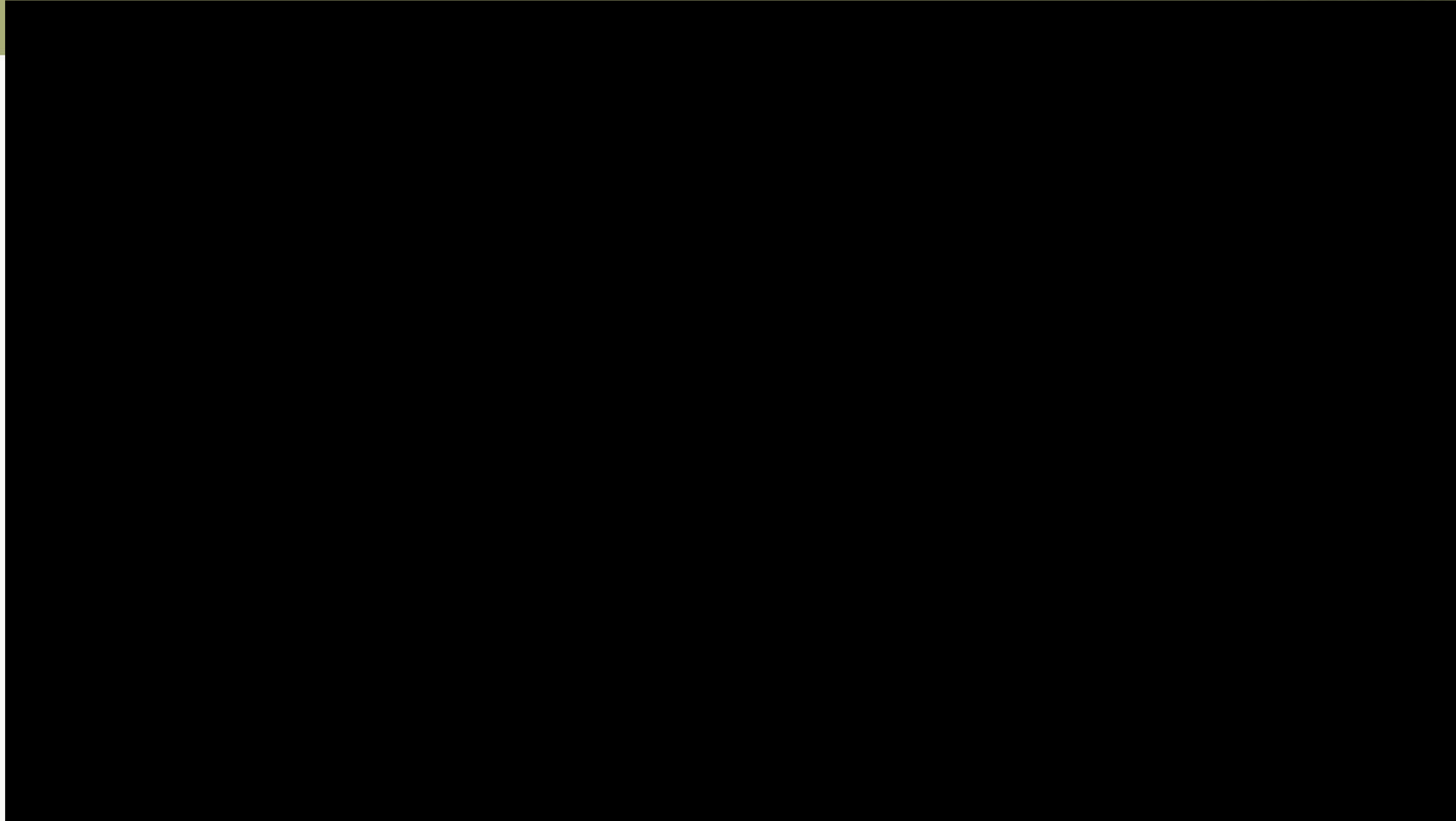


Is Covid Over?





Covid Queen





- “The biggest risk that insurers now face is the unknown long-term health implications for people who have recovered from a serious Covid-19 infection.” – Michael Dworsky – Senior Economist at Rand Corp.





Long Haul Covid-19

- Symptoms
- Permanency v. wage loss
- Expert witnesses
- ADA accommodations, FMLA Leave
- Statute of Limitations

Long-Haul COVID-19

We continue to learn about long-term COVID-19 symptoms. Below are some of the symptoms that have been reported so far.

Most Common

Fatigue
Shortness of breath
Cough
Joint pain
Chest pain

Less Common

Difficulty with thinking and concentration (sometimes referred to as "brain fog")
Depression
Muscle pain
Headache
Intermittent fever
Fast-beating or pounding heart (also known as heart palpitations)

Less Common, More Serious

Cardiovascular: inflammation of the heart muscle

Respiratory: lung function abnormalities

Renal: acute kidney injury

Dermatologic: rash, hair loss

Neurological: smell and taste problems, sleep issues, difficulty with concentration, memory problems

Psychiatric: depression, anxiety, changes in mood

Questions yet unanswered

How many people suffer from long-haul COVID-19?
How long does long-haul COVID-19 last?
Who is more likely to be affected by Long-Haul COVID-19?

IG: @dr.BerthaHidalgo, Twitter: @berthahidalgo, Blog: chicinacademia.com



Long Haul Covid-19

- 45% of workers surveyed said they needed an altered work schedule compared to their pre-COVID status.
- 22.3% reported they could not work at all because of illness.
- A study by the Disability Management Employers Coalition (DMEC) reported an increase in accommodation requests over the past year with the number one request being to work remotely.
- Department of Health and Human Services and Civil Rights Division of the Department of Justice joined together to issue guidance that Long Covid is a disability covered by the ADA. (July 2021)



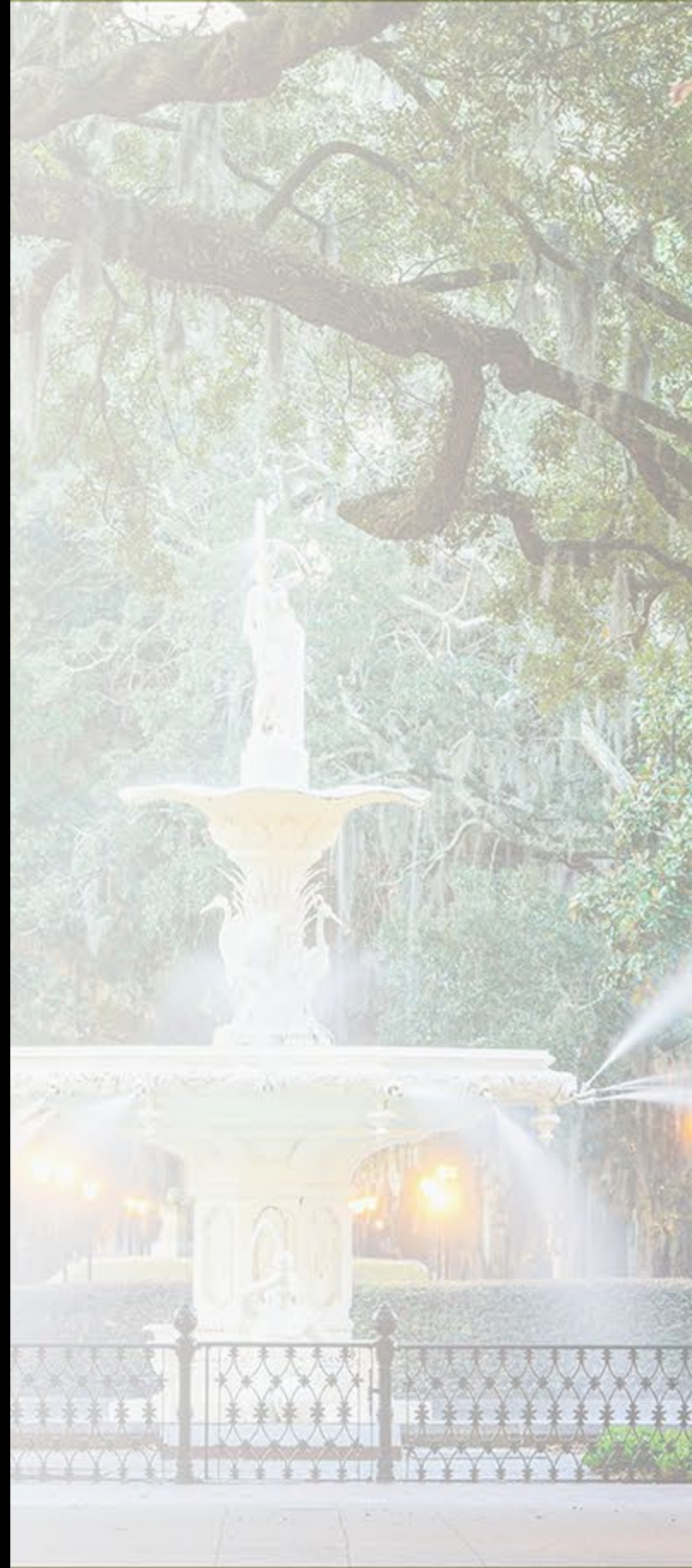
Future Impact of Covid-19

- The next variant
- Statute of Limitations
- 3rd party liability
- Workplace Violence
- Great Resignation
- Business interruption
- Changing local government regulations
- Claims from home offices (Covid and other)





The Scientist





COVID-19 Best Practices Roundtable





Tables 3, 8 and 11, please be prepared to share your responses to the proposed scenarios with the group.





Roundtable Scenario #1

- The employee is fifty-seven years old and worked for the employer as a finishing operator. He works daily with only one co-worker, “Charlie”. The employee claims that he contracted COVID-19 at work during a group meeting on March 8, 2021. He subsequently tested positive and has been out of work since March 12, 2021.
- The employee claims that forty-five employees tested positive as a result of the meeting where social distancing was not practiced. The employer disputes this and claims that all attendees wore masks except three members of management who spoke during the meeting (all three previously had COVID-19). Charlie attended the meeting but never tested positive. The employer claims that eleven people from the office (not where the employee works) tested positive following the group meeting and that everyone except the employee returned to work after the quarantine period.
- The employee was hospitalized from March 20, 2021, through April 1, 2021, and he did not report the COVID-19 contraction to the employer until April 20, 2021. On the above date, he told the employer that he thought he contracted the virus from a neighbor.
- As a result of the contraction, the employee claims that he is totally disabled due to long-term symptoms including fatigue, memory difficulties, and shortness of breath.



Roundtable Scenario #2

- Claimant was employed as an engineer for Space Jam Tech Company. Over the last year, Claimant made 6 business trips from his home location in Pennsylvania to a client location in Florida to consult on repairs. Each time, Claimant made the trip via car stopping 1 night in North Carolina on the way down and on the way back. He stayed at the local Holiday Inn near the job site.
- Claimant left his home in Pennsylvania on Saturday, October 23, 2021, and returned on Sunday, November 7, 2021. Claimant reported for work on Monday and by Wednesday, November 10, 2021, Claimant began to show Covid-19 symptoms. His wife developed similar symptoms the following day. Claimant and his wife both tested positive for Covid-19.
- Claimant was supposed to report for work during the week of Thanksgiving, but still felt congested and had some other lingering symptoms. He contacted his supervisor and stated he would remain out of work, but he expected to return to work on Friday, November 26, 2021, and work multiple shifts. (Day after Thanksgiving).
- After Thanksgiving dinner on Thursday, November 25, 2021, Claimant complained of shortness of breath and not feeling well when he stood up from the dinner table. He later collapsed in the hallway and was taken via ambulance to the hospital where he was pronounced dead a short while later. The Death Certificate listed the cause of death to be “cardiac arrhythmia” and under the headline of “Other Contributing Factors” listed included the reference “Covid illness.”
- Claimant was not vaccinated against Covid-19 and there was no specific company policy to mandate vaccination.



Tables 3, 8 and 11, please be prepared to share your responses to the proposed scenarios with the group.





ALFA International
THE GLOBAL LEGAL NETWORK

Workers' Compensation in the **GARDEN** OF **GOOD**, AND **EVIL**?

ALFA INTERNATIONAL 2022 WORKERS' COMPENSATION SEMINAR

MARCH 23-25, 2022

JW MARRIOTT PLANT RIVERSIDE DISTRICT

SAVANNAH, GEORGIA

www.alfainternational.com