

HOW THE PANDEMIC IMPACTS YOUR COMPANY'S LITIGATION STRATEGY

LEGAL ARTICLE

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In March of this year, COVID-19 changed the world as we knew it. People became confined to their homes, businesses closed, and virtually every aspect of society faced new and unique challenges. As litigators engaged in high-stakes litigation, we quickly and seamlessly pivoted to litigating entirely remotely and, in doing so, discovered that this "new normal" has impacted how we litigate in more ways than just the obvious. These changes, in turn, directly impact our business clients and their litigation strategies. Following are some obvious and not-so-obvious examples of how the pandemic is impacting your company's litigation:

1. **Virtual court appearances are the new norm**

In March 2020, courts moved to exclusively virtual operations (and in some cases were not available to the public at all for a period of time). Most courts are now operating entirely virtually. The availability of certain technology (like video conferencing) allows for court appearances to occur without having to

delay proceedings. You may have even noticed that your legal bills are a little lower where counsel's time traveling from the living room to the home office is substantially less than the time it used to take counsel to travel to the courthouse.

Virtual appearances are not limited to court. Other litigation activities, such as mediations and depositions, are also occurring remotely, allowing parties to pursue their business disputes without interruption. While some parties are happy to let their matters languish, those who take advantage of these virtual opportunities are better positioned to effectively and efficiently advance their disputes.

2. Arbitration and private judging have become attractive alternatives

Although courts are providing online services, civil litigants should continue to expect significant delays. Because criminal defendants have certain constitutional rights associated with access to the court system, many jurisdictions are prioritizing criminal hearings and trials, further delaying civil actions (and, in particular, civil jury trials).

Where civil litigants know they will face delays in court, some are opting to take their disputes to arbitration or a private judge. This is particularly so in cases where parties don't want to wait for resolution and may therefore be more open to the additional costs associated with arbitration or a private judge.

3. Distance makes the heart grow fonder

Geographic limitations or impediments associated with travel no longer exist. Where before a party may have been hesitant to agree to an otherwise excellent mediator or expert because she was located several hours away (or out of state entirely), the prevalence of virtual mediations (more on this below) and virtual hearings make it so that we can now use the best-suited mediator or expert for a particular case, regardless of location. For example, selecting a mediator in New York with unique subject-matter expertise pertaining to a case in California is now a viable and sometimes even attractive option.

4. Strike while the iron is hot

Just as private judging and arbitration have become more attractive to some litigants, in some instances, the delay in court proceedings may entirely change a party's attitude about settlement. Where a zealous plaintiff may have previously been completely disinterested in settlement, that zealousness may be tempered by the prospect that trial won't occur for eighteen to twenty four months. Revisiting settlement discussions with previously unwilling adversaries may net a resolution where one was not previously possible.

5. Access to high-functioning technology is crucial

Now more than ever, it is crucial that your litigation team is fully equipped with access to the latest technological resources. This includes maintaining software and hardware that allow clients and their litigation team to easily and safely share confidential documents. It also requires videoconferencing capabilities and electronic signature software.

In addition to the obvious benefits of having access to this technology, your litigation team working remotely means that, in many cases, your counsel is more accessible to you than ever before. Virtual meetings are faster and easier to coordinate and allow people in different places to instantaneously connect.

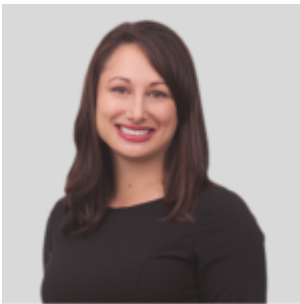
6. Preparation is still key

In-person depositions and mediations are ineffective when counsel is unprepared. And *virtual* depositions and mediations are downright disastrous if counsel is unprepared. For example, virtual depositions require counsel to analyze thoroughly, well in advance, how deposition exhibits will be handled and what exhibits will be used.

Additionally, it is counsel's role to ensure that the client is also comfortable with using technology in a virtual deposition or mediation. Expect that your counsel will coordinate with you in advance of any remote proceedings to assure your comfort with whatever technology your proceeding will require.

The pandemic has slowed many facets of our society, but business litigation continues (although it looks a little different than it did before). In fact, these unusual times provide unique opportunities for businesses to take advantage of new litigation strategies. We remain committed to helping businesses strategically and effectively litigate their disputes.

Meet our Trusted Advisors



Alison Buchanan is a Shareholder in the firm's Silicon Valley office, where she focuses her practice on business litigation. Alison is the Chair of the firm's Business Litigation Practice Group. She represents clients in complex business disputes, including contract, fraud, misappropriation of trade secrets, and unfair competition claims. She has significant trial experience, including serving as lead trial counsel in jury and bench trials in state and federal court.

Alison is a Certified Specialist in Legal Malpractice Law as certified by the State Bar of California Board of Legal Specialization. She is a sought-after speaker on attorney ethics.



Laura Riparbelli is a Senior Associate at Hoge Fenton, where she is a valued member of the firm's Business Litigation Practice Group. Laura aggressively litigates in a wide range of practice areas, including business disputes, professional liability, employment, and real estate in both California state and federal court. Laura has handled all aspects of litigation from start to finish, including second chairing three bench trials. She regularly prepares and argues challenges to initial pleadings, discovery disputes, and dispositive motions. Laura adeptly navigates all facets of the written and oral discovery process.

Laura's past legal experience includes representing clients against educational institutions for violations of Title IX, including sexual assault and harassment victims.

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