

COVID-19's Impact on Litigation and Claims

July 16, 2020 Presentation to
Minnesota CPCU Society Chapter
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Minnesota
CPCU Society Chapter, Inc.

COVID-19's Impact on Litigation and Claims - **Outline**

1. Increased Time of Resolution of Claims due to Delays in Discovery and Trials
2. Use of Zoom and other Virtual Platforms for Mediations, Depositions, and Hearings
3. Impact of Shift to Work-From-Home for Companies and Law Firms
4. COVID-19 Related Claims - D&O Disclosure - BI claims

COVID-19's Impact on Litigation and Claims Delays

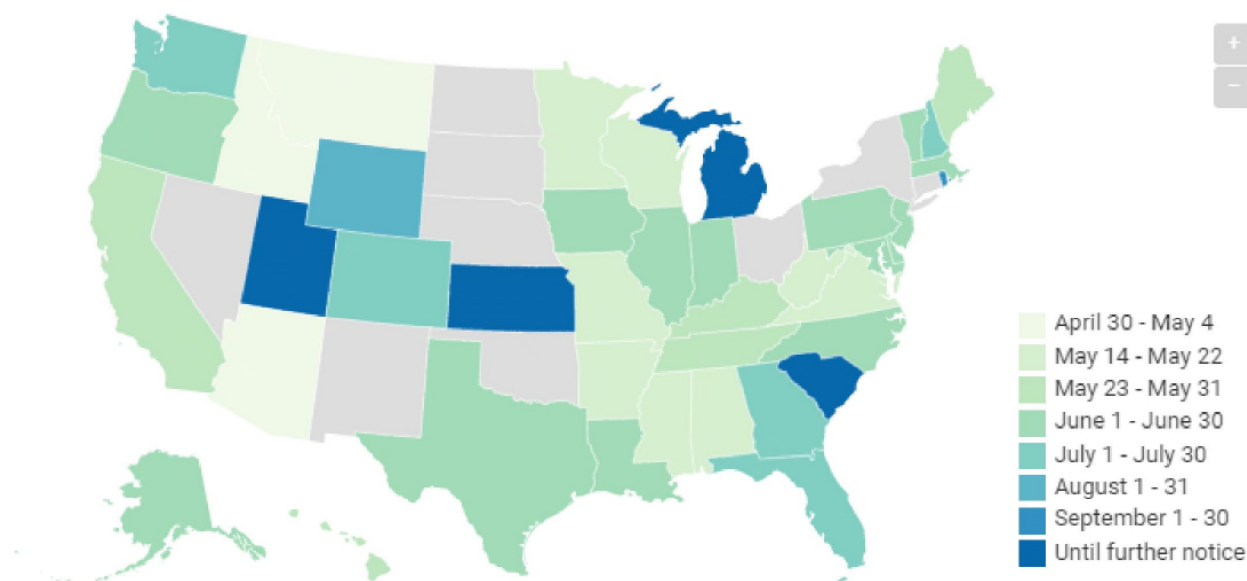


COVID-19's Impact on Litigation and Claims - **Delays**

1. Starting mid-March the court systems (and to some extent litigation as a whole) across the country basically ceased to a halt.
2. Took about a month for (some) court systems to reboot but with virtual hearings, other accommodations, and extensions to scheduling orders.
3. Trials (particularly Civil Trials) that were supposed to start in April, May, and June were all cancelled. Many have not been rescheduled yet.
4. Criminal Jury trials in MN (Pilot program) started back up in early June.
5. No Civil Jury trials in MN until at least September 2020. 5-6 month backlog. Some jurisdictions still shut down with reopening potentially not until 2021.

COVID-19's Impact on Litigation and Claims - Delays

Expected dates for state courts lifting restrictions, 2020



BALLOTEDIA

Credit: [https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020)

COVID-19's Impact on Litigation and Claims - Delays

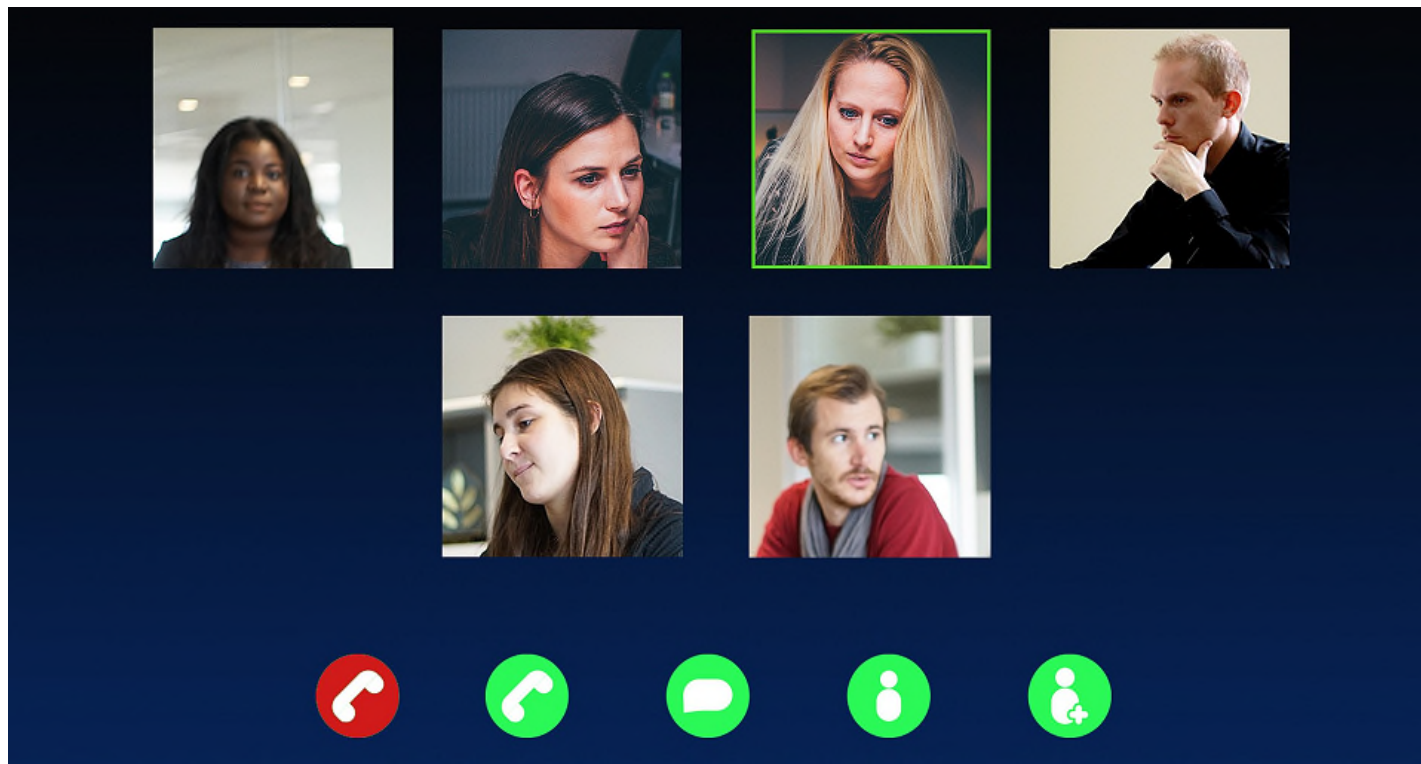
6. Delays also in discovery.
7. Initially many depositions cancelled or postponed.
8. Many attorneys initially being unresponsive or saying case needs to be stayed because of COVID-19, both PL and DEF.
9. Discovery has now resumed but in modified form.
10. Less in-person depositions and inspections but they are still occurring – safe-distancing and masks.

COVID-19's Impact on Litigation and Claims - Delays

11. Took time to adjust and figure out what we were going to do.
12. Some initially thought this would increase likelihood of claimants settling case for lower values. Some say this is happening, others not so much. Not seen in MN.
13. Meanwhile claims keep coming in.
14. Have not seen increased in litigation costs for claims but this may be delayed.
15. Added frustration and unknown for those dealing with claims.

COVID-19's Impact on Litigation and Claims

Use of Zoom/Virtual



COVID-19's Impact on Litigation and Claims – **Use of Zoom/Virtual**

1. Rather quickly pivoted to Zoom/virtual/telephone for hearings and depositions.
2. MN court system set up its own system and now uses Zoom.
3. Mediators were on this right away. Some are adept and sophisticated.
4. Depositions followed. Some depositions still being held in person but not common.
5. Virtual works better than anticipated usually.
6. Operator error/issues can still cause problems.
7. Efficiency aspect.
8. First Civil Jury Trial in Miami this week – Verdict on July 14, 2020

COVID-19's Impact on Litigation and Claims

Work-From-Home



COVID-19's Impact on Litigation and Claims – **Work-from-Home**

1. Some adapted quickly, others not so much.
2. Some better prepared, particularly on Company side who had already had in place work from home prior to COVID-19.
3. Some additional up-front costs. Getting everyone laptop, additional monitor, etc...
4. Some people's home internet better than others.
5. Psychological impacts still being felt.
6. May be here to stay for some industries.

COVID-19's Impact on Litigation and Claims

COVID Claims



COVID-19's Impact on Litigation and Claims – **COVID Claims**

1. Some say there have been over 2000 COVID-19 related lawsuits filed.
2. “At least 50 federal securities cases with references to COVID-19 have been filed in the past three months, including merger challenges, regulatory enforcement actions and sprawling investor suits..” <https://www.law360.com/articles/1278091> by Dean Seal, May 29, 2020.
3. Types: Direct COVID-19 exposure, employment-related claims, D&O claims, BI claims.

COVID-19's Impact on Litigation and Claims – **COVID Claims** - Coronavirus-Related U.S. Securities Class Action Lawsuits

March 12, 2020: *Douglas v. Norwegian Cruise Lines*, 20-cv-21107 (S.D. Fla.)

March 12, 2020: *McDermid v. Inovio Pharmaceuticals*, 20-cv-01402 (E.D. Pa.)

April 7, 2020: *Drieu v. Zoom Video Communications, Inc.*, 20-cv-02353 (N.D. Cal.)

April 15, 2020: *Riback v. iAnthusCapital*, 20-cv-03044 (S.D.N.Y.)

April 24, 2020: *Wandel v. Phoenix Tree Holdings, Ltd.*, 20-cv-03259 (S.D.N.Y.)

April 29, 2020: *Yannes v. SCWorx Corp.*, 20-cv-03349, (S.D.N.Y.)

May 20, 2020: *Hunter v. Elanco Animal Hospital, Inc.*, 20-cv-1460 (S.D.Ind.)

COVID-19's Impact on Litigation and Claims – **COVID Claims** - Coronavirus-Related U.S. Securities Class Action Lawsuits

May 26, 2020: *Wasa Medical Hldgs v. Sorrento Therap.* 20-cv-00966 (S.D. Cal.)

May 26, 2020: *Swartzenruber v. Colony Capital, Inc.*, 20-cv-4673 (C.D. Cal.)

May 27, 2020: *Service Lamp Corp. PSP v. Carnival*, 20-cv-22202 (S.D. Fla.)

June 10, 2020: *Guafeng Ma v. Wells Fargo*, 20-cv-3697 (N.D. Cal.)

June 15, 2020: *Gelt Trading v. Co-Dagnostics, Inc.*, 20-cv-00368 (D. Utah)

June 16, 2020: *Cherynysh v. Chembio Diag*, 20-cv-2706 (E.D.N.Y.)

June 20, 2020: *Lucas v. United States Oil Fund, L.P.* 20-cv-4740 (E.D.N.Y.)

COVID-19's Impact on Litigation and Claims – **COVID Claims**

4. IN D&O world - most of these types of cases involve stocks rising and then falling in a short period due to false or misleading statements made by officers, particularly in press releases and form 10-Ks.
5. Some, were (allegedly) outright lies and fabrications made by officers, such as in *Praxsyn* and *Sorrento*.
6. Some cases involved officers knowing more information than was released, such as in *Zoom*, *Carnival* and *Norwegian*, where the misleading statements were more subtle.

COVID-19's Impact on Litigation and Claims – **COVID Claims**

7. Business interruption suits seem to not be going anywhere.
8. Judges have been ruling that for BI claim to exist you need to have “direct physical loss or damage”. *Gavrilides Management Co. LLC v. Michigan Insurance Co.*, case number 20-258-CB-C30, in the Circuit Court of the County of Ingham, Michigan
9. Typically with COVID-19 you are not going to have “direct physical loss or damage”.
10. Looks like insurers may prevail on coverage position that COVID-19 and resulting government stay-at-home orders have not caused any direct physical loss or damage that would trigger policyholders’ business interruption coverage.

COVID-19's Impact on Litigation and Claims – **COVID Claims**

11. However, some jurisdictions have case law that states if you have a hazardous substance in the air that you cannot see, and it is making property uninhabitable or unusable, that is sufficient to trigger the direct physical loss or damage requirement.
12. Other case law that holds when property has been rendered unsafe due to contamination, it has incurred direct physical loss or damage.
13. Also important to remember most policies have virus/bacteria exclusion.
14. Probably still too early to definitely say how these all of these suits/claims will turn out.



The information in this presentation is intended only for general information purposes. No attorney-client relationship is intended by presenting this information. You should consult with your attorney regarding your own circumstances.



Thank you for your time!

Questions? Feel free to contact me.

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