



How Your Law Firm Can Continue to Prosper in Challenging Times

In this recording, Jennifer Cooper and Mark Barber of Baker Donelson and Tim Moore discuss how you can continue to prosper in these challenging times. We expect increases in litigation due to COVID19 related issues in areas such as Insurance, Employment, Torts, Contracts, and other areas of litigation.

You will learn how Lex Machina helps you find new business, uniquely position yourself to win that business, and in short, work better, faster, and cheaper.

In this webcast, our speakers talk about:

- How COVID-19 is changing the business of law
- How to set your firm apart from the competition
- How to increase revenue by winning more business

Speakers:



Tim Moore
Sales Director
Lex Machina



Jennifer Cooper
Shareholder
Baker Donelson



Mark Barber
Shareholder
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Tim Moore ([00:05](#)):

Hi everyone. My name is Tim Moore from Lex Machina. And I want to thank everyone for joining today's webcast where we're going to discuss how firms can continue to prosper during these challenging times. It seems like every day for the past few weeks, another large firm was announcing rounds of furloughs, pay cuts, and even lay offs. While the current economic turmoil has created revenue on certainty, it's becoming more and more clear that litigation is going to continue in that COVID-19 is likely to drive a surge of new cases. Joining me today to discuss how firms can position themselves to capture an increasing share of these new cases are Jennifer Cooper and Mark Barber, who are both shareholders in Baker Donelson's Atlanta office. Mark and Jennifer, thanks for joining us today.

Mark Barber ([00:47](#)):

Sure.

Tim Moore ([00:50](#)):

Before we get started, I want to mention that we will take some questions towards the end of the call via the chat box. Feel free to type in your questions at any point during the discussion, and we'll get to those at the end. Mark, I thought we could get the conversation started with you. I know you're involved with a lot of active litigation, and I thought we could just start by asking you to quickly introduce yourself and for you to give us a sense of what your experience has been like over the last few weeks with your current cases and maybe some predictions about what you think comes next for litigation.

Mark Barber ([01:23](#)):

Sure. Be happy to. So I have been practicing law for 35 years, and I do litigation trial work, tried over 50 cases. I do primarily commercial litigation complex towards an insurance, and I do have a lot of cases active in the court system. And right now what we're in is sort of phase two of the COVID shock. I would say phase one was everything froze in place. We stopped taking depositions. The courts closed. Jury trials got canceled. All our depositions got canceled. The mediations got canceled. So the litigation piece really froze at the very beginning of this. And people were I think just not prepared for such a sudden shutdown, and there was not really any path forward. In addition to that, we've had clients who had been involved in litigation who have told us to stop the litigation to the extent we can and where there are no emergent deadlines because they are trying to conserve cash. So it's been really a shocking stoppage of work, and everything's sort of in quicksand at this point.

Mark Barber ([02:42](#)):

But I think now we're beginning to enter into phase two, which is people realize we can't just stop all this litigation that has been ongoing and not get anything done. So now what is happening is we're rescheduling depositions. The court is beginning to schedule remote hearings. Some of our courts are allowing electronic signatures, whereas previously they had not. The depositions are now being reset for remote depositions. We are also getting some virtual mediations, although that's been controversial, and not everybody likes those. Of course, all of the law firms now have basically locked down, and everybody's remote. Our clients are remote, and there have been some communication problems and some technical problems and technology problems that are still being worked out, including the highly public issue with Zoom and its privacy. But I would say that's sort of the current status. We are beginning to move forward in these cases. And of course, that doesn't include the new cases, and there are numerous new cases being filed, mostly related to COVID issues, and every day there's new cases being filed on the various issues that have arisen as a result of the pandemic. So that's sort of where we are now.

Tim Moore ([04:06](#)):

No, thanks for that. That's very interesting. One of the things that we track the filings and the court activity at Lex Machina and as part of the analytics that we provide, and we've noticed that filings continue. The procedural kind of slow down is accurate for sure. But we're starting to see COVID, like you mentioned, more and more in new filings. And we're expecting to see that increase over the next several weeks, just more and more cases as it relates to contracts, insurance, employment. When you think about those cases and you think about Baker Donelson, what are your thoughts on kind of this potential new surge of cases? Maybe how big do you think it could be? And what our Baker Donelson's or maybe your individual plans to capitalize on the increase in filing? How can you capture more of that work?

Mark Barber ([04:55](#)):

Well, certainly, like most law firms, we're sending client alerts, and we're sending I guess updates on legal issues. And of course, things have been changing so fast lately on the legal issues with all the congressional action, there is a lot of outreach to clients. In fact, right now I'm probably having more contact with my clients on a daily basis than I did before COVID, although some of it is a little bit on the panicked side from the client's perspective because I think they're really scrambling to try to respond to this. And so, I mean, from my perspective, there is an opportunity for us to... I wouldn't say take advantage of the COVID situation, but at least harvest some opportunities. And of course, it depends on the practice groups. Some of our practice groups right now are really booming. Labor and employment is booming. Our banking folks with all the loans and loan forgiveness programs are booming. The privacy people are really booming because of all the privacy concerns of everybody in the world now being remote.

Mark Barber ([06:07](#)):

Of course, insurance is one of the things I do, and the insurance is really exploding. We're getting questions every day about business interruption and liability coverage, worker's comp and directors and officers liability. There's a lot of issues there. Interestingly, the transportation cases, which is another thing that I handle, are down because there's so little traffic on the roads, which I guess we should all be happy for. There's fewer accidents. And I will say there is also other areas that are not doing well. A lot of the deal transactional people are telling me that the deals are not closing. There's a lot of advising going on about whether there has been a material change in circumstances which allows you to undo the deal, or if there is a deal, can force majeure clauses forgive performance?

Mark Barber ([07:02](#)):

And then, of course, there's other areas that are just at a dead stop and where clients have even told us that we can't do any work, and that's car manufacturing, retail, travel and hospitality and that sort of thing. So really it's interesting, even in the cases where the business is down and the clients are down, our outreach and contact with the clients is actually very, very high. So it's a strange world we live in where because of the pandemic we're actually getting more contact with our clients, and certainly there's some practice groups that are going to boom in the next few months. And I probably would be remiss if I didn't mention that bankruptcy, that practice group is probably going to be busy several months from now, although right now it hasn't hit yet.

Tim Moore ([07:49](#)):

Yeah, and that's what the data is telling us now too, is those certain litigation groups are going to see a lot more potential work. We've also heard from some of our other big firms that we work with what you just mentioned, where basically the deals kind of just completely dry up and stop at this point. And they're thinking about revenue, and they're even shifting resources to do litigation business development where they see potential more

work coming from that sector now. Jennifer, maybe we can bring you into the conversation. Thanks for joining us. Maybe you could also quickly introduce yourself. One of the things I thought was interesting when we chatted earlier this week, you talked about kind of big changes taking place in the legal industry that are often driven by client demand. You talked about the 2009 great recession being one of those where forced law firms become more data-driven and more efficient and that you saw this COVID crisis as potentially being along those same lines. Maybe you could let us know a little bit about yourself and chat and give us your thoughts on that.

Jennifer Cooper ([08:53](#)):

Sure. I, like Mark, am a shareholder at Baker Donelson in Atlanta, Georgia, and I've been practicing over 30 years, but not 35. And when we were talking earlier this week, as you mentioned, we talked about the changes that came about as a result of the recession in 2009, and I see some similarities here in terms of drivers that will get legal departments to think about how to manage litigation in a more efficient way and for law firms to do the same. Now more than ever with this dramatic financial impact of COVID, they need to find ways to manage their legal expenses, both for current litigation as well as the expected litigation that's going to come out of the COVID pandemic.

Jennifer Cooper ([09:45](#)):

Also there's going to be a reduction in staff and most legal departments probably. We've already seen that with some of our clients. And so I have found that when pressure comes to the legal industry, particularly to clients and in-house counsel in terms of how to save cost, that's when they really start to consider and become more receptive to innovation and technology and the management of litigation. And we're already starting to see that from some of our existing clients in terms of sort of fine tuning some of the innovation and technology we already provide or from clients who have not used our innovation and technology resources before, they have been reaching out, asking for more information and proposals for us to assist them with innovation and technology.

Tim Moore ([10:35](#)):

Yeah. I was just thinking about that where sometimes clients, especially the legal industry, hasn't been so familiar or used to working with data and technology, and now there's been a shift over the last probably 10 years in that direction, and maybe it's even accelerating now. What is their response to that? I know Baker has been a big adopter of technology over the last decade. Do they look for you for that type of guidance? How do they respond when you push them to say we can be this much more efficient, we can produce better results by leveraging technology and data?

Jennifer Cooper ([11:13](#)):

Well, it kind of depends. It runs the gamut. We have some legal departments that are just very stuck in their ways, and they're not interested in it, and they just want you to send reports and bill them by the hour at the lowest possible rate. Then there are clients that are much more forward-thinking and very receptive to technology, and their own departments are very technology-driven. And they realize that the benefit of technology in addition to reducing overall legal spend is it allows you to develop analytics that continue to drive better and better financial in litigation because it allows you to better manage cases and better manage the expense associated with litigation.

Tim Moore ([12:03](#)):

Yeah. It sounds like probably technology has positioned you to probably not only produce better results, but as part of that, win more business or just attract more clients. Is that accurate?

Jennifer Cooper ([12:16](#)):

Yes, I would say that is definitely the case. And we've had some wonderful success stories. We had even one of my own clients that we implemented a large legal project management and budgeting program with say over a three-year period. After using our legal project management and our budget designer program, they saw a reduction of 45% in legal spend. And more importantly to them almost was a reduction of 63% in the life of a case. So one of the things that technology does and that we explain to our clients when we're discussing it with them is that when we can better manage cases, they don't last as long. And everybody knows the longer a case lasts, the more expensive it is. And so being able to get cases to quicker resolution is very important to them. And by... Excuse me. By not only managing the flow of information and the actual handling of the case, but also being able to analyze the data that comes from the use of that technology, helps reduce that life of the case as well as the spend.

Tim Moore ([13:27](#)):

Yeah, and that's very interesting. We're seeing that. And it might be a good segue into kind of walking through some of the Lex Machina information, but when we work with corporate clients or corporate legal departments, the one thing we always hear, the questions they always ask is how long is this going to take? How much is this going to cost? And what are our chances of success? So anything like it sounds like you put in place that can help provide more concrete answers or better answers to those questions is definitely going to help you. So let's try to change gears a little bit. I want to walk through a case in Lex Machina and highlight how firms are using our data as a business development tool. The sense of that is thinking about how firms have traditionally pitched for business. If we look at a case as this one here, and we'll walk through this one in a second, and we'll walk through some of these details, but traditionally when you look at pitches, what we found and what we hear from corporations is that those pitches have traditionally been very law firm or attorney focused. They include bio's on the law firm, bios of the attorneys, information on who the firm works with or how long they've been in certain cities.

Tim Moore ([14:35](#)):

But the change that we've seen take place, the data-driven change, is making those pitches more case focused. So you have an insurance case in the Northern District of Illinois in front of Judge Gettleman, let's answer those questions about how long it could take, how much it could cost, or what our chances are if we go in certain directions. So I chose this case for an example today just because it's related to what's going on right now. You can see this case was filed in the northern District of Illinois in early April. One of the unique things when we look at this case in Lex Machina, if we actually look at the docket entries... And these are all available to you in Lex Machina. I'm looking at the complaint right now. We can see this case is directly related to the COVID-19 global pandemic. The facts of it, basically something along the lines of this dental office had a business interruption policy with Cincinnati Insurance Company. They were forced to shut down by a state order. They went to exercise that policy and the claim was denied by Cincinnati Insurance Company. Before we walk through some of the data, Mark, are these the types or one of the types of insurance cases that you think is really going to grow over the next couple of weeks?

Mark Barber ([15:51](#)):

Oh yeah. I think this is probably the tip of the spear. There's almost every business, especially smaller businesses, are going to be in an existential crisis. Their concern is even with stimulus help, are they going to have enough cash to last or wait out the medical crisis? And the insurance industry has dug in its heels, and so I think there's going to be a wave, maybe even a tsunami of litigation against the insurance industry related to especially business interruption, but other types of claims, civil authority and some other detailed types of coverages. But

yes, I do think this is going to be just the beginning. I think there's going to be a lot of this litigation, and it'll take you years and appellate opinions to finally get us to an endpoint.

Tim Moore ([16:42](#)):

For sure. Very interesting. And Jennifer, just imagine for a second you were pitching for this case or you wanted to reach out to Cincinnati Insurance Company about a case like this. What types of data or information would you think empower you to reach out in a more proactive way that provides them information that would be of interest to you? Is there anything specifically about the folks involved in this case that you think that could really improve your chances of having a positive interaction with a potential client?

Jennifer Cooper ([17:14](#)):

Well, I think knowing more about the law firm they have typically used in the past to represent them in similar cases would be an interest to me. And I would also want to know more about some of the outcomes that they've had in similar litigation. I'm not sure that I'm following you. In terms of the specific parties that are involved in the litigation or the law firms that are involved in the litigation?

Tim Moore ([17:39](#)):

Well, I think you understood the question, and I think that kind of what we were getting at is providing information more on who does Cincinnati Insurance Company use? What type of results are they used to? What type of results that firm's getting for them. And then we'll even drill, and we'll show some information and answer those questions about maybe what could happen and how long it could take. Let me walk through a quick example, and we'll get your feedback on it. Using Lex Machina, what I did was I created a [inaudible 00:18:07] party group for Cincinnati Insurance Company. So what we're doing here with these cases is here's their 388 insurance cases where they've been the defendant that have been filed since 2009. We can see 42 are open. 346 are terminated. Several tabs in Lex Machina start to provide us data and analytics about what's happened in this group of cases, specifically Cincinnati Insurance Company's cases when they've been the defendant.

Tim Moore ([18:33](#)):

We can look up their law firms. Like you mentioned, you wanted to know who they use. We can see their top firm is Litchfield here. That's who they're using most often when they're the defendant in insurance litigation. We can also see what type of results they'd gotten in these cases. We can see, for instance, they've lost 6% of the time, or 25 times. They win 10% of the time, or 39 times. We can see how often there's a likely settlement or some procedural resolution. Some of the information that jumps out to me was that they've lost at summary judgment 22 times, and they've won at summary judgment 22 times. It might be interesting to see how that information could potentially compare to what the results look like in general or the results that Litchfield is getting in general for cases. So what I did quickly is I looked at Litchfield, and I did the same analysis, 345 insurance cases where Litchfield has represented the defendant. Look at their case resolutions. We can see they've lost 17 times at SJ. They won 38 times at SJ.

Tim Moore ([19:35](#)):

We can even start to see things like how often have certain damages and when are those dollar amounts awarded? There's been 10 damage awards for over \$5 million. And you might start to wonder okay, now we have competitive information on Cincinnati Insurance Company and their top firm. And firms are now starting to use this information to compare that too to the type of results that, for instance, Baker Donelson gets in the same type of cases. So here is Baker Donelson's 747. So you have more experienced insurance cases where you've represented the defendant. I can look at those case resolutions, and Baker Donelson's only lost three times that

summary judgment where you're winning 38 times. We can even look at the damages where you only been involved in five damage awards for just over 700,000, a lot difference than 10 million or the many more times that Litchfield has lost at summary judgment.

Tim Moore ([20:30](#)):

So maybe, Jennifer, you could talk a little bit about how some of this data or this competitive intelligence could be used to potentially talk to a company like Cincinnati Insurance. We're not here to throw Litchfield under the bus, but I want to highlight the [inaudible 00:20:47] of results that maybe Baker got. Are these types of hard data results helpful when you reach out to a client or are talking with a current client?

Jennifer Cooper ([20:55](#)):

Absolutely, absolutely, because the first thing most defense clients ask is how soon can I get out of this case? So having numbers that reflect successes in summary judgment obviously is very persuasive. But I do feel like this would be great data to be able to share to a client because it shows that one, you have a deep bench, that you have a tremendous amount of experience over a large number of cases, and that you have been able to get very, very good results in these types of cases for these types of clients. And this would be a huge help to send to a client as either part of a pitch or just as a casual conversation and talking about the case. You could forward the information to them. And I think it would also be helpful, not just for this specific case, but obviously for discussing additional business, similar business that you could help them with.

Tim Moore ([21:51](#)):

So potentially highlighting that the firm, we're not only leveraging technology like this for this individual case, but we could do it for all your cases potentially?

Jennifer Cooper ([22:00](#)):

Correct, yes.

Tim Moore ([22:03](#)):

Very interesting. Thanks for that feedback. That was more focused on competitive intelligence and information on the company itself. We can do that same type of analysis... We're not going to jump into it... but on opposing counsel if we wanted to understand more about what this attorney has done and have they won any damages? Have they won at summary judgment before. But firms, as part of their business development efforts, are also using information about the judge. So if we look at Judge Gettleman, and we can pull up specifically his insurance cases in Lex Machina, we can see he's been involved in 91 insurance cases.

Tim Moore ([22:40](#)):

And it kind of goes back to that question of how long is this going to take? What are our chances for success? So we can see and Judge Gettleman's 91 insurance cases, if we look at the timing metrics, we can start to see specifically, once again, if we were going for SJ, how long it could take to get to SJ, so 505 days. We could see the median time determination. We can narrow it to the cases that settled and then see how long it gets determination. Before it was always this judge is slow or this judge is fast or it takes forever to get to summary judgment. Now we're able to provide hard data on how long it could take to reach certain milestones. Mark, do you have any thoughts on how this setup of timing metrics could help when you're reaching out to a client or maybe even putting together budgets or pricing for specific matters?

Mark Barber ([23:28](#)):

Sure. I think one of the challenges for every litigation lawyer is to explain to the client the importance of the judge. Although the clients I guess conceptually understand how important it is, in cases where the legal issues predominate especially, you need to know how long it takes. You need to know how long this case is likely to extend because part of the initial evaluation that we give our clients is the budget, and the budgeting does depend on the judge. We also look at the judge's rulings on discovery issues and previous cases. So yeah, the more data we have about the judge, that can drive our decision at the beginning of the case on how strong we want to play the case and also what is our likely timeframe for resolution if we don't settle it on our own?

Mark Barber ([24:22](#)):

And let's face it, there are always cases where we know we've got a bad judge and he won't rule or can't rule or he or she has typically never granted summary judgment for a party that we represent. In those cases then, early resolution is part of the strategy, and it goes into everything. It goes into the evaluation, the case, the budgeting, everything. So yeah, the more statistical information in the list we have to rely on anecdotes, the better we are as lawyers, and the better client outcomes we get.

Tim Moore ([24:56](#)):

Yeah, and kind of thinking about this, and what I just quickly pulled up and is on the screen now is information on how often Judge Gettleman grants summary judgment and these insurance cases. And you're right, we could be looking at another judge in the same jurisdiction in the Northern District of Illinois, and these grant rates could be wildly different for the same group of cases. The other thing I was thinking about is just how different the traditional pitch deck or client conversation looks that's more focused on the PDFs of the bios and the attorneys and the firm compared to one that has how often Judge Gettleman grant summary judgment and just how much that data is going to stand out compared to a lot of the pitch decks that firms have traditionally submitted. So the time flies as we're going through this information, and kind of what we walked through is just the tip of the iceberg in terms of the type of data that is available.

Tim Moore ([25:49](#)):

But I want to pause for a second, and I know we wanted to do a little Q and A and see if there's any questions. I'm going to go to the Q and A. It looks like there are a few. Let me see what we have here. Maybe Jennifer... We maybe covered this a little bit, but it can just get us started. Someone typed in, "Are clients now expecting to see data in pitches, conversations, and other communication, or it hasn't got to that point?"

Jennifer Cooper ([26:25](#)):

Well, I think, as I said before, to a certain degree it depends on the client, but I do feel like more and more legal departments are becoming sophisticated about the type of information that helps them drive good internal results. And frankly their internal clients, they want hard data but they can rely on when their legal partner comes to them and tells them about the progress of a specific case or mitigation in general. So... Excuse me. Increasingly clients are asking for data. They want, not only the case management data that I spoke of and the budgeting data that I also discussed earlier that we provide as a firm, but also things like the information in Lex Machina they do ask for. And Mark was explaining about the data on judges. That is just huge. I mean, I think who your judge is determines the roadmapping of cases. And clients increasingly ask for that information. I just prepared a very lengthy evaluation for a client on a very serious case in federal court in New Jersey, and they wanted information on the judge, as much information as we could possibly give them. So yes, I do find that increasingly legal departments and clients are asking for data on their cases and on the outlook for litigation.

Tim Moore ([27:51](#)):

Okay, thanks. Here's an interesting one. It talks about attorneys adopting new technology like Lex Machina. You both have been lawyers for a long time, and you've seen a lot of change in the legal industry. Maybe Mark, you could talk about this type of technology didn't exist when you started. How has it been for you to adopt or be a change agent and embrace new technology and data about how judges behave or what's happened in previous cases? And how do you see your colleagues adopt or maybe runaway from technology or new information that's available to you?

Mark Barber ([28:31](#)):

Well, I'm probably the perfect person to ask because I didn't even have a desktop computer when I started as a lawyer. So things have changed. And really there is sort of a dinosaur club that that just pretends like the asteroid isn't ever going to strike. And there are those lawyers that just refuse to adopt any technology. My own upbringing was you learn from mentors. You get court experience. You have anecdotal information, and you just went out into the world blind and said you knew something. Well, technology is now filling that information gap, and I've been amazed at what's happened just in my practice lifetime. It's been amazing. I mean, now I've got a desktop here that gets me every case in the entire world, that before I had to go down to the library at the university to find this stuff.

Mark Barber ([29:27](#)):

So I think the adoption of technology is the only way lawyers are going to stay in front of the curve. Those lawyers that sit back and do it the old way are going to get out-hustled almost every time. And the clients are used to using more data. They can't be expected to use more data at their business and then have a lawyer come in and say, "Well, I've been doing this 40 years, and I barely know how to use a Blackberry." That kind of thing is gone. I mean, you cannot be seen by clients as not being savvy. And so I think it's one of the challenges of an older lawyer like I am, that I've had to stay abreast of things. And I think it's part of the fun, though, of practicing law, is not only do I learn legal stuff, I also have to learn all this technology that actually then I can use in my business, which in the olden days some of the technology came out really didn't have anything to do with your business. Your iPod didn't help you at work. But so I think this is a huge issue. I think staying abreast of it is the only way to impress a client. And the failure to do so I think is really playing into the competitor's hands and diminishes your chances of landing the client.

Tim Moore ([30:46](#)):

Great. Well, I appreciate that. And yeah, we definitely see that change taking place with the corporate clients where they use data in all other aspects of their business. And traditionally they just never did in the legal department, but times are changing for sure. So it looks like we're out of time. Maybe just to recap really what we went over today and kind of the discussion that took place, it really seems like litigation is going to continue and that we're probably going to see a surge of new cases as a result of COVID-19. It does also seem like firms like Baker Donelson that are leveraging technology are going to continue to prosper in these challenging times and that technology like Lex Machina is going to help position firms increase revenue through business development by enabling them to handle matters better and faster and cheaper.

Tim Moore ([31:32](#)):

So if you have any additional questions, for those folks who are on the line, for Mark or Jennifer, their contact information can be found at bakerdonelson.com. I'm sure they'd love to hear from you. And we know these are challenging times from a budget perspective, so we've launched a special program that will allow you to access Lex Machina now at no cost. If you'd like more information on this program or anything you saw today, simply

reach out to me at tmoore@lexmachina.com or click on the request information button that you're going to get in an email from us shortly. I want to thank everyone for joining us today, with a special thanks to Mark Barber and Jennifer Cooper from Baker Donelson. Be well everyone and have a great weekend.