



## Analyzing the Impact of COVID-19 on Litigation

COVID-19 is causing unprecedented disruption in business operations as well as the legal system. Many companies that have been directly impacted by the virus will seek litigation to find relief. But there are also procedural effects of COVID-19 that are causing ripples in the legal system.

Our CEO, Karl Harris, moderates a discussion with Christina Fugate, Gene Vance, Paul Mersino, and Rodney Satterwhite about the effects of the pandemic on the court system. Learn what this means for your organization, and what Lex Machina is doing to help you win in uncertain times.

### Speakers:



Karl Harris  
CEO  
Lex Machina



Christina Fugate  
Partner  
Ice Miller



Gene Vance  
Member  
Stoll Keenon Ogden



Paul Mersino  
Director  
Butzel Long



Rodney Satterwhite  
Partner  
McGuireWoods LLP

Karl Harris (00:05):

Hello everyone. Welcome to our webcast about the impact of the COVID-19 crisis on federal district court litigation. My name is Karl Harris, and I'm the CEO of Lex Machina. For those of you who aren't familiar with us, I'd like to introduce Lex Machina quickly, and I'll keep it really simple. Lex Machina is legal analytics, and legal analytics help you win. If you don't remember anything else about Lex Machina, I hope you remember this. Lex Machina helps you win more business and win more cases. Specifically, we enable you to make data-driven decisions to answer questions like how the judge likely to behave in a certain scenario. What's the best winning strategy for my particular case? How has opposing counsel behaved in cases like mine?

Karl Harris (00:49):

How do I convince my client that I'm the best law firm to represent her in this case? Of course, relevant to today's topic, what litigation trends should I know about to best serve my clients and best manage my firm or in-house legal department? In the next 45 minutes, we're going to take a look at some of the litigation trends we've seen in the Federal District Courts since COVID-19 really began impacting our lives. We're fortunate today to have a fantastic group of speakers, who I now have the pleasure of introducing.

Karl Harris (01:21):

First, we have Christina Fugate who is a partner at Ice Miller in Indianapolis. She chairs Ice Miller's franchise and distribution team, and co-leads the firm's COVID-19 Task Force. She has a lot of experience in franchise law, but also has defended fortune 500 manufacturers, distributors, and retailers against product liability, warranty and indemnification claims. Welcome Christina.

Christina Fugate (01:46):

Thanks, Karl. Happy to be here.

Karl Harris (01:49):

Awesome. Next, we have Paul Mersino. Paul serves on the board of directors and as the chair of the litigation practice in the Detroit office of Butzel Long, specializes in complex commercial litigation, contract disputes, non-competition, trade secret disputes, and automotive supplier disputes. Welcome, Paul.

Paul Mersino (02:10):

Thank you very much. Happy to be here.

Karl Harris (02:13):

Next, we have Gene Vance, who is a member of Stol Keenon Ogden working out of the Lexington office. He's a member of the Business Litigation Practice Group as well as the Tort, Trial and Insurance Services

Practice Group and the Intellectual Property Practice Group, and also serves on the board of directors. Welcome, Gene.

Gene Vance (02:32):

Thanks very much, Karl. It's great to be part of this panel today.

Karl Harris (02:35):

Awesome. Last but not least, we have Rod Satterwhite, who is a partner at McGuire Woods in Richmond, Virginia. He has a lot of experience in investigating and prosecuting malfeasances such as trade secret theft, fiduciary breaches and unfair competition. Welcome, Rod.

Rodney A. Satterwhite (02:52):

Thank you, Karl. I appreciate you having me.

Karl Harris (02:55):

Awesome. Let's get started. I'm going to spend a very brief minute diving into some data and some of our findings, and then I want to turn it over to our speakers who are the real experts here today. First of all, let me quickly set up the data analysis that we did to help assess the impact of COVID-19 on federal district court litigation. First of all, quick reminder, Lex's not going to help you win, but specifically, we enable you to make data-driven decisions that help you win. That's why we're here today.

Karl Harris (03:25):

Our task was to take a look at the litigation trends to make a data-driven decision of how COVID-19 is impacting litigation in federal district court. The way that we did it is we compared litigation activity between the last three years from March 2018, March 2019, and March 2020, and then expanded that analysis to the first half of April, so April 2018, April 2019, and April 2020. For those of you that are following along, starting tomorrow, we will roll up the statistics for the entirety of April, and you can come back to [lexmachina.com](https://www.lexmachina.com) to check our blog for an update on that in the next week.

Karl Harris (04:06):

For data geeks, we want to make sure that we're always having rigorous apples to apples comparisons at Lex Machina. So what we did here is we compared activity that has the same number of business days, because there's obviously less court activity on weekends, and if we're comparing a period of one to the next, we want to make sure that we're actually comparing the same number of business days. So that's 20 business days for March and 10 for April. Let's quickly dive into our findings. In the next 45 minutes, we're going to prove the following data points and conclusions. First of all, case filings are down, but not significantly.

Karl Harris (04:40):

What this suggests for us is that litigants are moving forward with plan litigation. We'll dive into some data points here in a minute, but big picture takeaway, case filings continue in the federal district courts. Second data point, despite filings continuing, courtroom activity itself is down. That means that COVID-19 and social distancing measures are in fact impacting courtroom operations, and it's making it harder for cases to progress through the litigation process. This to me suggests that there's likely to be a backlog in the federal district courts.

Karl Harris (05:12):

If case filings are relatively steady, but courtroom activity is down, that means a lot of cases are getting on a backlog in the district courts. Then finally, searching for evidence of COVID-19 itself appearing in courtroom filings, we see that there is a lot of activity but mainly as an operational item, so like scheduling orders, or postponements and things like that. We have yet to see a wave of litigation that's truly caused by the COVID-19 crisis, but it's coming. We're seeing an uptick in cases that are actually filed as a result of COVID-19. We'll talk about that in a little bit more detail.

Karl Harris (05:52):

Let's dive into the data. First, we're going to take a look at case filings. Again, here we are. Case filing is down, but not significantly. What you see here is, again, comparison of litigation activity from March 2018 in the blue bar, March 2019 in the red bar, and March 2020 in the green bar. We've broken it down by practice area. So you can see here some are up and some are down. In particular, employment litigation is actually up from last year in the month of March, whereas consumer protection is down. Contracts is down but only slightly by just over a dozen cases.

Karl Harris (06:28):

Insurance litigation is actually up. Copyright is down fairly significantly on a percentage basis, but notice this is a lower volume filing practice area than the others we mentioned. Patent litigation is up. Trademark litigation is slightly down, and securities litigation is up. These trends held for April as well. In fact, when we compare a litigation activity for the first half of April, we see the exact same practice areas are up like employment and insurance, patents and securities, and the exact same practice areas are down, consumer protection, contracts and copyright.

Karl Harris (07:08):

What I'd like to do is turn it over to the panelists to see what you're seeing in your day to day practices. Let's start with Gene. Gene, what are you seeing in your firm in terms of these different practice areas and different filing activities, and how are you orienting your firm in response to this data that you see in the courts?

Gene Vance (07:29):

Well, I think what we're seeing in our firm is similar to the data that you just presented. The immediate needs for clients in the first couple of months of the COVID-19 pandemic have been in the area of labor and employment. It's not yet necessarily translating to litigation, but it will. Our labor and employment practice area has been overwhelmed with the number of inquiries on various issues related to staffing

and government programs that have been created. We're starting to see upticks obviously in the insolvency and restructuring practice, and that's going to continue as the year moves along.

Gene Vance (08:15):

We advise on insurance coverage issues, business interruption and other aspects of commercial insurance policies. Again, these are in the advice stage and have not yet matured into litigation, but we're headed in that direction as you indicated. Other areas where we're seeing inquiries relate to the essential business designations, opening and closing of businesses, a lot of states now are getting into the mode of reopening various aspects of the business community. Those businesses are seeking advice as to how they can comply with the directives that are coming from various government entities.

Gene Vance (08:54):

Those are the areas that are seeing the most activity at this point in time. Later in this presentation, we're going to talk about what we believe that means for the future trends in litigation. I think what you are seeing right now, in terms of the advice your clients are seeking, are that that is the warning, and that is the canary in the coal mine, I guess, of what the litigation picture is going to look like as we move through the rest of 2020 and into 2021.

Karl Harris (09:30):

That's great, Gene. Thanks for those insights. Either for Gene or someone else on the panel, you mentioned canary in the coal mine and that these are early days. We're two months into this. Are you taking any steps to change how you manage your firm or how you align your resources based on this data?

Gene Vance (09:54):

Well, I can pick back up on that and note that we are of course, cross training some of our younger lawyers so that if perhaps they are a transactional lawyer and we have an immediate need in labor and employment, we can get them up to speed in that area to relieve some pressure there. We pretty early on, and I think a lot of law firms, this is not unique, but within the first week, we formed the COVID-19 client response team to marshal the information and the resources that we have within the firm in order to be able to respond to the anticipated need from clients.

Gene Vance (10:30):

We've been preparing what I'll call bench research on different aspects of the types of issues that have arisen. Frankly, we've been able to turn some of that bench research into very productive work for clients. I think a lot of law firms have been nimble in addressing these areas, and it has been a significant benefit to our clients.

Karl Harris (11:00):

That's great. Christina, I know you lead your firm's COVID-19 Task Force. Do you follow a similar process to what Gene is describing? How has your firm been reacting based on the different types of filing data that you see?

Christina Fugate (11:15):

Absolutely. We have a COVID task force as well. That includes attorneys from topic groups throughout the firm. We have a concerted effort as well to make sure that we're keeping up to date with the latest issues, not only what's happening right now, but what we foresee happening down the road three to six months from now and even further. We've also started putting together teams to address insolvency issues that we foresee in the future. We're working with associates to train them to be able to handle the optics that we foresee coming down the road with respect to that area as well as real estate litigation.

Christina Fugate (11:54):

We think that's going to be another hot trend down the road. So we're training some associates in that area as well, but definitely on the COVID side of things, we've got a big team that's keeping up to speed with all the issues that's going to come down the pipeline.

Karl Harris (12:16):

Makes sense. I'm really impressed with how folks are being proactive in terms of aligning resources. Based on the data that we're seeing, that's really fantastic. Why don't we move on for a second here, because this is talking about big trends and filings and things like that. Let's talk a little bit about what's happening now in the courts. When I switch here to quote an activity, let me show you how we analyze that. What this chart is showing is cases with findings by event. Again, this is a March over March comparison with March in the blue bar for 2018, 2019 in the red bar, and 2020 in the green bar.

Karl Harris (12:56):

When we say a finding, what we mean is a significant event of litigation. For example, it could be an infringement finding in a patent case, or it could be a discrimination finding in an employment case or a duty to defend finding in an insurance case. It's a major milestone that impacts the outcome of litigation. What we see is across the board, this activity is down. For example, consent judgment is down around 6%. Default judgment found down significantly as with judgment on the pleadings. Summary judgment down 27%. Then finding that trial were down 41% in the month of March.

Karl Harris (13:36):

Again, this activity carries over into April. You can see, again, consent judgment down, findings of default judgment down same with judgment on the pleadings, summary judgment, and then findings at trial are significantly down. What this suggests to us is that despite the fact that filings are continuing to come into the federal district courts, moving those cases through trial and other phases itself is slowing down quite a bit, which is obvious as courtrooms are closing and changing schedules and stuff like that.

Karl Harris (14:10):

I'm curious to hear a little bit about how this is impacting your work at your firms. Now for this one, Christina, when we spoke last week, you mentioned that you had your first multiparty call happening over Zoom. Can you tell the audience a little bit about how that went for you and how you think this is going to affect managing litigation going forward during this crisis and beyond?

Christina Fugate (14:35):

Sure. Absolutely. On Monday, I had my first all virtual mediation. It was in a case that had multiple parties and multiple issues at play. This was a date that we had set on the calendar, obviously, prior to the COVID situation. So when we were leading up to April 27th date, we were talking among all the parties whether or not do we still want to go forward knowing that we couldn't be there in person with the client or among all the other parties? We decided that we wanted to try to give it a go. What we ended up using is the Zoom platform.

Christina Fugate (15:13):

I know there's some privacy issues and security issues, but we decided that was the best platform for us to be able to try to get this done. I was pleasantly surprised at how well it went. The technology worked for us. It was a long day, but by the end of the day, I felt like I was actually in the same room with my client. Each party was given a Zoom breakout room, so essentially as a Zoom call with the client... I had two client representatives with us. We were there and able to talk freely without the other parties present, or in some cases, the mediator went in and out of each party's room, but it worked very well.

Christina Fugate (15:57):

We also had a group text as well on the side, [inaudible 00:16:01] anything came up where we felt we couldn't talk in front on a Zoom call, but it worked really well. I think more and more, people are going to start using this type of technology to have a second mediation. In fact, I've got another one on Tuesday, and we're using the Zoom platform for that as well. It was nice because we were all doing this on Monday at our homes, at our home offices, and we're using the video from your computer, so you could see each other quite well.

Christina Fugate (16:40):

You weren't in a conference room, where you're sitting back far from the camera, so it really felt like we were all there together.

Karl Harris (16:51):

That's great. In particular, I noticed that you mentioned you used the private breakout rooms in Zoom and the group text. I think, sometimes folks wonder if during these video calls, is there going to be a way to speak privately or converse just with your team and stuff like that, but it sounds like that worked just fine for you. Would you say it was just as good as being able to have like a private conference room if you were on site?

Christina Fugate (17:17):

It did, at least for us. It really worked well, and we did feel as though we were in a secure room that we could have those conversations about strategy and the case. The one thing I would say that is a disadvantage for not being there in person is having the ability to bump into the opposing parties returning and on the way to the bathroom and have a sidebar conversation. We can't really have that in a virtual mediation, but besides that, I felt everything went smoothly, and I would definitely do it again.

Karl Harris (17:52):

That's great. Rod, when we were chatting a little bit before, you mentioned you had an experience. I don't know if you used Zoom or a different technology. Did you have similar experiences to Christina or some thing's a little bit different for you?

Rodney A. Satterwhite (18:05):

Yes and no. We did use Zoom for mediation last week, and we had a situation where some parties were individual and working from home. So they were clear and large on the screens, and others were... We had a couple of parties that were with a client in a conference room, socially distancing, of course. The end result is when you're using a camera that's up on the wall that's part of a conference room conferencing system, and people are sitting back away from it, they're smaller. They're harder to see, and you can't really...

Rodney A. Satterwhite (18:36):

I think it lacks a little bit of that personal connection that Christina was talking about, because you really can't see facial expressions as well. You can't see reactions as well when other people are speaking. I won't say it was the reason that the mediation was not successful for us, but I think we lacked a little bit of that personal connection that Christina was talking about in hers. As between the two methods, it seems a little bit inconsistent or abnormal to try to distance yourself individually when you don't have to, but I think if you're going to do it on that kind of platform, that's a better way to approach it.

Karl Harris (19:16):

That makes sense. I'm curious. Christina, you hinted at this, but moving forward on the other side of this crisis, getting together for these types of things costs quite a bit of money in this travel and things like that. Do you think that as folks get more practice with doing these types of conversations over Zoom and whatnot, that a year from now, two years from now, will folks go back to preferring to do these things in person all the time, or do you think that we'll see a permanent shift towards having these types of litigation stuffs done remotely?

Christina Fugate (19:54):

I don't know it'll be a permanent change, but I do think that we're going to see more and more of this type of technology being used in the future, even when we can get together in the same room. I think, as you mentioned, costs, you save a lot of money not having to travel somewhere. The client doesn't have to travel and take time out of their day to sit in an airport to perhaps be in a mediation for an hour. Sometimes, mediations don't last very long, and so I think we are going to see an uptick in using this type of technology, even when we can be together.

Christina Fugate (20:30):

I think this event has forced a lot of people to try it out. I think people were hesitant in going this direction, and now that we are almost forced to try it out, I think people are seeing that it can work, and we're going to see more and more of it.

Rodney A. Satterwhite (20:49):

[Crosstalk 00:20:49], Karl.

Gene Vance (20:49):

This is Gene. If I could, I think that's a really interesting topic, particularly in light of the orders that many courts enter requiring decision makers to be present for mediation. Some courts have orders that even go so far as to say it has to be the person with ultimate decision making authority, and they define that. I think the virtual mediation will be something that could very well have an impact on how judges who order mediation approach it. Whether that means they're going to be more or less tolerant, I think, on appearances, whether they would approve virtual mediations when we're not in this setting, or whether the fact that you could have a virtual mediation may mean that you need someone even more senior in the company than you might have otherwise, I think those are going to be interesting questions to think about.

Rodney A. Satterwhite (21:43):

I have one piece to add to that that just doesn't really answer the question, but in terms of court approval in... I practice in the Eastern District of Virginia, and just last week, we got a general order from the court encouraging and explaining the use of Zoom Gov, which is the government version of the Zoom platform that Christina use, basically encouraging parties to use it for hearings. If you go to the court's website, there's now a full blown tutorial and set of instructions on how to prepare for it.

Rodney A. Satterwhite (22:15):

Then they leave it to the individual discretion of the judge as to how and when they want to use it. So not only individual parties in mediations, but I think you're going to see courts moving in that direction as well.

Paul Mersino (22:25):

Karl, this is Paul. Just to give another view on this, I think this will certainly accelerate the amount of use of technology and remote mediation and maybe remote depositions, but I don't think in-person work is going to end by any means. In mediations, we've all seen the utility of figuratively or literally locking someone in a room until they can get to a consensus. That's just not the same when it's done remotely with some depositions and complex cases. For example, actually, I have some expert depositions coming up, and both sides agreed that the parties would be best served by pushing them off and doing them in person when we're able to, given the complexity of the case, the amount of exhibits that are going to be necessary, needing other counsel or other agents in the room to confer with in between questioning, things of that nature.

Paul Mersino (23:15):

I think we'll definitely see the needle shift towards use of technology, but I don't think by any means the days of working together in person are going to be over.

Karl Harris (23:28):

Makes sense. Fantastic insights from everybody there on this particular topic. Maybe before we move on, just to bring things back to the data, Christina, you mentioned your first big multi party Zoom call this last week, and everyone's had an experience it sounds like within the last weekend this week on these things, so this is all new. Do you think that the use of these remote technologies and whatnot, are we figuring out a way to push the cases that are currently being litigated through the system?

Karl Harris (24:02):

More specifically, do you think this backlog that we showed here with this lack of findings and things like that is going to continue over the next few months, or do you think that we're going to unlock some productivity here and get things pushing through the system like they were before?

Christina Fugate (24:21):

I think it's definitely going to help. I think, like the order that each district of Virginia just issued encouraging the Zoom platform, I think that's going to help and I think more and more courts are going to turn to holding virtual hearings, which is going to help move these cases along. Yes, I do think as more and more people get familiar and get comfortable with the technology, especially if some of these [inaudible 00:24:50] orders continue, I think we are going to see more of this help push some of the litigations through.

Karl Harris (25:00):

That's great, a fantastic perspective. We'll of course be checking back at the end of the month and next month to see what the data shows, because I hope that these types of things prove correct. Well, that's great. Let's move on a little bit to the next topic, which is really around the appearance of COVID-19 itself as a topic of litigation. What we did here is we cut the look. We did a keyword search across dockets and documents that matches the search for COVID or coronavirus or pandemic. The first finding here is not surprising, which is that this is largely a new thing, so there are 40,091 hits on this search in 2020, and only a handful of hits probably matched things like pandemic or coronavirus, which is not specific to COVID-19 in previous years.

Karl Harris (25:54):

By far, the majority of these hits were on what we call just general operational item. For example, here's a particular example of an order filed by a judge. "In light of the COVID-19 public health crisis, the court will not hold the upcoming initial pre-trial conference, in this case, in person. Counsels should submit the proposed case management plan in joint letter seven days prior to the scheduled conference." This is an example of things being held out and something that can't be done in person. Hopefully this last

conversation we just had about using Zoom and things like that means that progress can be made, but this is what I mean by a general operational order.

Karl Harris (26:33):

Here's another example. Civil case hearings, trials and settlement conferences scheduled for March 17 until April 3rd are stricken from the calendar. COVID-19 here, this is what I mean by something that's affecting the operations of the court, but not necessarily related to the cause of the litigation. What we mean by cause, what we're looking for next is litigation that where COVID-19 is the reason for a litigation existing in the first place. What we did to investigate that is we searched complaints that matched that same keyword term COVID or Coronavirus or pandemic, to see whether those search terms exists in the actual complaint filed and the litigation itself.

Karl Harris (27:17):

The reasoning for this is that if a plaintiff is mentioning these terms in the complaint itself, it's likely to be the subject of the litigation. We confirm this by looking over some sample data to see that when these search terms hit, it's because Coronavirus is the cause of the particular litigation. This is a new phenomenon. In the first week of March, this only hit one complaint. Then you can see this chart subsequently week over week, it's grown significantly, so for the next week, 19, 24, 34, 56, 69 and 117 matches last week alone. What this tells me is that while this is early days, this is roughly just over 200 matches, this is coming.

Karl Harris (28:04):

I mean, this is almost doubling week over week. So what I think by that, what that means is that we're going to start to see a wave of litigation that's caused by Coronavirus. Just to give you some quick examples, and then I'll turn it over to the speakers for commentary, here is an employment case, and in the complaint itself, it says, "This case is an egregious example of a company putting profits over people during a national pandemic." Here's an example of an insurance case. It's based on the [inaudible 00:28:38] conduct in this case, defendant adopted a general business practice to deny insurance claims arising from the COVID-19 pandemic.

Karl Harris (28:46):

Here's an example of a contracts case. The Coronavirus pandemic is a circumstance beyond the control of net one. That's definitely the language of a company that's looking to get out of fulfillment of a contract as a result of Coronavirus. Then finally, I had to put this in there, everyone's favorite video conferencing tool Zoom. This is a contracts case in which folks are suing Zoom for some of the security breaches that have happened, that you all may have read about in the news. What I'll do here is turn it over to Rob to just kick us off here.

Karl Harris (29:22):

What I would predict from this data is that we're about to see a wave of litigation that's caused by Coronavirus. Are you seeing this:? Are clients asking you about this at your firm, and then how are you reacting to meet that demand or to be able to provide the best advice to your clients?

Rodney A. Satterwhite (29:39):

Well, I don't think anybody on the call doubts that you're going to see a significant increase. I mean, no crisis should be wasted. You'll see a whole host of litigation, but what we've seen so far that's consistent with some of the examples that you just went over, thus far, it's been a mixed bag. I mean, you've got everything from Uber drivers filing suit to try to get sick pay. You've got price gouging claims against online retailers, people suing gyms for charging their monthly fee when they're closed. In terms of figuring out the trends, I think I would circle back and agree with what Gene said at the beginning.

Rodney A. Satterwhite (30:18):

For us, the areas that have kept us busy on the counseling side in the last two months are probably going to be the biggest hitters in terms of where the litigation is going to go. I mean, we've all talked about the fact that we're cross training lawyers to the hot areas like insolvency and restructuring, employment law. We've had a lot of questions, and we're starting to see a lot of litigation on the commercial side with respect to force majeure clauses and their effect. Then I think, Gene may have mentioned the insurance litigation and whether or not there's coverage for business interruption.

Rodney A. Satterwhite (30:54):

I think there are also going to be some newer claims based on the federal legislation. Everybody has seen some of the less than favorable press resulting from how the paycheck protection program funds were distributed to perhaps larger organizations than people thought they were going to be distributed to. All of those in those general areas, I think, are likely to be heavy. Then in the area where I spent some time with the employment law, I think you're also going to see a combination of old and new types of claims. I mean, with a number of people who are working remotely, I think it's inevitable that you're going to see an increase on wage and hour litigation.

Rodney A. Satterwhite (31:35):

People have much more difficulty tracking overtime and meal breaks and that sort of thing when they're not in the same room or in the same building. I think the teleworking issue may also play a role in future Americans with Disabilities Act cases, because up until now, telework has been a potential reasonable accommodation that some employees have asked for and some employers have granted and some have denied. You're not required to provide an accommodation if it's an undue hardship, but I think people are going to be very hard pressed going forward to claim that teleworking is an undue hardship, given the fact that we all have been doing it for the last two months.

Rodney A. Satterwhite (32:17):

I think when you combine that with, again, the new statutes like the Families First Corona Response Act that provided paid leave and paid sick leave, that's going to be fodder for a lot of claims as people start to get through the crisis period and think about coming back to work or think about whether they have a job when they're coming back to work. I mean, we're hiring unemployment. I can tell you that for sure.

Paul Mersino (32:44):

Karl, this is Paul. The flip side of that, of course, is there might be some cases where the complaint doesn't mention it at all, but you're going to have now a lot of defenses in the form of affirmative defenses, whether it's force majeure or other matters. We know for certain there's going to be a lot of landlord tenant litigation coming when the tenants don't file their suit. So you may not see it in the complaint, but the tenant may raise it in their response, same with a lot of supply chain issues and just general breach of contracts that have been coming up.

Paul Mersino (33:14):

Of course, there's going to be a lot of instances where it's a very valid defense. Then there's gonna be instances where the defendant raises it as a defense, whether it's valid or not, because they may be able to now. So we're going to also see it a lot on the responsive side as well.

Karl Harris (33:31):

That makes a lot of sense. I'm eager to create a similar chart that searches over answers, and I think we'll see those trends as well. Paul, I know you've obviously handle a lot of cases that ultimately have contracts as a source of dispute. It was interesting to me to see that overall numbers for contract litigation, at least in federal district court, were just slightly down year over year. I would have actually expected that to be up. Do you see that trend likely reversing in the next couple of months, and you see a spike in general contract litigation with federal district court?

Paul Mersino (34:06):

I do think that you will see a spike. I'm perhaps more bullish or optimistic than some, but you have two different phenomena going on right now. On one hand, you've got a lot of cases that are just... They were already in existence before this pandemic occurred, and they've been put on pause. So they're just on a leash being held, a lot of things coming, and once it is unleashed, we're able to travel again or go to court again. You're going to have that rush of backed up litigation. Then you're going to have a lot of this litigation that's directly stems from this.

Paul Mersino (34:40):

I mentioned some already, supply chain issues, landlord-tenant dispute issues. There's going to be a lot of just general contract and commercial issues that stem from this from delayed delivery or all of a sudden products or goods that were supposed to be available no longer are available, which we're seeing shortages around. How does that affect requirements, contracts and output contracts? I do think we're going to see a lot of work for a lot of attorneys coming out of this, again, both from that which has been bubbling over being held back, and then that which stems directly from this.

Gene Vance (35:16):

Karl, I'll play devil's advocate on that just a little bit, because I think Paul is exactly right in the commercial setting. I agree with everything he just said. I do think there are areas of litigation where you may ultimately see a downtick because of this. Let's think about personal injury litigation, for example. There are a lot fewer automobiles on the roadway right now because people are staying home. So you should expectedly see a downturn in litigation arising from motor vehicle accidents, both

in federal and state court, particularly in federal court because all of those have to have diversity of citizenship allegations.

Gene Vance (35:53):

With people not traveling Interstate, that's going to even reduce that docket even more. Industrial accidents and products liability claims that arise from those, with fewer people at work right now, there may be fewer claims there. Conversely, in the personal injury space, I think we're going to see a dramatic increase in nursing home litigation, because nursing homes have been in many respects the epicenter of the COVID-19 outbreak, and there are going to be tremendous pressures on nursing home companies and companies that have interest in nursing homes because of litigation arising directly from this pandemic.

Karl Harris (36:33):

That's absolutely great insight. I think that the takeaway is, like you said, Gene, some stuff's going to go up. Some stuff's going to go down. That's why it's so important to be on top of the data so that everybody's able to be responsive and align resources accordingly. Let's take a look at one more data point here before we get to some Q&A. This is a different data point. This is an actual look at Lex Machina's usage week over week by unique active users from January 26, which we consider January 26 before shelter at home orders and whatnot really started to impact businesses, and in particular our business.

Karl Harris (37:18):

What you notice here is not surprisingly. The week of March 15th, users on our platform bottomed out, almost 23% down from that January 26th baseline. That is right when the shelter at home order started to impact people, and folks were adjusting to the shock of the new working reality. But subsequently week over week, things have bounced back. Actually last week, usage on our platform was just 1.2% below the January 26th benchmark. We hope, obviously, for our own business that this number continues to go back up into the right, and hopefully next week, we'll be back to the normal level.

Karl Harris (38:00):

[inaudible 00:38:00] in terms of the broader things outside of Lex Machina the platform is that folks have started to figure out how to work from home and how to make progress, and are getting back to focusing on those things that they were dealing with back in the office before the pandemic started. I'm curious, I'd maybe turn it over to Paul here. We chatted. You had shared a story about some of your firm's experiences about getting folks to work from home successfully, maybe overcoming some people who were initially skeptics.

Karl Harris (38:31):

Maybe I'll turn it over to you to talk a little bit about what you see in people's effectiveness working from home, and what you're doing at your firm.

Paul Mersino (38:37):

Sure.. At my firm, as with many firms, we've been looking for some time now at the law firm of the future and what it's going to look like. We all know various factors out there, technology, AI, different things, how might it affect our office sizes and the number of offices we have in our real estate, in our hiring activities. It's something we've been analyzing for some time. In many ways, for better or for worse, this last month or so has just put it into hyper speed, and a lot of the things we've been discussing we were forced to put into practice. I was telling you the story anecdotally here.

Paul Mersino (39:17):

We had many of our more senior partners and attorneys sometimes pushing back on technology or scoffing at the idea of working from home, things of that nature. We had one of our older, more senior shareholders or partners, who when we had to move to work from home, pretty much overnight, we got our firm working from home. Now, a lot of people already had laptops and VPNs, and so it was easy for a lot of people, but for some of those pushing back, it was a rude awakening. For one of our more senior attorneys, we got him set up working from home, and our tech support was on the phone with him.

Paul Mersino (39:53):

When he logged in at his home computer, he said, "Well, how is this happening? I'm seeing my my work computer from home." I said, "Well, yeah, that's how it works." He said, "But this looks exactly like my desktop in my office. It looks just like I'm sitting at my office desk at my office computer working on that same computer." They said, "Yeah, that's how it works." He said, "And I can open all the same files right here on my desktop at home that I would be able to do in my office." They said, "Absolutely, that's the way we've got it set up." He said, "Man, if I would have known I could do all this, I would have been doing this for years now."

Paul Mersino (40:30):

Somebody who maybe was a little bit more skeptical or pushed back on the idea that once they were forced to do it realized first off, it's not difficult. Secondly, I think it was much easier and gave him much more capabilities than he ever realized were out there. There's going to be a shift, I think. We'll see more and more people. Now that they've done this, now that they've been forced to do this, they realize that it's actually not so bad. They actually can be productive. Again, I don't think in-person work or offices are going to be a thing of the past.

Paul Mersino (41:00):

We're still going to have that, but more and more people are realizing that they can do the same amount of work in many respects, sitting at home and not fighting traffic and not parking and all of that. I think in many ways, when we talk about the law firm of the future, we maybe had accelerated that entire process industry wide by a number of years here.

Karl Harris (41:21):

That makes sense. I'm curious, the idea of this forcing us to try out things that we maybe not hadn't tried out in the past. Christina, you mentioned that a little bit when you talked about doing Zoom, and

it's turned out perhaps better than you might have expected. Do you have any similar stories to share about folks moving to work from home from Ice Miller as another example of people maybe not having tried something before because of some concerns about it, but finding out that in fact, works better than we might have thought?

Christina Fugate (41:55):

Absolutely. We have similar stories just like Paul had, but I think also too, not only some of our senior partners who are now getting accustomed to it, but attorneys like myself who have young children and a working attorney at the same time, I've actually found myself way more productive now that I don't have to fight traffic. I can work from home and do it all here. I've got a lot more time on my hands that I can now put more time into the business, and help the firm. I think we're also seeing that dynamic too, which is, helping as well.

Karl Harris (42:39):

Makes sense. Well, we are getting close to the end here. Thanks to all of the speakers for your fantastic contributions. I want to turn it over to a couple of Q&A. Some people have written in, and let's pick off a few questions there. First of all, there's a question that says, "Is there any way for us to track these metrics as users of the Lex Machina platform? The answer is yes. I pulled all of the metrics that you've seen here directly out of Lex Machina. Feel free to reach out to us at support, or, of course, to me directly. I can show you how to do it.

Karl Harris (43:14):

One thing that I am excited to talk about is we'll be releasing an app inside of our platform in the upcoming weeks that allows you to track these statistics, just as I've shown them in this slide. We've had a lot of demand since we started talking about these stats for our users to get this information, and we'll be making it easy in the upcoming weeks. It's easy now. If you want to write into support, we can show you how to do it. Another question in this would be for one of our speakers. Any thoughts on depositions via Zoom or reporter proprietary systems?

Karl Harris (43:54):

It's interesting. We heard from Christina and others that Zoom was the tool that they use, and there's also some proprietary deposition systems out there. What do the panelists think about using Zoom versus proprietary systems?

Paul Mersino (44:11):

Karl, this is Paul. I'll jump in first, I guess. Much like the legal industry are third party vendors overnight had to adjust on the fly and come up with new business models and new services. So you are seeing a lot of third party vendors putting together their own proprietary online services, including depositions, video deposition services. I would just caution that some are probably better than others. I've heard some that work great, and maybe even better than Zoom in certain ways. Others maybe not so much. So I would recommend to the extent you're able to practice with it in advance of your deposition, but a key thing and maybe everyone's already thought of this, but I think we should also point out is there are

different rules in different states as to whether or not you can actually do video depositions in particular.

Paul Mersino (45:00):

I don't know of any state that says you cannot, but there's a big question that varies from state to state as to swearing in the witness and putting them under oath. Does the court reporter have to be present with them to do so? I know under certain states, the courts can waive those requirements or the parties can stipulate to certain requirements, but keep that in mind. The last thing you want to do is go through an entire deposition, and then after the fact someone challenges whether it was even properly under oath or not.

Rodney A. Satterwhite (45:31):

Karl, this is Rod. I would-

Christina Fugate (45:33):

Karl, the only thing-

Rodney A. Satterwhite (45:34):

Go ahead, Christina.

Christina Fugate (45:36):

The only thing I was going to add is a lot of vendors will go into your firm and help with training to do virtual depositions. We went through... We had our litigation group went through a training with one of the vendors that we use quite frequently, and it was great. It gets that practice so you feel more comfortable moving forward with agreeing to a virtual deposition. We said going back to the mediation as well, we practiced using the Zoom technology before we went for defacto. Whatever platform you decide to use, I would encourage practicing on it.

Karl Harris (46:16):

Great. That's fantastic advice. Then one more question here, because it's an easy one. A couple of folks have asked if we identified any trends in the state courts that we covered. The answer there is stay tuned. You can always come to [lexmachina.com](http://lexmachina.com), and look on our blog post. We will be writing about trends and all of the different venues that we cover. State court trends is one of the things that we'll look at in the upcoming weeks.

Karl Harris (46:46):

All right, well, we went over by just a couple minutes, but thank you all for joining this webcast. A special thank you to all of our speakers Christina, Paul, gene and Rod. It was really fantastic to hear your insights. I hope everyone have a great rest of your day.