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## COVID Is Over, but Not When It Comes to Real Estate, Personal Injury Litigation



"COVID continues to impact trials as attorneys, judges, trial staff, litigants jurors, etc. test positive before, during, or after trial, and derail things that have taken years to get into a position to try," Attorney Kenneth J. McKenna said.



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Litigation



Lisa Willis



COVID-19 is over.

The effect of COVID on courts is not.

Beginning March 2020 the world held a collective breath as emergency rooms across the world became flooded with patients suffering from a mystery illness later classified as COVID-19. In May, some 39 months later, in the US, the Centers for Disease Control and Prevention declared an end to the [public health emergency](#).

Every industry faced unique challenges, including the legal sector, which was not immune to the effects of economic strain. To survive the pandemic, it needed to make sweeping changes to the practice of litigation.

Surveys show [lawyers found themselves billing more hours](#) than ever before under once-unthinkable circumstances, including working from home during the lockdown and litigating trials online.

Per-partner profits at the largest U.S. firms rose 13% in 2020, according to [Am Law's annual report](#), and close to 20% in 2021.

In February, global law firm Hogan Lovells, which has a strong Miami presence, released a summary of the firm's [financial results for FY 2022](#), announcing global revenue that was the second highest in the firm's history, despite global economic challenges.

The early 2023 numbers are indicating a return to earth as [Am Law 100 reports](#) a leveling out.

Small, Mid-sized, Large ... across the board, the effects are omnipresent as South Florida law firms are dealing with the rapidly changing law landscape.

Tiffany Comprés, partner at FisherBroyles in Miami, sees the change in technology as something long-lasting.

“The use of technology for remote hearings in arbitration will likely continue. The pandemic accelerated the adoption of remote-work technology in every industry, especially the legal sector,” Comprés said.

In a 300-strong firm, Comprés’ focus is on international arbitration and litigation. She feels remote hearings offered significant cost savings, increased efficiency and enhanced accessibility, as well as maintaining continuity in legal proceedings during times of disruption, such as hurricanes and other emergencies.

In justifying the importance of the new trend, Comprés said, “They eliminate the need for travel, reduce expenses related to physical hearings, and enable participants from different geographic locations to participate without logistical challenges, thus reducing the timelines.”

Comprés said the experience gained during the pandemic has highlighted the viability and convenience of using technology in arbitration. “Many legal professionals and parties involved in arbitration have adapted to this new mode of proceedings, and have witnessed its advantages firsthand and as a result, either fully or in combination with in-person hearings, depending on the circumstances and preferences of the parties involved ... remote proceedings are expected to continue,” Comprés said.

## **South Florida Traffic, New Workforce Dynamics**

David B. Haber, Managing and Founding Shareholder of Haber Law agrees that the continuation of alternative methods of communication have been helpful to the practice of law at his firm post-COVID. Haber’s firm is mid-sized with about 30 lawyers on staff.

Referring to the use of video communications services platforms Haber said, “It’s easier to practice law, because you’re not running around in the car as traffic in South Florida has just gotten worse.”

Haber said the hybrid-work scenario is new and not going away.

“People have been hired just to work from home, because they have no interest in driving an hour and a half to get to the office and an hour and a half back home, and they required that if you hire them, they be remote.”

The Haber Law firm has hired a full-time condominium lawyer who resides in Orlando to work on Miami-area cases as a fully remote employee.

“That’s the opportunity that exists, and I find that in the condominium field in particular, whereas most meetings used to be in person, because a lot of the people are from South America or from New York or from Europe, that own units ... they have gotten used to holding Zoom board meetings, so that more people can listen, more people can participate,” Haber said.

The Miami litigator says the post-COVID hybrid environment pioneered a different workforce.

“It creates the ability to hotel your offices, which creates the ability to have a smaller physical footprint and more lawyers,” he said.

## **The Surfside Ripple Effect**

While real estate transactions have slowed, Haber said there is still a “tremendous amount” of construction litigation coming into firms, in the wake of the COVID-19 decline.

“The new regulations and laws that have been put into place since Surfside [collapse] has everybody rushing to do construction projects, and projects that have been put off for 10, 20, 30 years,” Haber said. “So now you have condominiums doing all kinds of loans with banks to get financing for these construction projects. You have the construction contracts themselves that you have to negotiate and then of course, if they get into any disputes with the contractor, you have to deal with the contractor and or the bonding company.”

## **Court Delays and Zoom at a Cost**

Boutique firm managing shareholder Jane Muir of Jane Muir & Associates said there is a lot of catching up to do from COVID-related delays to litigation.

“I am expecting a lot of trials, or cases getting up to the point of trial and then settling after years of not moving forward,” she said.

What types of suits might ebb?

“Unrelated to COVID, the legislature made sweeping changes affecting first-party property insurance claims which should dramatically decrease due to the absence of prevailing party attorney’s fees going forward,” Muir said.

And what will stick around?

“Zoom is here to stay, and it has made hearings much more efficient,” Muir said. “Now, there is no need to drive to the courthouse, park, stand in line in the hallway, or that kind of thing, but I fear it is going to hurt young lawyers because they will not have the chance to see others perform in the courtroom setting or do so themselves,” Muir said.

## **Personal-Injury Caseloads**

Clarke Silverglate partner Francisco Ramos Jr. is one of 13 strong in his Miami firm.

Ramos said in his view, COVID-19 led to administrative orders changing how cases work their way through the courts, including requiring a scheduling order for every case, putting every case on a trial calendar, and having lawyers with multiple trial-ready cases set simultaneously.

“Add to that the influx of cases brought upon by the new tort law, and judicial and law firm resources are being stretched to capacity,” Ramos said.

“In the short term, judges are inundated with personal injury matters, which will ebb as pre-tort lawsuits go through the courts,” Ramos said.

At the firm, Ramos concentrates on commercial litigation, drug and medical device, product liability and catastrophic personal injury.

“Expect fewer [personal injury] cases in the future, with more construction litigation taking its place, despite a pending recession, development in Florida, where there is no income tax and sun year-round, to remain strong, and lawsuits follow large construction projects,” Ramos said.

## **Continued Impact on Trials**

Kenneth J. McKenna of Dellecker, Wilson, King, McKenna, Ruffier & Sos, Miami, specializes in personal injury at his nine-attorney firm.

“COVID continues to impact trials as attorneys, judges, trial staff, litigants jurors, etc. test positive before during, or after trial and derail things that have taken years to get into a position to try,” McKenna said.

Remote trial testimony authorized and encouraged during the pandemic will have a positive benefit moving forward, McKenna said.

“Lower costs, less delay, less travel burden and expense for witnesses, etc.,” he said. “Courts will need to make some permanent changes to rules of trial procedure to ensure future use of remote testimony.”

McKenna said the issue of whether parties need to attend in-person depositions continues to heat up.

“Ultimately trial courts will determine, but for now it appears the move towards in-person depositions is occurring,” he said. “Remote depositions of witnesses and treating physicians and experts seem to be here for good with little controversy.”

Trial courts continue to try to work through the backlogs of cases with long trials, like medical malpractice or complex commercial litigation, still waiting to get their trial started post-COVID, McKenna notes.

“This will be compounded by the flood of personal-injury litigation that was filed in response to the recent Tort Reform legislation,” McKenna said.

Plus, apprehensions among some attorneys about public-spending priorities.

“State court funding—at least in Florida—always seems to be a struggle,” McKenna said. “[The] governor [is] happy to finance a new Sixth [District Court of Appeal] that very few thought we needed, but funding at the local level is still a struggle.”

## **From 3 Days per Week to Once a Month**

Michael Kreitzer is a shareholder and chair of the Miami Litigation Practice at Greenberg Traurig, which has had litigators in South Florida since 1967, and now operates worldwide offices as the ninth largest law firm in the United States, according to its website.

Before the global pandemic, Kreitzer used to spend at least three days a week in court for hearing attendance. Now, apart from trials, the litigator might only travel to the courthouse once a month.

“The game changer was the decision by state and federal courts all over the country to implement video conferencing, most notably but not exclusively Zoom, as a substitute to in-person hearings before the court,” Kreitzer said.

But even now with the COVID-19 pandemic in the rear-view mirror, Kreitzer doesn't expect most courts to revert to the former practice of requiring lawyers to travel to the courthouse to argue less consequential motions.

“Indeed, while courts and judges across Florida have accepted the technology with uneven enthusiasm, it's safe to say that the majority of courts have endorsed the practice of using video conferencing as a substitute for courtroom attendance for most non-evidentiary hearings,” Kreitzer said.

“Most judges to whom I have spoken have told me that they have no intention of returning to the days of packed courtrooms for early morning motions calendar. But when it comes to taking evidence, they feel they want to see the witness in the courtroom,” Kreitzer said. “In contrast, it’s fair to say that the trial bar has mixed views on the applicability of video conferencing as a substitute for in-person deposition examinations.”

## Concerns

But the new practices have given rise to novel issues.

“There is a perceived, if not a legitimate risk, of real-time witness coaching, even if unethical, or the use of memory aids by a witness that might go unnoticed by the examiner because of the limited width and depth perception of a camera lens,” Kreitzer continued. “Likewise, there is meaningful value in the lawyer-witness confrontation that occurs during an in-person deposition. Thus, many lawyers have become more strategic in their decision whether to forego an in-person deposition and more circumspect in deploying measures to minimize the risk of witness manipulation.”

“Clearly, the use of the conferencing technology has been a net gain to the profession and to those burdened with having to bear the high cost of litigating a case to conclusion,” Kreitzer said. “The more we can deploy technology to reduce the costs of litigation, the more accessible our courts become to the population at large.”

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