

The Texas Lawbook

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Law Firms Share Advice with Clients – and Each Other

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The Texas Lawbook has received feedback from litigation leaders in Texas on what measures their law firms are taking to assist clients, what their clients' largest concerns are surrounding the virus, and what they are advising their general counsel clients to do.

John Zavitsanos, AZA

What are litigation clients asking about?

"Timing. Harris County is taking the incremental action of banning civil jury trials in March. I applaud that approach. But we have several trials scheduled in April and May, including a sizeable, hard-fought matter. The next two weeks will be very telling about whether we get to go forward or not.

"There is so much information, disinformation and different viewpoints, some of them political. It is tough to tell where this will really go. I hope general hysteria is replaced with careful planning."

Advice for GCs:

"What a General Counsel should do depends so much on the size of their business. The more employees and the more locations a business has, the more conservative they may need to be.

"But the economic impact on a small business could be devastating. It's a different thing if someone is infected. But if there is no indication of any illness, it will be much harder for a small business GC to consider any kind of shut down when weighed against the possibility there is no business to come back to afterwards."

Upcoming legal issues:

"The collapse of the economy means we will have many folks trying to get out of deals and contracts. The question asked in many boardrooms and courtrooms will be: was there a real breach of contract or was this an Act of God that excuses the breach? That will be the issue du jour for maybe 18 months."

Michael Hurst, Lynn Pinker Cox & Hurst

Advice for GCs

"GCs need to review all existing executory contracts and specifically the timeframes associated with compliance provisions and force majeure clauses. I'm also getting calls regarding insurance claims.

"Clients want to be assured that we are available and able to work remotely on their important matters, which we and most law firms are able to do. While some courts are still open, no juries are going to be ordered. I assure clients that while the wheels of justice may be working more slowly, I'm advancing their cause as quickly and efficiently as circumstances allow."

Greg Waller, Hunton Andrews Kurth

Waller told *The Texas Lawbook* that the law firm has decided to re-activate its pandemic working group, a group of around 30 lawyers who specialize in employment, healthcare, insurance, commercial contracting, privacy, corporate and finance, securities, bankruptcy and immigration cases.

"The same team previously helped clients address the SARS, MERS, H1N1 and Ebola outbreaks and has significant experience," Waller said. "The group meets regularly to share intelligence and develop coordinated responses."

The ranges of questions clients have litigation-related are "extraordinarily broad," he said. By industry, here are the main topics the firm is providing advice on:

Labor & Employment: "We're advising on questions associated with balancing OSHA obligations and ADA obligations not to discriminate on basis of the perceived disability of being contagious, as well as significant work from home issues."

Commercial: "We're handling a deluge of

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requests to interpret force majeure clauses, analyze “impossibility of performance” claims, and strategize generally around event cancellations and potential disputes. Our insurance coverage litigators are busy handling related inquires around event cancellation insurance policies (which are non-standard and need careful review), as well as business interruption and workers’ compensation policies.”

Commercial Litigation: “Our commercial litigators are fielding questions about appropriate standards of care for those concerned with facilities management and other industries with significant exposure to the public ... Our litigators are also beginning to help our judges manage the practical challenges of social distancing in the courthouse.”

Finance and Bankruptcy: “Clients are focused on credit risks and are asking us to analyze ‘adequate assurance’ and ‘material adverse change’ clauses in financing agreements.”

Immigration: “Our immigration lawyers handling issues relating to US travel bans, as well as critical status issues that may arise if certain visa holders are forced to work from home.”

“All of those activities ought to confirm for general counsel that, for the near term, COVID-19 is going to require significant effort in every area of the law and legal operations,” Waller concluded. “Managing the human aspects of the response to the disease will have to be at the top of the list, closely followed by triaging operational and financial challenges and contingency planning.”

Tom Walsh, Winston & Strawn

Unique legal issues tied to the coronavirus that don’t immediately come to mind to many:

“This particular disruption is particularly acute because pandemics such as this were not anticipated by many of the contracts, regulations, and business models that form the infrastructure of the global economy – for now, we want to make sure we learn from the gaps and issues that are arising now and make the adjustments needed for business arrangements to withstand similar disruptions in the future.”

Common areas of client concern:

“We are seeing a lot of questions right now about employee benefits and executive compensation, labor and employment, HIPAA and other data security issues, business continuity/interruption insurance, private equity/M&A deal flow and due

diligence, and contracts and force majeure clauses – other questions of course come up daily as the situation continues to evolve.”