

Complex Commercial Litigation

An Update on the State of Litigation Under COVID-19



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Since our last report on the state of litigation under COVID-19, the disease continues to spread throughout the country and impact all aspects of American life. That report can be found [here](#). We hope that you and your loved ones are well and remain safe.

Courts across the country continue to strive to balance protecting health and safety while continuing to administer justice. Many courts in areas that are deeper into the pandemic cycle, such as those on the coasts, in Chicago and other metropolitan areas, are amending earlier orders to continue to limit their functions to essential or emergency matters and also addressing how litigation can best and appropriately move forward. Many courts in regions more recently experiencing an initial spike of COVID-19 cases are promulgating orders similar to those issued by courts in areas that experienced peaks earlier.

States Extend Statutes of Limitations for Many Civil Actions

Importantly, recent orders are tolling statutes of limitations for most or all potential matters. Several states, such as Massachusetts and Nevada, have tolled statutes of limitations for several claims during the current crisis, just as New York did by executive order in March.^[1] California has similarly tolled statutes of limitations for all civil actions from April 6, 2020 to 90 days after its Governor lifts the state of emergency order in effect there.^[2] The suspension or extension of statutes of limitations is something all potential litigants need to understand in addressing pre-litigation strategy. Additionally, the proliferation of such tolling orders sends a signal to litigants to not rush to court and burden the system with non-emergency issues.

Courts Issue or Extend Orders Governing Civil Litigation

Courts continue to issue new or amend past orders cancelling, postponing or continuing hearings and trials, sometimes indefinitely. For example, many presiding judges of district and state courts are issuing blanket orders postponing hearings and trials for 28 days or more.^[3] Some courts, such as the Northern District of California,^[4] are consolidating business from multiple courthouses to one location to minimize the overall utilization and density of personnel.^[5]

Emergency and Time-Sensitive Matters Continue to Move Forward

Courts are working diligently to stay open to handle essential and emergency business and to try to find way to appropriately move cases forward, including some directly related to the pandemic.

- In New York, 3M sued a Performance Supply LLC for, among other things, trademark infringement and false advertising for using 3M's logo and other trademarks to "perpetrate a false and deceptive price-gouging scheme on unwitting consumers, including agencies of government, during the global COVID-10 pandemic."^[6]

- In Illinois, a judge recently granted a temporary restraining order that, among other things, forced a company to continue to provide food and clean laundry to senior health care facilities. The court explained that the services the defendant was providing were “essential” and that “[i]t is difficult to overstate the strength of the public interest in making sure senior citizens get the services Defendant contracted to supply to them.”^[7]

Do Not Burden Courts with Non-Emergency Matters During A National Crisis

Some litigants, on the other hand, continue to ask courts to spend valuable resources adjudicating disputes that courts found are neither “required to protect the immediate health or safety of a party of the community” or “required to avoid serious harm that would likely result if the matter was not resolved during the emergency period.”^[8]

- A plaintiff misfired in asking a district court to order a federal agency to process requests to bring hunting trophies back into the country. The district court found it “unwise and not in the public interest” to issue such an order and denied the request, specifically “[i]n light of the unprecedented disruptions created by the COVID-19 pandemic and the Service’s likely diminished capacity.”^[9]
- Similarly, a district court in New York recently denied a plaintiff’s request for a temporary restraining order over breach of contract claims related to the purchase and sale of microscopes over two years ago. The district court wrote that the “timing of this application is even more dubious given the global health crisis caused by the COVID-19 pandemic,” adding that “[d]evoting resources to this facially deficient application strains already taxed staff dealing with other substantial matters pending before the Court and is abusive.”^[10]
- As we noted in our earlier report, a district court in Florida told the parties to resolve a routine deposition scheduling dispute on their own, and shared his own “let’s-keep-things-in-perspective” advice. The judge admonished the parties’ attorneys for exchanging “snippy emails” and certifying a “routine discovery dust-up” as an “emergency” matter. Indeed, the court said the controversy “would not even reach the bottom rung of a 10-rung ladder.”^[11]

Other district courts are denying requests that don’t meet the courts’ essential or emergency standards, with one explaining while “[t]hese are indeed strange and difficult times,” “the rule of law is particularly important.”^[12]

Courts are adapting to continue litigation remotely using telephonic or videoconference hearings. Judges and practitioners are learning how to best employ those technologies, but there have certainly been struggles. A federal court in Georgia had to shut down a publicly videoconferenced hearing over gun carry licenses because the lawyers “were frequently interrupted by loud music, running water, background conversations and occasional vocal interjections by at least one person who took issue with the lawyers’ assertions.”^[13] Courts have also taken attorneys to task for not treating video conference hearings with appropriate decorum, including appearing in various states of undress.^[14]

Appellate Court Arguments are Being Delayed or Heard Telephonically, the High Court Included

Several federal appellate courts, such as the Fourth Circuit,^[15] have postponed their April oral arguments, while other circuits are cancelling them and waiting to advise counsel regarding further arrangements.^[16] For example, the Ninth Circuit is evaluating oral arguments scheduled in April and May on a case by case basis.^[17] Even the United States Supreme Court is no exception, deciding to hold oral arguments telephonically for the first time amidst the pandemic.^[18]

Safety First and Stay Informed

Striking an appropriate balance between safety and access to justice remains a priority for courts nationwide, but the steps that courts are taking are far from uniform. Instead, an even brief survey of the landscape shows a variety of court measures depending on local circumstances. Attorneys and their clients therefore must stay aware of court orders that apply to their current or potential litigation to avoid issues, particularly those that relate to scheduling or timeliness of claims.

We continue to closely monitor the state of litigation across the county. Firm litigators, including the co-authors, are currently litigating as appropriate and necessary expedited motions, court hearings, depositions, and we continue to daily counsel clients in or facing litigation, including on cases that involve COVID-19-related litigation issues, such as preserving documents and witnesses and best recording proofs and damages. Please reach out to us if you or your client could use our assistance in addressing dispute counseling and litigation matters.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

For additional information and materials, please visit our COVID-19 / Coronavirus Resource Center.

[Click here to visit our COVID-19 / Coronavirus Resource Center](#)

[1] Order Regarding Court Operations Under The Exigent Circumstances Created By The COVID-19 (Coronavirus) Pandemic (Mass. Apr. 1, 2020), <https://www.mass.gov/doc/supreme-judicial-court-order-regarding-court-operations-under-the-exigent-circumstances-created/download>; Declaration of Emergency Directive 009 (Nev. Apr. 1, 2020), <https://www.nvbar.org/wp-content/uploads/Governors-Directive-009-Revised.pdf>; Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (N.Y. Mar. 20, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf. See also Executive Order No. 7G (Conn. Apr. 19, 2020), <https://jud.ct.gov/HomePDFs/Executive-Order-No-7G.pdf>; Administrative Order on Emergency Tolling of Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters (Md. Apr. 3, 2020), <https://www.courts.state.md.us/sites/default/files/admin-orders/20200403emergencytollingorsuspensionofstatutesoflimitationsetc.pdf>.

[2] Amendments to the California Rules of Court (Cal. Apr. 6, 2020), <https://www.courts.ca.gov/documents/2020-04-06-rules-effective-04-06-2020.pdf>.

[3] Amended Standing Order No. 4 Concerning COVID-19 Precautionary Measures (Del. Apr. 14, 2020), <https://courts.delaware.gov/rules/pdf/Superior-StandingOrderNo4-UpdatedProtocolsAMENDED.pdf>; Standing Order No. 20-19 (D.C. Apr. 2, 2020), [https://www.dcd.uscourts.gov/sites/dcd/files/COVID-19 Standing Order 20-19 Extension of Postponed Court Proceedings.pdf](https://www.dcd.uscourts.gov/sites/dcd/files/COVID-19%20Standing%20Order%2020-19%20Extension%20of%20Postponed%20Court%20Proceedings.pdf); Administrative Order SC20-23, Comprehensive COVID-19 Emergency Measures for the Florida State Courts (Fla. Apr. 6, 2020), <https://www.floridasupremecourt.org/content/download/633282/7195631/AOSC20-23.pdf>; Second Amended General Order 20-0012 (N.D. Ill. Mar. 30, 2020), [https://www.ilnd.uscourts.gov/assets/documents/New AMENDED GENERAL ORDER 20-0012.pdf](https://www.ilnd.uscourts.gov/assets/documents/New%20AMENDED%20GENERAL%20ORDER%2020-0012.pdf); Fourth Supplemental Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic (W.D. La. Apr. 15, 2020), [https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/COVID-19 Fourth Supp Order 4-14-20.pdf](https://www.lawd.uscourts.gov/sites/lawd/files/UPLOADS/COVID-19%20Fourth%20Supp%20Order%204-14-20.pdf); General Order 20-08 (S.D. Ohio Apr. 3, 2020), [https://www.ohsd.uscourts.gov/sites/ohsd/files/General Order 20-08.pdf](https://www.ohsd.uscourts.gov/sites/ohsd/files/General%20Order%2020-08.pdf); Presiding Judge Kevin C. Brazile Extends Order Closing Courtrooms, Delaying Trials and Non-Essential Matters for 30 days, News Release (Cal. Apr. 15, 2020), http://www.lacourt.org/newsmedia/uploads/14202041517144920_NR_GO_4-15-20-Final.pdf; General Order 20-10 (W.D. Okla. Apr. 3, 2020), http://www.okwd.uscourts.gov/wp-content/uploads/General_Order_20-10.pdf; Amended Order (20-006) Imposing Level 3 Restrictions on Court Operations (Ore. Mar. 27, 2020), <https://www.courts.oregon.gov/rules/Documents/CJO-20-006-AmendedOrderImposingLevel3RestrictionsCourtOperations.pdf>.

[4] General Order N0. 73 (N.D. Cal. Amended Apr. 2, 2020), https://www.cand.uscourts.gov/wp-content/uploads/general-orders/GO_73_amended_4-2-2020.pdf.

[5] See also Memorandum Regarding Updated Protocols (N.Y. Mar. 15, 2020), <https://nycourts.gov/whatsnew/pdf/Updated-Protocol-AttachmentA3.pdf>.

[6] Complaint, *3M Co. v. Performance Supply, LLC*, No. 20-cv-02949 (S.D.N.Y. Apr. 13, 2020), ECF No. 9.

[7] *Lexington Healthcare Ctr. of Bloomingdale, Inc. et al. v. Morrison Mgmt. Specialists, Inc.*, No. 20-cv-01949, 2020 WL 1820522, at *4 (N.D. Ill. Apr. 10, 2020).

[8] Judicial Emergency Declared, Amended Order (W. Va. April. 3, 2020), <http://www.courts.wv.gov/covid19/JudicialEmergencyDeclaredAmendedOrder4-3-20.pdf>.

[9] *Dall. Safari Club v. Bernhardt*, No. 19-CV-03696 (APM), 2020 WL 1809181, at *8 (D.D.C. Apr. 9, 2020).

[10] *FEI H. K. Co. Ltd. v. GlobalFoundries, Inc.*, No. 1:20-CV-02342-MKV, 2020 WL 1444956, at *3 (S.D.N.Y. Mar. 25, 2020).

[11] *C.W. v. NCL (Bahamas), Ltd.*, No. 1:19-cv-2441, 2020 WL 1492904, at *1 (S.D. Fla. Mar. 21, 2020).

[12] Order Denying Emergency *ex parte* Motion For Temporary Restraining Order, *Godfrey Johnson, P.C. v. Carranza*, No. 20-cv-00920 (D. Colo. Apr. 3, 2020), ECF No. 5.

[13] R. Robin McDonald, 'Uncharted Territory': Judge Ends Phone Hearing After Unruly Audience Keeps Interrupting His Call, National Law Journal (Apr. 15, 2020), [https://www.law.com/nationallawjournal/2020/04/15/uncharted-territory-judge-ends-phone-hearing-after-unruly-audience-keeps-interrupting-his-call/?kw=%27Uncharted Territory%27: Judge Ends Phone Hearing After Unruly Audience Keeps Interrupting His Call&utm_source=email&utm_medium=en&utm_campaign=newsroomupdate&utm_content=20200415&utm_term=nlj](https://www.law.com/nationallawjournal/2020/04/15/uncharted-territory-judge-ends-phone-hearing-after-unruly-audience-keeps-interrupting-his-call/?kw=%27Uncharted%20Territory%27:Judge%20Ends%20Phone%20Hearing%20After%20Unruly%20Audience%20Keeps%20Interrupting%20His%20Call&utm_source=email&utm_medium=en&utm_campaign=newsroomupdate&utm_content=20200415&utm_term=nlj)

[14] The Honorable Dennis Bailey, Virtual View From the Bench, During the COVID-19 Pandemic (Apr. 14, 2020), <https://www.westonbar.org/so/61N5VoOJe?fbclid=IwAR3gBGUaUfpC8qs0612nMrw-ISDgZkDFiOiCcKGXBjd3SDS8PisCrsIHn6c#/main> ("We've seen many lawyers in casual shirts and blouses, with no concern for ill-grooming, in bedrooms with the master bed in the background, etc. One male lawyer appeared shirtless and one female attorney appeared still in bed, still under the covers. And putting on a beach cover-up won't cover up you're poolside in a bathing suit. So, please, if you don't mind, let's treat court hearings as court hearings, whether Zooming or not.").

[15] Postponement of Fourth Circuit Oral Argument Session (4th Cir. Apr. 1, 2020), <http://www.ca4.uscourts.gov/news-announcements/2020/04/01/postponement-of-fourth-circuit-oral-argument-session-may-5-8-2020>.

[16] General Order Docket No. 2020-4 (5th Cir. Mar. 25, 2020), http://12.130.77.8/docs/default-source/default-document-library/general-order-2-covid-19.pdf?sfvrsn=17ffcb2d_0.

[17] COVID-19 Notice (9th Cir. Mar. 26, 2020), <http://cdn.ca9.uscourts.gov/datastore/general/2020/03/16/COVID-19 Notice.pdf>.

[18] Tucker Higgins, Supreme Court to hear historic arguments virtually in May, including over Trump tax records and Electoral College, CNBC (Apr. 13, 2020), <https://www.cnbc.com/2020/04/13/supreme-court-to-hear-arguments-over-trump-tax-records-remotely.html>.



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