

What the Uptick in Coronavirus-Related Litigation Means for Law Firms

"I believe the student loan debt crisis will be the next bubble issue that could burst at any time now, which could wreck the economy, like the mortgage crisis did in 2008," attorney Ivan Reich said.

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A sign in Baltimore instructs residents to stay home in order to stem the spread of the Coronavirus during a pandemic that has claimed to date over 130 thousand lives nationwide. Photo: Diego M. Radzinski/ALM

The COVID-19 pandemic has brought in a new era of litigation, and also ushered others out. One plaintiff firm, for example, has expanded as demand for employment litigators has spiked. Class action lawsuits seeking refunds for missed events and college tuition are also common now.

Business litigation attorney Harsh Arora of Fort Lauderdale said he sees a trend for alternate dispute resolution not being alternate anymore, because it is unknown how long parties will be stuck in litigation.



Kelley Kronenberg partner and shareholder Harsh Arora.

“Businesses are amending their contractual relationships, and negotiating mandatory mediation and arbitration provisions to avoid litigation. Florida state and federal court systems provide for mandatory mediation to the parties, which is very specific to Florida and is not an available option in many other states,” Arora said. “Litigants in many new cases are opting for early mediation rather than waiting for discovery to be completed or certain pleadings to be filed.”

Arora said the employment-based litigation he’s seeing relate to the work arrangements of remote employees.

“Businesses are still adopting this new trend,” he said. “There are issues relating to employee practices that are becoming part of almost every business dispute. The issues of vaccination requirements and discrimination-based claims are on the rise. The non compete issues and wage and hour violations are now more relevant due to the increase in the demand for labor and related shortage.”

Arora believes litigators have to be sensitive to the fact that these issues are prominent with most disputes, and litigators cannot ignore them as part of their defense strategy and in prosecution of new cases.

“This means if there are claims that are intertwined, then maybe that gives an opportunity for the litigators to consider bringing counterclaims, rather than filing a

separate lawsuit on behalf of the client as the courts are backed up,” Arora said. “I think it also provides an opportunity for litigators to hopefully do what they do best many times, and avoid litigation and engage in pre-litigation counseling or pre-litigation mediation.”

When such disputes arise, Arora said litigators therefore have a unique opportunity to guide clients to potentially bifurcate disputes and work on early resolution on parts of the dispute, “rather than the entire controversy, which can, many times, lead to a global settlement of all disputes.”

“Since clients now need a great deal of strategic and innovative guidance, litigators can be very effective if they are keeping up with what’s happening with the legal landscape and trends when counseling their clients to avoid disputes and potentially engage in preventive counseling,” Arora said.

Uptick in Business



Ivan J. Reich partner with Nason Yeager.

Once the pandemic hit, Nason Yeager attorney Ivan Reich of Palm Beach Gardens immediately noticed his bankruptcy practice picking up, but just as it looked like the uptick in business would be here for a long time, he said the government bailout arrived and surprisingly worked.

“As such, businesses which would have normally been filing bankruptcy, particularly in the restaurant sector, didn’t have to because their receipt of Paycheck Protection Program money kept them going. Also the bail out had some quirky procedural prohibitions that made taking the PPP money, and filing bankruptcy at the same time, not possible. Eventually those rules cleared up, but the success of the program kept many out of bankruptcy, and able to survive the initial financial crisis.”

But on the other hand, Reich feels the PPP issue raises new areas of litigation.

“It was designed to pay salaries and rent to keep businesses afloat while there was a shutdown, and if you used it for those purposes the loan would be forgiven,” Reich said. “The crackdown from the government is coming and the corresponding uptick in legal work is the government coming after businesses and individuals who personally profited and used these monies for their own gains and purposes.”

Aside from his practice area, Reich believes the cost of college education has skyrocketed, while at the same time, students have been getting less and paying more, and the job opportunities for recent graduates are just not there.

“I believe the student loan debt crisis will be the next bubble issue that could burst at any time now, which could wreck the economy, like the mortgage crisis did in 2008,” Reich said. “Unfortunately, the Bankruptcy Code does not offer these students any relief because as written it is almost impossible to discharge student loan debt in bankruptcy.”

In Reich’s view, the solution is simple.

“Allow for the discharge of student debt,” he said. “But I don’t think the political will exists in Washington, for all the same reasons that not much legislation has gotten passed in recent years there, to allow for this solution to pass.”

‘The Great Resignation’



Andrew Gordon, a partner at Hinshaw & Culbertson in Fort Lauderdale.

Hinshaw & Culbertson partner Andrew Gordon acknowledges how the Great Resignation has empowered employees to feel as if they are in charge. Gordon thinks it has caused employees to believe they are calling the shots, and not employers.

“Because of this real or perceived shift in power, many employees are now willing to do things that they weren’t before, such as filing claims against their employers. Since this has happened, there has been a significant uptick in employment law-related claims. My clients have been spared due to the fact they have always put their employees first and shown them how much they are valued,” Gordon said.

If businesses want to dodge this uptick in employment law claims, they’re going to have to start prioritizing their employees, according to Gordon.

“However, for the businesses who are too late in terms of putting their employees first, they are now going to be dealing with employees who aren’t only just emboldened at work, but in the courtroom,” Gordon said. “Employees who used to walk away for a quick settlement are now digging in their heels and litigating a lot more aggressively than they used to in hopes of what they believe is not only going to be a bigger payout, but also possibly a result that will send a message to their employers.”

Gordon's advice to the employment law arena: "If employers want to be spared the fate of seeing an increase in employment litigation, they're going to have to put their employees first. And if not, they're going to be victims of this spike."