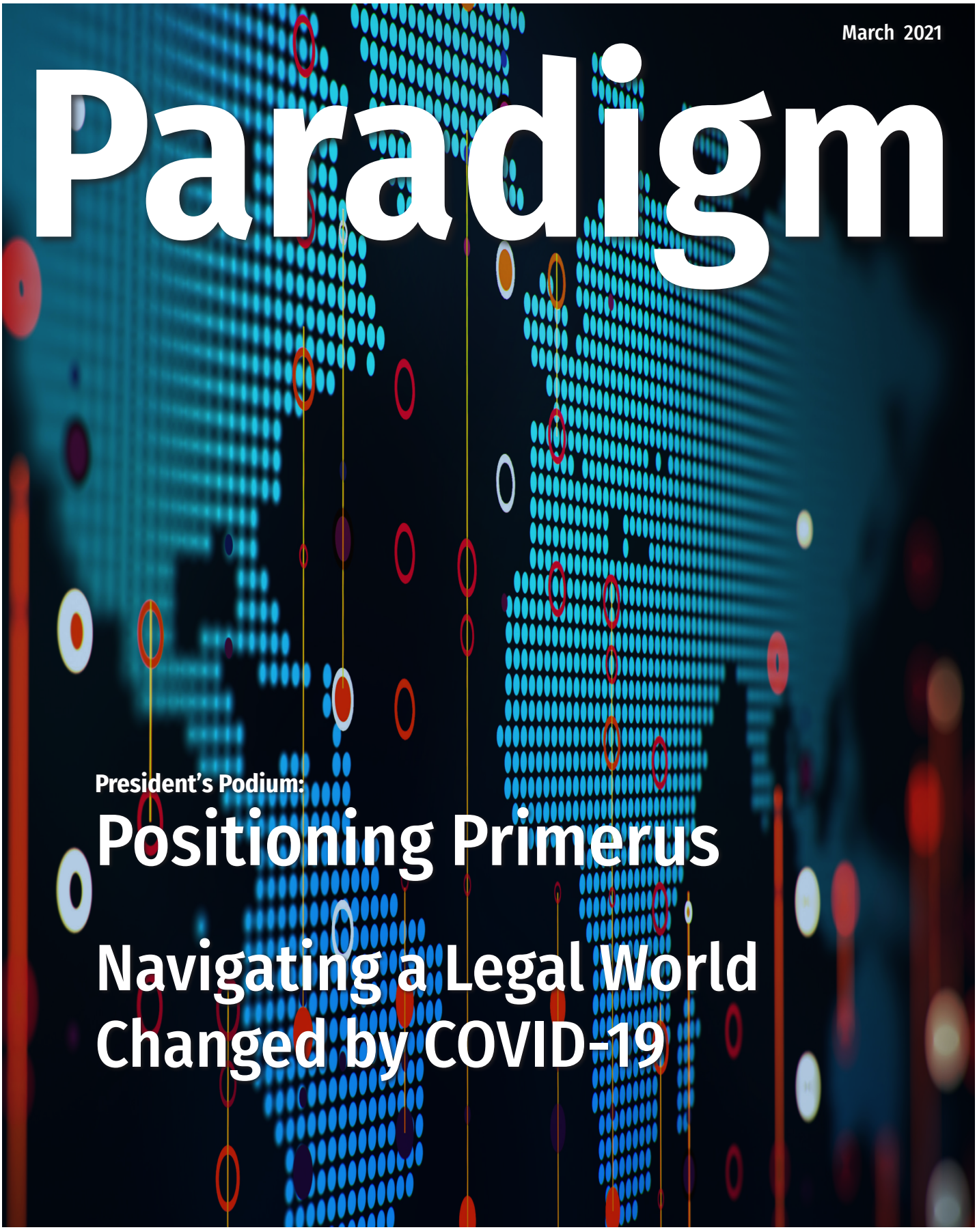

March 2021

Paradigm

President's Podium:

Positioning Primerus

Navigating a Legal World Changed by COVID-19

PRIMERUS

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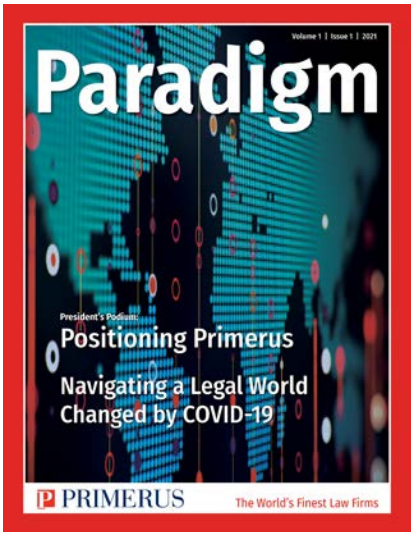
The Primerus Paradigm

March 2021



About Our Cover

In 2020, Primerus member firms from around the world came together in new ways as they faced the challenges presented by the COVID-19 pandemic.

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Every lawyer in Primerus shares a commitment to a set of common values known as the Six Pillars:

- **Integrity**
- **Excellent Work Product**
- **Reasonable Fees**
- **Continuing Legal Education**
- **Civility**
- **Community Service**

For a full description of these values, please visit primerus.com.

Publisher & Editor in Chief: **John C. Buchanan**
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PRIMERUS

President's Podium

John C. Buchanan

Positioning Primerus

Greetings. I am pleased to welcome you back to *The Primerus Paradigm*. The last time we published an issue of this magazine was in the fall of 2019 – around the same time that Primerus members from around the world gathered in San Diego, California, for our annual Primerus Global Conference.

Obviously, the world has changed drastically since then as we all have grappled with the effects of the global COVID-19 pandemic. I sincerely hope you all have stayed safe and healthy during these challenging times. While this pandemic has been trying for everyone, I write to you now hopeful about the future of a post-pandemic world.

We want to use the pages of this magazine to embrace the idea of change, specifically the drastic changes that have shifted the legal industry over the last year. Our Primerus lawyers are uniquely positioned to offer their expertise on various aspects of that change, including embracing virtual platforms for mediation between parties, and how firms and clients have embraced technology in new ways. You will read about that, and many other topics in this magazine.

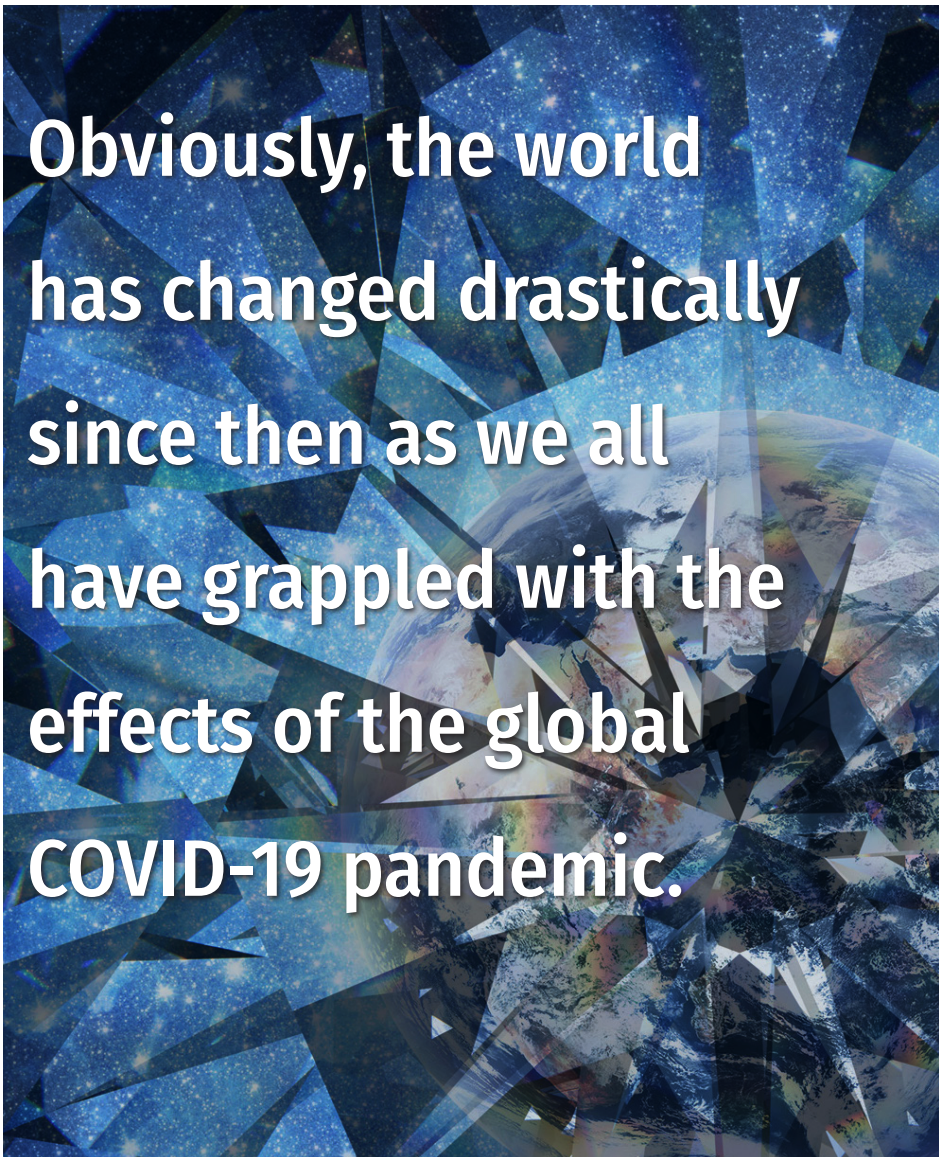
Despite the change, Primerus remains well-positioned to continue its work of bringing together the world's finest law firms and great clients everywhere. With our 170 member firms with 3,000 lawyers in 50 countries, we bring together people from around the world, making the world feel a little smaller for our lawyers and clients alike.

I'd like to introduce four words to describe Primerus: Character. Capability. Value. Results.

When we founded Primerus in 1992, we wanted integrity to be at the top of our list of values that we believed would help us restore trust in the legal profession, which was deteriorating at the time. That integrity forms the basis of the outstanding good character of every Primerus lawyer. Character means professionalism, ethics, reliability, honor and ultimately, it means absolute truth and trust.

Capability is the knowledge and skill every Primerus lawyer brings to the attorney-client relationship. Primerus invites only the finest lawyers and law firms to join our society. But capability also means far more than just the sum total of the accumulated skills of our member lawyers. It is the added resources that Primerus brings through technology, continuing education, opportunities for collaboration, and much more. The whole becomes much greater than the sum total of the parts. As Primerus grows and continues to expand across the globe, our enhanced capability only increases.

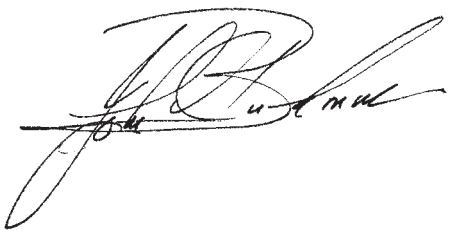
Value means reasonable fees, but it also means much more. It is the combined resources of what we would call the total "Primerus experience" that is important to clients. Primerus firms are uniquely positioned to provide the highest quality legal services to their clients at a comparably lower cost.



This is accomplished through their inherent boutique structure, partner-level service, efficiencies, and providing concierge service that sees to every detail – just like you would expect from the concierge at a fine hotel.

Finally, this leads to results: the bottom-line reason clients keep knocking on the doors of our member firms. It is why they came, and what is most important to them when they leave. Primerus lawyers offer results in every sense of the word. It's legal knowledge and good case outcomes, but it's also getting to know clients' unique needs and becoming partners seeking only the best for them.

These four cornerstones represent what we are and what we will continue to be – now and in the future. Please join us on the journey ahead.



Navigating a Legal World Changed by COVID-19

It's a Monday morning at 10 EST.

The faces of Primerus members from around the world – Hong Kong, Germany, Wisconsin, Florida, Illinois, California and more – appear on a computer screen.

They're gathered via Zoom for Primerus' weekly Coffee and Conversation meeting. For the next hour, they will laugh together, form friendships, share tips for facing the challenges presented by the COVID-19 pandemic, and grapple with serious issues facing the legal industry in these times.

It's a gathering that started in April 2020, shortly after law firms and businesses around the world closed their physical office doors and sent employees to work from home because of the pandemic.

In Grand Rapids, Michigan, Primerus did the same at its downtown office. Primerus staff members then faced the difficult task of canceling all upcoming in-person gatherings, including the popular Primerus Defense Institute Convocation in April, which brings together clients and Primerus members from around the United States. They also canceled the Primerus International Summit scheduled for April in Washington, D.C. Eventually, they would cancel the Primerus Global Conference scheduled for October 2020 in Paris, France. The event had been held every year since 1994.

Then, it was time to figure out a new way forward. This was a dilemma facing nearly every institution around the world – how to proceed in the face of the seismic change brought about by a once-a-century global pandemic.

"Primerus events played such a vital role in bringing together our members and allowing them to develop relationships and collaborate," said John C. "Jack" Buchanan, founder and president of Primerus. "It's an important part of what we have to offer as those connections are what ultimately benefit clients. We had to reinvent ourselves in order to keep that going, and we did that."

Coffee and Conversation came from that effort. Buchanan thought it would provide a way to bring members together in a very trying time, even if they couldn't meet in person.

The event continues now, with a maximum of 15 participants. Each week, a featured Primerus member shares a video about a current topic of interest to lawyers through the Primerus Weekly newsletter. That member then hosts the Zoom meeting and leads a conversation about the video's topic.

Topics have included: Client Development and Maintenance During and Post-Pandemic; Tools and Platforms Critical to the Age of Remote Work; Ethics, Civility, and Professionalism in the Age of Remote Work; Creating and Enhancing Relationships in a Pandemic; and more.

Making and Keeping Connections Strong

Dominic Wai, an attorney with Primerus member firm ONC Lawyers in Hong Kong, has been a regular participant, despite the fact that when the meeting is held, it's 11 p.m. in Hong Kong.

"It's been very good to get to know the person but also to share experiences and know what is happening in other parts of the world," Wai said.

In the past, Wai and his colleague Ludwig Ng have attended in-person international and regional Primerus meetings.

"I have been able to meet Primerus members from around the world," he said. "That is good and actually we have gotten work from those meetings."

He credits that to the rapport that he has been able to build with fellow Primerus members. And that's why he has prioritized the Monday morning Zoom calls – the next best thing to an in-person meeting.

In Hong Kong right now, COVID restrictions mean that he is not able to meet for cocktails with clients or colleagues, and there are no in-person conventions or conferences. So, with the time he saves from not having those events, he's able to carve out the time for the Primerus calls.

And he believes that investment will pay off in the end, for him and his clients.

"You never know once you get to know the person and get the ball rolling," Wai said.

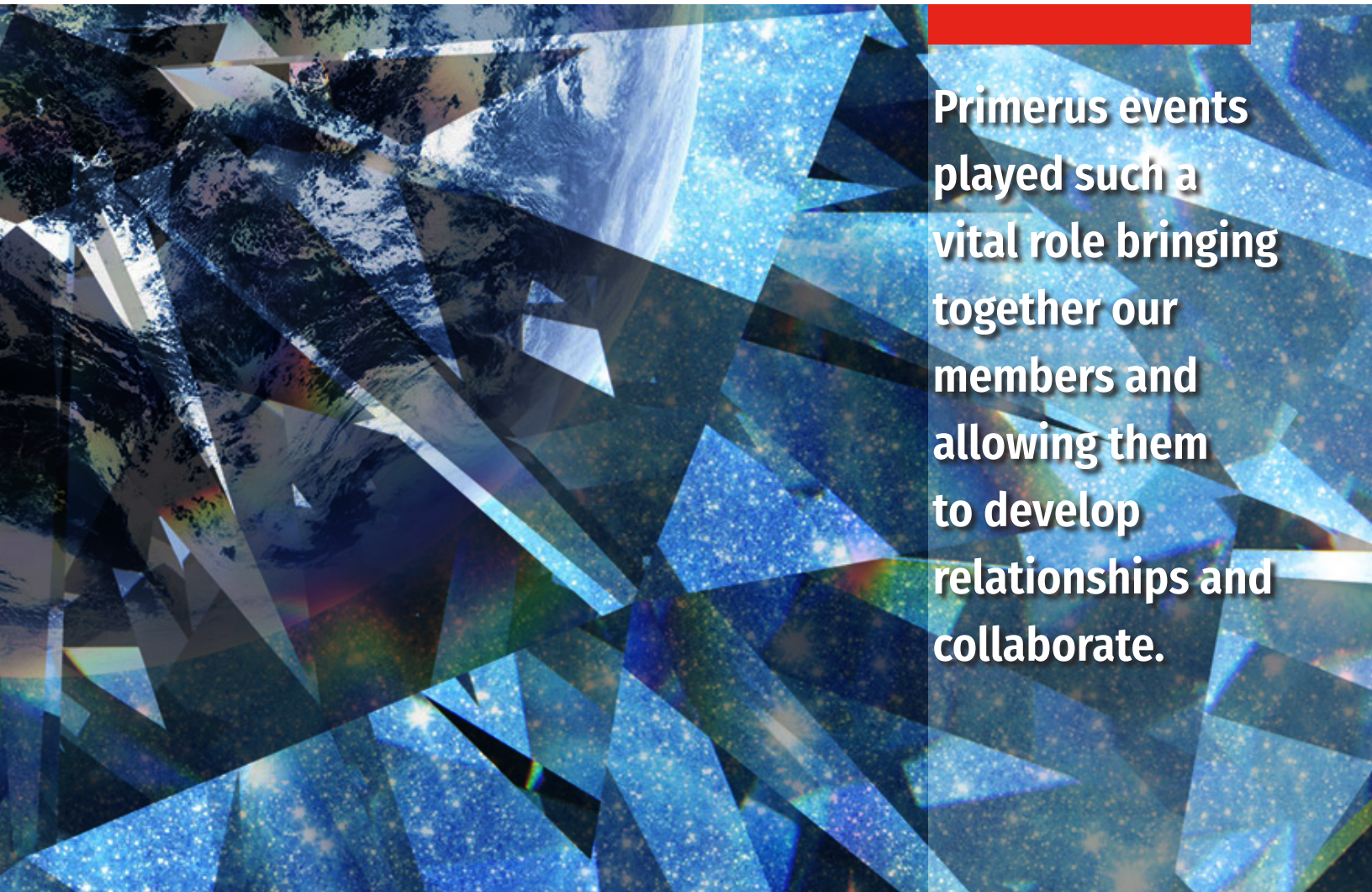
Redefining Workspaces

Jerry Weitzel, an attorney with Primerus member firm Kozacky Weitzel McGrath, P.C. in Chicago, jumped at the chance to connect with fellow Primerus members through the Coffee and Conversation calls.

"That was one of the first ways I was able to start to talk with lawyers in other parts of the country and the world about what was going on," he said. "I thought they were great, and I still think they're great. This is a time when it is much tougher to connect with people, and this is a fantastic way to connect with other members."

After stay-at-home orders in Chicago forced his firm's employees to start working from home, Weitzel and his partners faced a tough choice. Surprisingly, for the first time in the firm's 23 years, their lease was up at a time favorable to them, and not their landlord.

So, they decided to shutter their 5,000-square-foot office in downtown Chicago – for good. Employees took home everything they needed to do their jobs and set up home offices. They scanned documents and sent any hard copies they needed to keep to a storage facility. They disposed of their office furniture and let the lease run out.



Primerus events played such a vital role bringing together our members and allowing them to develop relationships and collaborate.

Then, they joined a shared office space provider in Chicago that caters to law firms – a company that happened to be their client. In addition to providing work spaces and conference rooms, the company also collects mail and operates their phone system.

"It's working pretty well," Weitzel said.

The firm's partners gather via Skype for a short meeting every morning to keep in touch, and when they need to talk during the day, they also use videoconferencing like Skype or Zoom.

"In that way, it's an approximation of what it would be like if we were there," he said. "I would just walk down the hall to their office to talk to them."

And yet, he admits, it's not exactly the same.

"I like to be around other people," he said. "I like to have the energy of other people, so that's different."

Kozacky Weitzel McGrath is part of a trend in the legal industry, as law firms – and other businesses as well – begin to imagine what their workspaces will look like post-pandemic. While they chose a shared workspace option, along with home offices, other emerging options include: office spaces with communal workstations that are not assigned to one employee, reduced total office space with some employees working remotely some or all of the time, and more.

"We could at any point in time decide to take office space again," Weitzel said.

But for now, this arrangement is just what they need, cutting their second-highest expense.

"That's huge," Weitzel said. "Sometimes we think, 'If only we had done it five years ago.'"

Evolving Technology

According to Michael Weinstein, an attorney with Primerus member firm Ferris & Britton in San Diego, California, the pandemic has forced technological changes on law firms that they might not have been ready to embrace so quickly.

"Like a lot of firms, we had some adjusting to do," Weinstein said.

He has seen young lawyers at the forefront of embracing the change.

"They're very comfortable with the technology," Weinstein said.

For older partners like himself, he said, it was time to make way for the change.

"You either get out of the way or you join the revolution," he said. "And the people who join are the ones who ultimately succeed."

Weinstein has also been a regular participant in the Coffee and Conversation meetings, which has allowed him and other members of his firm to not only connect with other attorneys from around the world, but also to learn from one another. He also likes that with a virtual event, anyone from the firm can participate more easily. In the past,

he was the only person from his firm who attended most Primerus events.

"It's a great way to get to know people, including people I might not necessarily meet at a conference," he said. "I like to hear about how different people are adapting, not just in our jurisdiction but in every jurisdiction internationally. Every time, you get a gem or two that you have never thought of before because you're getting outside of your own little box."

Future of the Legal Industry

Looking forward, a lot more than office space and technology is changing for law firms – especially small to medium-sized ones, according to Buchanan.

Buchanan believes a membership in a society like Primerus is the way of the future for boutique law firms. He hopes to see Primerus grow into a "virtual law firm, made up of high-quality independent law firms located across the globe, self-managed, and marketing their legal services under a unique Primerus Brand."

"The future is headed toward very well-known and recognized law firm brands, like Primerus, offering a highly supportive infrastructure of Starbucks ubiquity," he said. "Most other industries, going all the way back to McDonald's, have paved the way for this."

He casts a vision for the future of Primerus law firms, even as soon as five years from now, in which Primerus provides a comprehensive infrastructure upon which its firms operate and thrive – doing what the world's largest law firms do for their practice groups, and much more.

He summarizes the advantage Primerus offers with seven things: the highest quality lawyers; excellent work product; personal, partner-level, care; prompt and responsive service; excellent communications; reasonable fees; and global resources.

During the pandemic and beyond, small to medium-sized firms need Primerus more than ever, he said. And clients need Primerus more than ever to help them find the high-quality law firms they need.

"We spend a tremendous amount of time finding, screening and monitoring firms to be sure they meet the high standards Primerus holds," Buchanan said. "Then, we are able to enhance what they can bring to clients by offering collaboration with 170 other law firms in 50 countries, hundreds of legal specialties, along with supporting technology and marketing services."

"We want to take this model to every major city and become the finest and largest provider of legal services in the world," Buchanan said.

The firm consists primarily of former BigLaw partners who combine their extensive legal experience with Barton's flexible, value-driven service delivery model.

Barton LLP is a mid-sized law firm, with offices in both New York and Nashville, whose purpose is to provide value, solve problems and foster opportunity. The firm consists primarily of former BigLaw partners who combine their extensive legal experience with Barton's flexible, value-driven service delivery model. Our senior attorneys work directly with clients on matters, taking the time to understand each client's business objectives and long-term goals. We recognize that clients prioritize managing their resources and creating efficiencies – and they want lawyers who are able to do the same.

Barton offers a full suite of services, including in the areas of corporate transactions, litigation, financial services, tax services, real estate, family law, employment, cybersecurity, banking, immigration, intellectual property and emerging companies/venture capital, among others.

At its core, we believe that innovation, agility and a commitment to value set us apart from the mélange of BigLaw firms that offer similar services. Our business model is designed to foster collaboration between attorneys, while providing them the autonomy to grow their practices and streamline interactions with clients.

Barton has often been recognized for its innovation and disruption of the legal industry, having been featured by *Law360* as one of "10 Boutiques Giving BigLaw a Run for Its Money" and by *Acquisition International* in "Ones to Watch: The Best Boutique Law Firms."

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Roger E. Barton

Roger E. Barton is the managing partner of New York City-based Barton LLP. He has been rated by *The American Lawyer*, *Corporate Counsel* magazine, and the *National Law Journal* as one of the top commercial litigators in the United States and is a fellow of the Litigation Counsel of America. Roger is widely published and speaks nationally and internationally on law firm innovation and the business of law.

Firms that have woven building client relationships into their DNA and who possess the service delivery models to complement the nurturing of such relationships will likely find that they hold a significant advantage over the competition.

At Barton, a Culture of Client Connection Is Part of Our DNA

As anyone who has worked in the legal world during the past year knows, the COVID-19 pandemic has changed the way we communicate. As a profession, we've had to quickly adapt to new technology and changing social norms when it comes to how we interact with our clients. While this expedited learning process has naturally come with some growing pains (who among us hasn't forgotten to unmute ourselves on a Zoom call at least once?), it has highlighted not only the importance of building robust client relationships, but also the concerted efforts that must be made to keep these connections strong.

Firms that are currently having the most success in growing their client relationships didn't magically become adept at it overnight. These firms were already prioritizing their client connections before the onset of COVID-19. Firms with the infrastructure in place to foster client engagement and with cultures that were already encouraging their attorneys to interact meaningfully with clients needed only to pivot when the pandemic struck. Changing the means of connecting is a simpler shift when a firm already has a deeply ingrained client focus.

However, relationship building is not simply a product of mindset or willingness – it's also largely a result of firm structure. A firm with heavy committee oversight, where senior partners often dole out work to lower-tiered attorneys, can create greater distance between the client and the attorney. If a client doesn't feel like they have a direct line to their counsel, that relationship is likely to suffer.

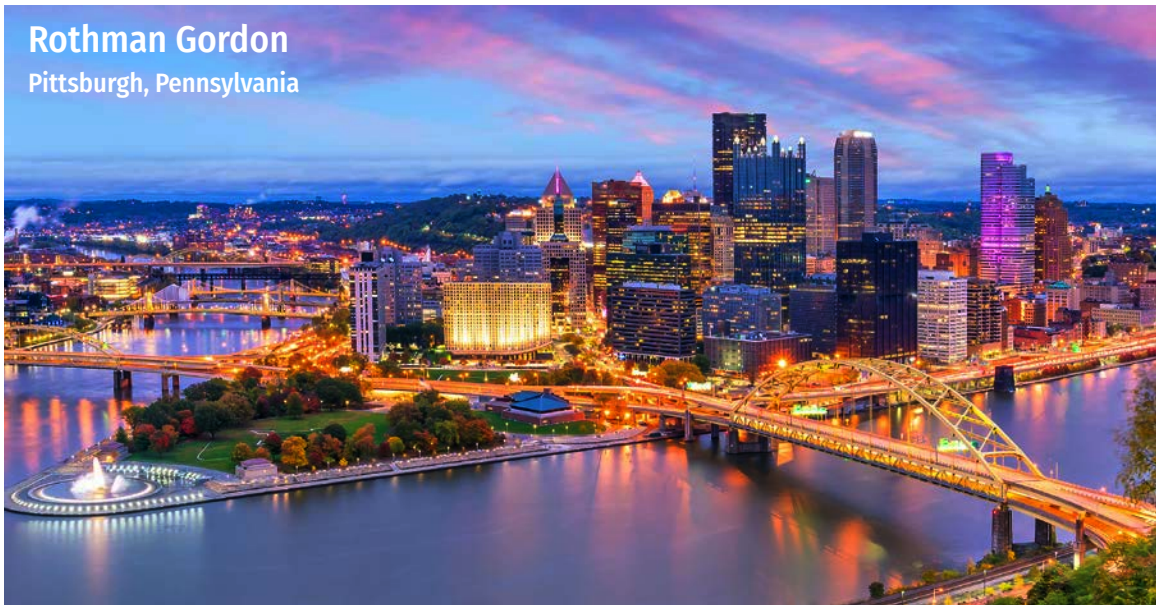
There are a variety of reasons why firms benefit from creating and maintaining healthy client relationships. Strong and consistent communication builds a base of knowledge and trust. Clients continually tell us that they trust and appreciate lawyers who take the time to know their business. It follows that these clients are not only more likely to refer additional matters, but also different types of matters, thus allowing a firm to broaden and deepen its relationship with the client with multiple service areas of the firm.

To this point, the 2021 Citi Hildebrandt Client Advisory cites "A Greater Focus on Business Development" as a key trend to watch heading into 2021: "We would anticipate that in an effort to gain market share in this ongoing challenging environment, firms will need to focus on how to deepen and broaden relationships with their existing client base while attracting new clients, perhaps from firms who have become complacent."

During a time when clients are already feeling disconnected, streamlined communication can be a huge reassurance. Firms that have woven building client relationships into their DNA and who possess the service delivery models to complement the nurturing of such relationships will likely find that they hold a significant advantage over the competition.

Rothman Gordon

Pittsburgh, Pennsylvania



Rothman Gordon is built upon a combination of sophisticated law and personalized service. With nearly 30 attorneys, we are large enough to bring a breadth of resources to meet our clients' needs, yet small enough to maintain personal relationships with them.

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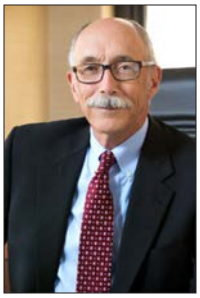
Rothman Gordon is a Pittsburgh-based law firm that has been advocating for our clients' interests since 1954. Rothman Gordon has created a suite of services for individuals, organizations and closely-held and family businesses.

Our areas of practice include alternative dispute resolution; business and corporate law; commercial real estate; construction law and litigation; commercial and business litigation; white collar criminal law; estate planning and administration; taxation; financing and commercial loans; employment law; labor law; oil and gas for landowners; and workers' compensation and social security disability.

Rothman Gordon is built upon a combination of sophisticated law and personalized service. With nearly 30 attorneys, we are large enough to bring a breadth of resources to meet our clients' needs, yet small enough to maintain personal relationships with them. Our belief is that by listening to and understanding our clients, we can be trusted to represent their best interests. It's a philosophy that has served us well for over 65 years and, we believe, provides a strong foundation for the future.

Rothman Gordon's attorneys have mediated a wide range of civil cases, including class actions and multiple party cases, and commercial cases such as franchise, contract, shareholder, real estate and breach of warranty disputes. The firm also has extensive experience in labor and employment mediation and arbitration, including sexual harassment, discrimination, wrongful termination, FLSA and other employment issues. The family law mediation practice strives to achieve fair settlements for all parties in custody, relocation, equitable distribution and protection from abuse cases.



Stephen H. Jordan

Stephen H. Jordan has built an extensive mediation and arbitration practice focused primarily in the area of employment law in both private industry and with non-profit employers. He has also mediated commercial disputes, including breach of contract and intellectual property issues.

Rothman Gordon's Day of Caring at the Wilkingsburg Free Store

With the arrival of COVID-19, our office has successfully moved to virtual mediations. In-house training on the various virtual platforms has enabled our mediators to conduct virtual mediations with ease.

Embracing Virtual Mediation Amid COVID-19

The COVID-19 pandemic has changed everything, including how mediations are conducted. Pre-COVID, mediations were nearly always in-person events. In many jurisdictions, court-ordered mediation protocols required decision makers to attend mediations in-person. Anyone familiar with the mediation process would agree that such a requirement enhances the chances of reaching agreement. Actual attendance, while witnessing the give and take, provides the decision makers with the necessary flavor of the parties' respective positions. It also provides insights regarding the chances of success, or failure, of the litigation in the event settlement is not achieved.

In contrast, contacting a decision maker by phone to obtain assent to a settlement proposal, only after many hours of the in-person participants modifying their respective settlement positions, is not optimal. It robs the decision maker of the "flavor" of what has led to the proposed settlement. In-person attendance also enables the mediator to build a rapport with the participants which, in turn, enables the mediator to assess the feasibility of reaching agreement and what elements need to be included in a mutually acceptable settlement.

It has been my experience, pre-COVID, that corporate decision makers and their insurance representatives often sought permission not to attend mediations in person mainly due to cost and scheduling issues. When the mediation involves multi-state parties, travel costs and scheduling issues are quite understandable. I also found that ordering corporate decision makers and their carriers to attend mediations in person, despite their objections, often resulted in an unhappy party. This made them less inclined to compromise, especially in light of being required to expend funds for travel which could otherwise be used in a settlement.

During the pandemic, our office has successfully moved to virtual mediations. In-house training on the various virtual platforms has enabled our mediators to conduct virtual mediations with ease. While some would argue that the personal touch a seasoned mediator brings to an in-person mediation would be lost, we have not found that to be the case. Virtual mediation has enabled our mediators to bring the same level of expertise to the process. In doing so, we have found that the participants are equally comfortable with the process. We are able to easily move from "room to room" to have private discussions with participants, and we are able to place parties together, if need be, or confer with counsel confidentially. Plaintiffs, who are often uncomfortable being in the same physical room with a defendant, feel more secure and at ease "attending" remotely. Likewise, we have been told that defendants and their insurers prefer virtual mediations because of cost savings and scheduling ease. Our mediators also have discovered that our settlement success rate has remained unchanged.

While the pandemic has certainly been a tragedy, we have found that the necessity of handling mediations virtually has not impacted litigants' ability to resolve their disputes through the time-tested process of mediation.

How to Avoid a Fire: Establishing Effective Crisis Monitoring

In 2019, the European Union launched a new restructuring tool for companies regulated in the Restructuring and Insolvency Directive, the so-called "preventive restructuring framework." Germany has since fulfilled its obligation to implement the directive into its national law. Effective January 1, 2021, the Act on the Stabilization and Restructuring Framework for Companies (StaRUG) came into effect.

This article highlights why, in light of the StaRUG, companies should not hesitate to establish effective crisis monitoring.

Obligation to Monitor Crises

In 2020, many companies in Germany, as well as across Europe and the world, found themselves in an earnings and financial crisis (through no fault of their own). German companies were able to make use of a temporary suspension of the obligation to file for insolvency if the reasons for insolvency were due to the pandemic. However, the obligation to file for insolvency was reinstated on October 1, 2020. This could blindside companies in the future, as practice shows that managing directors often do not have the necessary tools at their disposal to recognize a crisis, or even a maturity for insolvency, in time.

For legal reasons, managing directors are obligated to keep a monitoring system that indicates crises in advance. This obligation applies to every managing director, regardless of whether he or she has recently joined the company or whether there is a division of responsibilities between several managing directors. StaRUG has removed the last doubts about this obligation to monitor crises on a regular basis. Section 1 of StaRUG states that "the members of the body appointed to manage a legal entity (managing directors) shall continuously (!) monitor developments that could jeopardize the continued existence of the legal entity."

Fight Smoldering Fires in Good Time

Only those who discover a smoldering fire in time retain sufficient leeway to prevent greater damage. Crisis signs of a smoldering fire go through different stages (e.g., stakeholder crisis, strategy crisis, sales crisis, etc.). Without suitable tools, such signs of crisis will usually not be recognizable, and there won't be sufficient preparation time for effective countermeasures. In restructuring processes, however, time and the trust of stakeholders are of the essence, as more extensive restructuring measures require a lead time for the involvement of experts.

Moreover, in the event of a crisis, the managing director also faces personal liability. For example, he is liable for payments made after the occurrence of an (unrecognized) obligation to file for insolvency or for unpaid company taxes and employee contributions to social security. Special attention is also required if group subsidiaries are integrated into a cash pool of the parent company. The automated

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Sebastian Kühn

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Sebastian Kühn is counsel at Brödermann Jahn, where he works as a specialist lawyer for banking and capital markets law, as well as a mediator. He advises banks and companies on all aspects of banking and capital markets law and on insolvency law issues, particularly in the context of restructuring measures.

payment flows in the cash pool can lead to a return of equity to the shareholder and give rise to liability on the part of the managing director. The risks of criminal prosecution are another impending disaster. Whether suitable monitoring was in place (and can exonerate the managing director) often only becomes apparent when the insolvency administrator and/or the public prosecutor's office come to terms with the matter. The arguments of a "sudden insolvency maturity" of the company or the operational necessity of disbursements are usually unsuccessful against the sharp sword of the liability claim.

On the other hand, with a swift reaction, measures can be taken to avert a deepening of the crisis to the point of filing for insolvency.

Establish Your Own Tools

It is crucial to use the company's existing resources for crisis monitoring. Three aspects should be taken into account and, above all, documented within the framework of standardized monitoring: the asset, financial and profit situations. Many modern accounting systems already have functions that can be used for such monitoring.
In this context, up-to-date and complete bookkeeping is of essential importance. Only on the basis of current bookkeeping does the business analysis provide information about the profit situation. It provides important indications of signs of crisis. Even if the operating result remains positive, decreasing gross margins with an increasing cost-of-sales ratio, for example, can be an indicator of difficulties. A declining gross margin with increased expenditure (turnover) often leads to consequential problems such as rising costs.

But even with an intact business analysis, there are external signs of crisis that make increased vigilance necessary. Certain signs of crisis are used by courts as evidence of undetected maturity of insolvency and insolvency delay, including:

- Permanent use of the overdraft facility
- Critically declining liquidity
- Banks rejecting further loan requests
- The portfolio of receivables ages significantly (six months and older)
- Increase in trade payables
- Payment terms are exhausted or exceeded, salaries and duties/taxes due at the turn of the month are paid with delay
- Increased number of complaints from suppliers' accounting departments, reminders and individual enforcements

Part of efficient monitoring should always be the financial situation, which describes the company's need for funds (liquidity). Expected incoming payments and due liabilities are compared with each other. If there is no shortfall, a monthly review is sufficient, but if there are signs of a crisis, companies should keep a closer watch (weekly reviews, in critical phases even daily). In the case of coverage gaps of 10 percent and more, the focus must be on the following three weeks. In the case of a coverage ratio of more than 90 percent, there is no insolvency under insolvency law and thus no obligation to file for insolvency. However, caution is advised when scheduling customer payments if customers themselves do not (or no longer) reliably meet agreed upon payment targets. Payments from shareholders can also only be scheduled if they have been reliably and bindingly promised. For later verification purposes, documentation should always be kept in mind.

The asset situation describes the balance sheet view, i.e., the view of the company's equity capital. Not only insolvent, but also over-indebted, companies are obliged to file for insolvency. If there are signs of over-indebtedness, external help should be sought urgently in order to prepare a documented continuation forecast that can withstand an examination under insolvency law. However, the moment the equity capital appears on the assets side of the (draft) balance sheet, at the latest, insolvency law expertise should be called in. Even then, there is usually still a lot that can be done to avert insolvency, but as mentioned at the beginning, the time available plays an essential role.

Conclusion: Preserve Room to Maneuver and Avoid Liability

A regular and critical analysis of one's own company provides the necessary time to initiate rescue measures in the event of a crisis. If the company is still able to act, out-of-court solutions together with the main business partners and banks, e.g., on the basis of the StaRUG, can possibly avoid insolvency.

However, if such measures are no longer sufficient, insolvency proceedings – e.g., in self-administration – must be carefully prepared even before an application is filed, as such proceedings offer great opportunities for change management involving, for example, employees and external stakeholders. A managing director who recognizes signs of crisis at an early stage, with the help of monitoring, and takes according measures, acts not only in the interest of his company, but always in his own interest as well. In so doing, he prepares the ground for a corporate restructuring and at the same time contributes to avoiding his own liability.

Finally, Section 102 of StaRUG also requires tax consultants, auditors and lawyers who are involved, for example, in the preparation of annual financial statements, to inform the client of the existence of a possible reason for insolvency pursuant to Sections 17 to 19 of the German Insolvency Code. They also must inform the client of the related duties of the managing directors and members of the supervisory bodies, if corresponding indications are evident, and they must assume that the client is not aware of the possible maturity for insolvency.

Schneider Smeltz Spieth Bell LLP

Cleveland, Ohio

With experience dating back to 1867, the firm focuses on delivering excellent client service by providing forward-thinking and creative solutions to complex legal problems.

Schneider Smeltz Spieth Bell (SSSB) is one of Ohio's most respected full-service law firms. With experience dating back to 1867, the firm focuses on delivering excellent client service by providing forward-thinking and creative solutions to complex legal problems.

The firm consistently earns recognition for its service to the legal, business and philanthropic communities. One of the most recent and notable highlights is SSSB's selection to be listed regionally by *U.S. News* as a "Best Law Firm" in eight practice areas. Ten of the firm's lawyers are recognized in the 2021 edition of *The Best Lawyers in America*. Additionally, six attorneys have been listed as 2021 Ohio Super Lawyers® and three attorneys to the 2021 Ohio Rising Stars® list. The firm is also proud of the number of attorneys who are Fellows with the prestigious American College of Trust and Estate Counsel.

As part of its business philosophy, SSSB has focused on succession planning with and for its clients. In 2020, David Lenz was elected as the firm's managing partner, and is among the youngest law firm leaders in Northeast Ohio. SSSB prides itself in taking steps towards a multi-generational approach to best serve the needs of clients, today and for the future. As a further testament to the firm's culture and environment, it was recognized as a 2020 Top Workplace by *The Plain Dealer*.

The legal team at SSSB is more than 25 attorneys strong, licensed to practice in five states and Canada, focusing on business law, real estate, litigation, family law, taxation and trusts and estates. Each member of the firm is committed to providing dedicated, thoughtful and practical solutions to our clients.

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Even our marketing strategy shifted dramatically to increase our communications with clients and to deliver additional value by helping businesses pivot toward reset and recovery.

Moving Forward Facing the Reality of COVID-19

The COVID-19 pandemic has forever changed the practice of any modern law firm. In my case, hearings, depositions and trials have all gone virtual in some form. In fact, client meetings are easier to coordinate by video platforms than ever before. And the investments our firm made in technology, including remote login systems and video conferencing, have more than paid off. Even our marketing strategy shifted dramatically to increase our communications with clients and to deliver additional value by helping businesses pivot toward reset and recovery.

At first, we attempted to gain as much knowledge as we could for our clients on the various forms of coronavirus relief packages that were being implemented by local, state and federal government agencies. Then came tolling orders affecting all facets of our litigation practice from assessing statutes of limitations to filing deadlines. We updated our clients on their options there, too.

Next, I was able to leverage more unique marketing and thought leadership opportunities. I found myself writing and speaking on topics that were timely and relevant. The most interesting experience was a request to provide legal commentary to a local news broadcast for a virtual TV appearance. The discussion revolved around guidance for parents who were being asked to sign waivers for their children to go back to school for in-person learning. Here's a link to the segment:

linkedin.com/posts/schneider-smeltz-spieth-bell-llp_as-some-districts-defy-county-health-guidelines-activity-6696971340630515712-32BR

This was the reality of our clients, colleagues and friends. I quickly realized that in-person public education was one very large piece of the backbone of the employees of any employer, including my own law firm. This sparked our firm to quickly mobilize to accommodate our valued staff and employees while providing practical and creative solutions for our clients to help their team members. The reality is, if your employee must juggle full-time employment and full-time childcare responsibilities, how can they function efficiently at either task? Most of those solutions started with a simple premise – understand individual circumstances, accommodate and manage employer expectations accordingly.

This strategy has helped to foster engagement to fortify employer-employee relationships for our firm and clients. This same strategy translated into our working relationships with third-party vendors, opposing counsel and even referral sources.

Everyone is adjusting to the new normal. In an age of social distancing, when I am on a virtual call with someone at their home and their child, elderly parent or cat walks across the background of the screen, our communication is often tinged with humor as we acknowledge these unplanned "cameos."

Ogden & Sullivan, P.A.

Tampa, Florida

Recognizing that a trial is not always in their clients' best interest, they are committed to alternative forms of case resolution, including mediation and arbitration.

Ogden & Sullivan, P.A. is a Tampa, Florida-based trial practice firm which represents clients in state and federal courts throughout Florida. Founded in 1990 by Randy Ogden and Tim Sullivan, the firm strives to provide high quality legal representation designed to assist clients in achieving the best possible result – whether by settlement or trial. Recognizing that a trial is not always in their clients' best interest, they are committed to alternative forms of case resolution, including mediation and arbitration. The firm is always mindful of clients' desire for swift and cost-effective resolution of their claims, and they emphasize close communication with clients to ensure these goals are met.

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During the recent months of uncertainty brought about by the COVID-19 pandemic, a spotlight has been cast on the trucking industry, highlighting its importance.

Thank a Trucker: Essential Workers Kept Rolling through Pandemic

From a defense attorney with a large trucking practice, "Thank a Trucker" was one of the better sentiments I encountered in 2020 during the COVID-19 pandemic.

The trucking industry is vital to the success of our economy. During the recent months of uncertainty brought about by the COVID-19 pandemic, a spotlight has been cast on the trucking industry, highlighting its importance. While nationwide lockdowns and significant changes to our daily lives occurred, the trucks continued to roll, bringing personal protective equipment to our frontline workers, food from the farms to our local grocery stores, medicine to our health care professionals, and even a late-night online purchase to your front door.

The National Truck Driver Appreciation Week was from September 13-19, 2020, but the public's goodwill has lasted much longer. From social media posts with #thankatrucker, to news segments highlighting individual stories, the public is aware that truck drivers and their support systems kept supply chains running while most of us worked remotely and practiced social distancing.

My firm handles rapid responses, where we are notified of catastrophic trucking accidents involving fatalities or serious injury, often while the vehicles are still in place. COVID-19 has brought some changes, but we still need to investigate the accident, gather statements, secure evidence, and document the scene before time, weather and traffic erase it. Ideally, we like to meet with the driver on the day of the accident, and to take a more thorough statement after a night of sleep. In-person meetings are preferred in order to evaluate the truthfulness of the driver, to identify his or her strengths and weaknesses (should they need to be deposed or testify at trial), and to provide the counseling an attorney should provide his client following a significant event that will likely be with him or her long after any lawsuit is resolved.

Luckily, video-conferencing tools like Zoom, Microsoft Teams and FaceTime have assisted and supplemented many in-person meetings. Speaking to someone face-to-face, even if by video, is preferable to a telephone conference for the reasons listed above.

The trucking industry is still held in high regard. This moment in the sun may have an expiration date, but lawyers can use the positive support in their practice. If liability is contested or the injuries appear exaggerated, weaving the goodwill towards truckers into your case's theme is a great practice tip. A jury pool is likely aware of the hard work these individuals have performed, and in a game of inches, anything to tip the scale in your client's favor will be helpful. Likewise, during negotiations, you should be reminding opposing counsel that a 2021 trucking trial will look a lot different than a 2019 trucking trial (or 2022 depending on your court's trial backlog). In the current climate, a jury is more likely to thank a trucker by providing a more just verdict than the industry has seen in a long time.

Evaluation Criteria for Moral Damages

The subject of moral damages is perhaps one of the most challenging to deal with, and even more difficult is trying to develop some criteria for how it should be evaluated. This article is intended to show that the determination of moral damages is an objective task. Our judges and magistrates daily face the commendable and controversial work of calculating a "monetary compensation" for a damage that the doctrine qualifies as non-pecuniary, meaning that it is not subject to economic valuation. What equally motivates us is to try to establish some basic criteria in accordance with the Standards of Psychiatry and Psychology by framing it within these sciences. How do we calculate the amount that we have to compensate when feelings, affections, beliefs, decorum, honor, reputation, etc., are affected?

I. Concept and Definition of Moral Damages

Moral damage refers to the way a person suffers in his feelings, affections, beliefs, decorum, honor, reputation and privacy. Before knowing how these damages can be valued, we need to specify what they are.

II. Psychology of Affectivity

1. Situation Feelings:

These are feelings referring only to the ego state. They are classified as pleasant (happiness, pleasure, agility, joy, rest, satisfaction, security); and unpleasant (sadness, worry, anguish, fear, restlessness, uneasiness, failure, helplessness, nostalgia, bad mood, anger, rage, envy, jealousy, etc.).

2. Feelings of Self-Worth and Exo-Valuation:

The feelings of self-worth are those that refer, as the code says, to the consideration the person has about himself. These can be affirmative such as strength, pride, vanity, dignity, superiority, triumph, comfort, or they can be negative such as shame, guilt, etc. The feelings of exo-valuation are those that concern the consideration that third parties have about a person and are also classified in affirmatives such as love, trust, compassion, interest, justice, nobility, and in negatives such as hate, repugnance, contempt, indignation, etc.

III. The Determination of Moral Damage

It must be proven that the unlawful action has produced a moral damage and, in addition, that it is only indemnified when the damage caused is compensated financially. In our humble opinion, moral damage can only occur when there is damage of a psychological nature that affects any of the feelings we have already described.

IV. Criteria for Determining Moral Damages

As mentioned above, our judges must set a monetary compensation for a situation that the same doctrine calls non-pecuniary damage.

We must undertake this task first remembering that, since feelings are subject to a universal number of stimuli, there will be as many moral damages as situations that cause them.

We will then discuss the moral damages that are most commonly requested, in order to outline evaluation criteria.

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The standard offered in article 1644 of the Argentine Civil Code clearly establishes that the amount of the moral damages will be determined by the judge, taking into account factors including the rights of the injured parties, the degree of responsibility, the economic situations of the victim and the responsible party, and other circumstances of the case.

Let us remember that we are referring to the problem of pecuniary compensation for moral damages and not to the compensation of the integrity of the aggrieved individual to whom the same Article 1644 establishes the way in which this reparation should take place.

Let us examine each of the parameters with which the judge must restore a monetary value to the moral damage.

1. Right of the Injured:
Specifically, it is limited to the moral damage of an injured person, and within this specific situation, it is appropriate that we frame ourselves in the responsibility derived from the offense of negligent injuries regulated in Article 139 of the Criminal Code, whose maximum representation in our law is the processes of culpable injuries or for recklessness.

Does it mean that in the crimes of culpable homicide there is no room for a request for moral damages? In our opinion, applying the analogy, since we are under the aegis of the civil law that allows us to use it, and since the effect on emotions and feelings is due to different stimuli, we would conclude that it is possible, even though the law does not establish it directly. We maintain that the way the article is written is an example and not restrictive, which has been reflected in the law as examples of the criteria that the judge must follow in order to determine the quantum of moral damages. These may also include the rights of those affected by the death of a father, son, brother, etc.

In analyzing the criteria of the moral damages caused by the death of a parent, it might be suggested that the criteria be to assess moral damages at twice the amount of the compensation proven in the material part. That is, to provide the family with the resources that the parent would have provided, within the economic possibilities that the family had at the time of death.

Since most people would not change their lives for money, we cannot think that the moral indemnity is infinite, even if that indemnity does not "repair" in the strict sense of the word, since the deceased could never be resurrected.

The limitation comes if the deceased does not have employment at the time of death. With such high unemployment rates, it is not uncommon for some people who have died in car accidents to report no income at all, and this does not mean that their life is worthless, it is as much as if the assumption was that the person had died "with no use in living."

If we are dealing with the death of a minor child, the situation is much more complicated, however author Richard A. Posner suggests that the financial compensation would be the cost of maintenance based on the opportunity costs of the market. If we take this as a basis for compensating this difficult transaction for moral damages, we suggest at least three times the financial compensation.

2. The Degree of Responsibility:
This criteria assumes the co-authorship and participation in the loss or impairment of the life or physical integrity of the person, a situation that the judge must take into account in order to impose moral damages in this case. It would then be that the co-perpetrator or accomplice, depending on his degree of responsibility, could be sentenced to pay greater or lesser compensation.

3. Financial Situation of the Responsible Party:
Of the criteria, this seems to us to be the most objective of all. However, this situation is not like that of the person obliged to give child support, in which the child support provider is considered largely by his economic situation. The extent of the impact on one's emotional life, in our opinion, has nothing to do with the economic means of the defendant. However, because there is no means of compelling the insolvent party to pay in civil proceedings, it is perhaps an appropriate practical criterion. It is useless to establish a sum of one million dollars for moral damages to someone who cannot pay that amount, however nothing prevents you from using the criteria outlined to reach that amount of money.

4. Other Circumstances of the Case:
This criteria allows the judge to take into account other circumstances when evaluating the evidence of the specific case.

> Moral damage refers to the way a person suffers in his feelings, affections, beliefs, decorum, honor, reputation and privacy.

Zupkus & Angell, P.C.

Denver, Colorado

Z&A doesn't just "keep up" with trends, we anticipate them.

By leveraging better, faster and more advanced technological resources, the Z&A team is able to address its clients' legal needs in new and innovative ways.

Zupkus & Angell, P.C. (Z&A) is comprised of a skilled group of practitioners well-versed in the legal needs of insurers, their insureds, businesses large and small, and the people that keep them running. Our diverse talents and backgrounds make us an effective legal team striving to achieve optimum results and provide unparalleled service for our clients.

Z&A fosters an inclusive work environment based on mutual respect, support and open communication. We encourage initiative, creativity, professionalism and legal scholarship enabling exceptional service. Meaningful collaboration, including the client's perspective, is an integral part of the firm's vision, strategy and tradition of success. Z&A is proud to be woman and minority-owned since 2013, but the firm has been committed to inclusion and diversity since its founding in the '90s. By incorporating many viewpoints on the law (and the world in general), Z&A is able to provide clients with broadly-envisioned creative legal services. Z&A is committed to recruiting talented and intelligent employees regardless of gender, race, religion, ethnicity or sexual orientation.

"Diversity" can mean different things to different people. At Z&A diversity is not a fad or a buzzword, but rather a fact of life. Each attorney and staff member brings their own unique and diverse set of identities, experiences and viewpoints to the table when advocating for our clients. Indeed, this inclusionary philosophy is crucial in enabling Z&A to practice the unique, contemporary and dynamic brand of law for which our firm has become known. Z&A has cultivated a truly inclusive work environment, and we do everything we can to accommodate our diverse team by offering non-traditional and flexible work schedules and by adopting a variety of progressive inclusiveness initiatives.

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On March 15, 2020, once it was apparent the pandemic was going to change the world, Zupkus & Angell pivoted, ever-so-slightly, to a completely remote work environment. We made the decision to suspend the "in-person" component of our practice, turned off the lights and locked the door.

Zupkus & Angell: A Day in the Life

This is a description of a typical day at Zupkus & Angell before the pandemic. We moved into the cloud years ago, and we always knew it was the right choice. On March 15, 2020, once it was apparent the pandemic was going to change the world, Zupkus & Angell pivoted, ever-so-slightly, from what you will read, to a completely remote work environment. We made the decision to suspend the "in-person" component of our practice, turned off the lights and locked the door. "See you tomorrow."

Nimble is the word we most often use to describe our cloud-based working environment. It allows for efficiency, cost-effectiveness, meaningful and powerful collaboration, flexibility, and most important of all, happy, productive team members.

My day begins at 6:00 a.m., as my Microsoft Teams status changes itself from "Away" to "Available." Almost at once, emails start notifying me of their presence, mostly from clients an hour ahead in the Midwest. After my ritual morning breakfast burrito with black coffee, I grab my phone and glance quickly at today's Task List already loaded into the ToDo app by my assistant Kirby. A meeting with clients, a letter to revise, accounts payable to approve, final steps on that motion I worked on last night – oh, and it looks like one of our attorneys has a question about the subpoena he's working on – he's asked Kirby for a quick chat with me. Plus, I've got to find time to prep for tomorrow's virtual client training, and I have to start planning what to do for the kids' teachers this month (I am the classroom pamperer this year). Today's going to be busy!

As I get ready for the day, Cortana reads me my emails. "Delete. . . Delete . . . Flag for Follow-up... Forward to Kirby... Delete." My client meeting starts in five minutes, and I want to be early. The meeting reminder has already popped up on my screen, and I click "Join Skype Meeting."

As my meeting ends, Kirby's Teams message pops up to remind me that I need to review the letter and the accounts payable. The accounts payable is a quick task, so I log into QuickBooks Online and approve this month's bills. Most of them are paid automatically, so I won't have to sign many checks – after the firm administrator reviews my approval.

Time for the letter. I click the link in the email from the attorney at the firm who prepared the letter, and it opens in Word, directing me to @Muliha tags. One question leads me to the 3,600-page claim file to find the answer, but fortunately, my digital notes and annotations are searchable, so I quickly get the answer I need. Otherwise, nothing too major, and I use the @ feature in the body of the letter as I respond to the comment bubbles. I close the letter, knowing that my @s will find their way into the attorney's inbox, and she can move forward with finalizing.

Later in the afternoon, I head to the kids' school to pick them up. The Teams call Kirby scheduled for me comes in just as I'm pulling into the school parking lot. I park the car and answer the video call. The attorney, who is at home, shares his screen, showing me the subpoena and the question he has, and then it's off to get the kids.

At home, while the kids start their homework, I begin preparation for tomorrow's virtual client training, looking over my PowerPoint again. It will be a good opportunity for me to "meet" new adjusters through Teams, the client's preferred video platform.

Silver Linings Among the Major Changes in Litigation During and Following 2020

No reasonable person would contest that 2020 was a year full of changes from the "normal" way of living. It was no different for attorneys litigating matters. There were numerous changes to litigation that were, at first, new to us. However, as the year reached its conclusion, it became apparent that not every change in 2020 was a negative. Quite the contrary, there were several notable changes that were somewhat positive if not outright positive.

First, the ability of the legal system to rapidly adapt was certainly a positive, commendable development. There were undoubtedly changes in litigation, as evidenced by the difference in practice between January 2020 and December 2020:

- In the beginning of 2020, nearly all court proceedings were held "live" in court. Few judges allowed telephone hearings and very few held video conference hearings. By the end of the year, video conference hearings and oral arguments were widespread.
- In the beginning of 2020, video depositions were increasing, but still fairly rare. By the end of 2020, the overwhelming majority of depositions were taking place via video recording.
- In the beginning of 2020, client interactions and seminars were far more likely to be in-person. By the end of 2020, client interactions were nearly exclusively done by email, telephone, and (increasingly) video.

If nothing else, the legal profession showed flexibility to adapt to these changes very quickly. Attorneys and judges learned new technologies, as did the staff members of law firms and courts. In many ways, the speed at which the system adapted is quite remarkable.

The reason for this adaptation can be traced to the desire for resolutions inherent in the legal system. One thinks of the maxim "justice delayed is justice denied." Indeed, without regard to whether an attorney is on one side or the other, all litigators *should* agree that whoever *should* prevail in a litigated matter *should* prevail sooner rather than later. The quick adaptation by the court and attorneys reflects that our otherwise imperfect legal system was able to stay somewhat on course notwithstanding new, unanticipated obstacles.

Second, while there is no doubt that this is not a universal rule, there was certainly an increase in the civility of many litigated proceedings. After pondering this issue, the reality may be that much of the combative tone from both attorneys and judges comes from the fact that there is an audience. At least in state court practice, it is fairly common to have a "motion day," where the court hears numerous motions consecutively in front of court personnel and a gradually decreasing number of attorneys and parties. Judges have an incentive to make subtle (and not-so-subtle) statements as to who is in control of the courtroom, while attorneys have a tendency to want to look good for the spectators and their clients.

In contrast, while many Zoom hearings and oral arguments were broadcast live or recorded for future viewing, there was rarely an audience of any kind. A judge participating in a Zoom video conference

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with a few attorneys has no need to control the courtroom, as the court is in absolute control of the video conference itself. Attorneys do not have an audience to "show off" their oratory skills and can get right to the point.

Frankly, it has been refreshing to participate in nearly every motion hearing or oral argument. Regardless of the result, there was a very noticeable difference in the way that the hearings transpired. During appellate arguments, the judges and justices seem to have been structuring their questions—rather than just having the first or loudest voice prevail. During motion hearings, attorneys have been encouraged to "mute" their microphones (somewhere an attorney joke is writing itself).

Of course, one might also wonder whether the more civil tone arises simply because it is more physically comfortable to attend or preside over a proceeding from the comfort of one's own office or home. Could it be that simple? If so, this is not necessarily something that should be discouraged moving forward.

Third, there has been no decrease in the quality of judicial opinions. Frankly, as a firm that files numerous summary judgment motions, it has been a banner year both in terms of quantity and obtaining unexpected results from specific judges. Judges that have historically been averse to granting summary judgment issued opinions doing so. The year 2020 was also notable for the number of granted motions for reconsideration. The increasing number of such motions granted suggests that judges have more time to carefully review the motions, rather than denying them with simple boilerplate language. Again, any change that leads to more accurate rulings should be welcomed as a positive change.

Finally, 2020 brought changes to interactions with clients. Needless to say, there was little or no opportunity to physically interact with clients during most of 2020. This applied to depositions and facilitations, with these events taking place remotely via video conference only. However, it also opened up other opportunities—such as video conferences and seminars. In some ways, a Zoom video conference with a client in 2020 was more personal than a telephone call with that same client in 2019. With the widespread use of Zoom and other such mediums, it is now far more "normal" to use them for a variety of interactions.

Clients may also have noticed that billing entries are now different. Litigation budgets are now being adapted to reduce the amount of time and expense expected for events. Out-of-state depositions can now be taken remotely, at greatly reduced cost for travel. With reduced travel, this means more time for attorneys to focus on the legal issues within the same budget. Another way of looking at that is that clients are getting more out of the same, or perhaps even lower, litigation budget. This, of course, cannot be a bad thing.

In conclusion, regardless of how one views 2020 overall, there were vast changes in litigation. There is no shortage of articles regarding the negative changes. However, there were some silver linings to the changes in litigation that are worth noting. Perhaps building off these changes, courts and attorneys can make more positive changes in the future.

If nothing else, the legal profession showed flexibility to adapt to these changes very quickly. Attorneys and judges learned new technologies, as did the staff members of law firms and courts. In many ways, the speed at which the system adapted is quite remarkable.

Dillingham & Murphy, LLP

San Francisco, California

Dillingham & Murphy, LLP, in San Francisco, California, is an AV-rated, 11-lawyer law firm founded in 1982.

Dillingham & Murphy, LLP, in San Francisco, California, is an AV-rated, 11-lawyer law firm founded in 1982. The firm represents a wide range of domestic and international clients, including major publicly-owned corporations, private companies, start-ups, non-profits, individuals, and governmental entities.

Dillingham & Murphy's practice areas include: product liability, transportation litigation, labor and employment litigation and advice, wage-hour, Telephone Consumer Protection Act (TCPA) and other class action defense, commercial and business litigation and advice (including securities, real estate, and intellectual property), intellectual property litigation including theft of trade secrets and unfair competition litigation involving employers and former employees, representation of senior executives and employers in negotiating employment and severance agreements, ADA access litigation, premises liability litigation, representation of retailers regarding trespassers including trespassers who claim First Amendment rights to trespass, professional liability advice and defense, and Proposition 65 advice and litigation.

The firm also provides transactional advice and guidance regarding commercial leasing. Although it is based in San Francisco, Dillingham & Murphy handles litigation and arbitration matters throughout the State of California. Its lawyers are well-versed with litigation in California's federal courts as well as litigation in the California Superior Courts.

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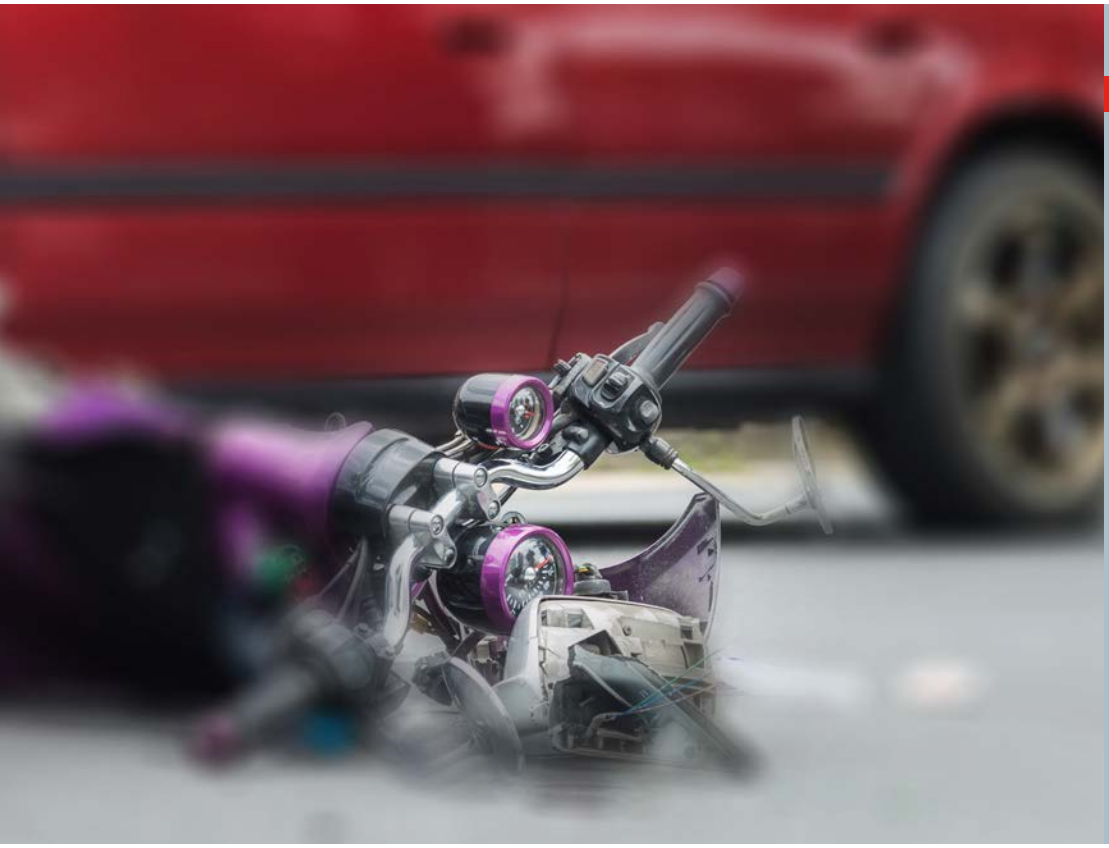

Dillingham & Murphy was retained to represent the property renter and quickly resolved the case with the help of a peeping tom.

The Peeping Tom Motorcycle Accident

A homeless man saved sufficient money to pay for a night at a Los Angeles hotel. The following morning, he drove his car out of the parking lot and attempted to cross a wide boulevard consisting of four traffic lanes. Unfortunately, his car was struck by a southbound motorcycle. The motorcyclist died after flying across the hood of the car and landing on the pavement. His widow filed a wrongful death case.

A minimum liability insurance policy covered the car. The motorcyclist was a 55-year-old Los Angeles Fire Department captain making $250,000 per year, so plaintiff's counsel cast a wide net to find deep pockets to fund a settlement. The plaintiff sued the City of Los Angeles and various entities associated with the hotel based upon the theory they improperly designed the street and driveway and failed to provide proper signage. The plaintiff also sued the renter and owner of the commercial property adjoining the hotel. The theory was that vegetation on the adjoining property and vehicles owned by the renter and illegally parked on the street blocked the car driver's view of the motorcycle. Dillingham & Murphy (D&M) was retained to represent the property renter and quickly resolved the case with the help of a peeping tom.

D&M had to determine the condition of the vegetation and parking on the day of the accident and what role, if any, the vegetation and parking played in the accident. Unfortunately, D&M was not retained until 15 months after the accident, and the lawsuit was the client's first notice of the accident. None of the property owners in the area had videos of the accident. The car driver was in jail and unavailable to be deposed. There was a witness, but he was homeless and could not be located.

Fortunately, D&M was able to determine that minutes before the accident, two Los Angeles Police Department officers responded to a peeping tom incident a block from the accident location. We obtained the officers' body camera videos. The videos show the officers standing on a sidewalk taking a report. The decedent's motorcycle is seen and heard driving past the officers. You then hear the crash and see the officers jump into their vehicle and drive to the accident scene. The officers drove past our client's property, and the video clearly shows no vehicles illegally parked on the street and no overgrown vegetation blocking views. The icing on the cake was the car driver not mentioning one word about blocked views when he was interviewed by the officers. D&M provided the videos to plaintiff's counsel, resulting in the client's dismissal.

Furthermore, D&M negotiated to have the property owner, which tendered to our client, dismissed. The case continues to drag on, now over two years after being filed, as to the remaining defendants. The goal of D&M is to resolve all cases quickly and inexpensively.

Material Adverse Change Conditions and Ordinary Course Covenants in Pandemic-Tested Acquisition Agreements

In business acquisitions, it is important to the buyer that the business he or she has agreed to buy does not change dramatically between signing and closing. As the pandemic's severity became apparent, it changed nearly every business, most in a material way. As a result, many of the contractual risk-shifting devices designed to ensure continuity between what the buyer agreed to buy at signing and what is handed over at closing were put under a stress test.

Buyers looking to escape their pre-pandemic agreements and not be stuck with dramatically damaged businesses filed a number of cases in the Delaware Court of Chancery. Those cases tended to claim that the buyer was excused from closing because the pandemic had caused a material adverse change to the business being acquired and that the seller failed to operate the business in the ordinary course. Many of the cases settled after the parties revisited the economic terms. One of the cases, *AB Stable VIII LLC v. Maps Hotels and Resorts*, 2020 WL 7024929 (Del. Ch. Nov. 30, 2020), proceeded through trial and the decision offers some valuable lessons for future drafting and navigating an acquisition process through a worldwide upheaval.

AB Stable VIII LLC is a holding company for upscale hotel properties in the United States that was owned by the Anbang Insurance Group of China and is now held by Dajia Insurance Group, the successor to Anbang. AB Stable leased the hotel properties to hotel managers, but it also maintained a high level of direct involvement in the hotel operations at the properties and was not a mere landlord. AB Stable entered into an acquisition agreement with Maps Hotels and Resorts on September 10, 2019, under which Maps Hotels would acquire the membership interests in an intermediate holding company that held hotel properties for a total purchase price of $5.8 billion. The transaction was originally slated to close on April 17, 2020.

On the scheduled closing date, Maps Hotels asserted that it was not obligated to close because, among other reasons, the business had undergone a material adverse change since signing (also known as a "material adverse effect" (MAE), the term used in the acquisition agreement) and AB Stable failed to operate the business in the ordinary course. AB Stable then sued to force the closing.

In ordinary speech, the pandemic clearly had a material adverse effect on the luxury hotel business. The hospitality business collapsed as the pandemic took hold. AB Stable's "financial performance deteriorated at an accelerating rate" and its "outside auditors discussed whether the Company's financial statements needed to [include] a going-concern qualification."

But an acquisition agreement is not ordinary speech, and instead involves "verbal jujitsu" as the court described it. "The standard MAE provision … plac[es] the general risk of an MAE on the seller, and

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then us[es] exceptions to reallocate specific categories of risk to the buyer. Exclusions from the exceptions return risk to the seller." Ultimately, the court found that no material adverse effect, as defined in the agreement, had occurred.

The MAE clause at issue was particularly seller-friendly. The court found that the buyer, Maps Hotels, was left to bear the risk of general "calamities" that included pandemics and other "systematic" and "structural" risks. The MAE clause did not even provide a favorable outcome for the buyer if a systematic event had a disproportionate effect on the acquired business. The court found that the "omission of a disproportionality exclusion signals a seller-friendly MAE clause." As a result, the buyer was unable to argue that the especially dramatic effect on the luxury hotel properties at issue would excuse it from closing.

Lesson One:

Insistence on a disproportionality exclusion under which the buyer will be excused from closing if a worldwide calamity is especially damaging to the acquired business is a common provision that should not be overlooked.

The buyer lost the material adverse change battle, but it won the war. The buyer was excused from closing because AB Stable failed to operate the business in the ordinary course under the pressures of the pandemic. In response to the pandemic, AB Stable had closed two of the 15 hotel properties completely for some time and most were operating as "closed but open." Among other dramatic changes: staff were laid off; hotel restaurants were shut down; other amenities were severely curtailed or shut down; marketing expenses were cut year-over-year by as much as 76 percent; and all non-essential capital spending was placed on hold.

The court summarized the competing positions succinctly. "Buyer argues that the radical changes that management implemented to respond to the COVID-19 pandemic obviously deviated from how the [business] normally operated and therefore fell outside the ordinary course of business. Seller responds that management must be afforded flexibility to address changing circumstances and unforeseen events, including by engaging in 'ordinary responses to extraordinary events.'"

The court found that the case law dictated the relevant analysis was to "compare the company's actions with how the company has routinely operated and hold that a company breaches an ordinary course covenant by departing significantly from that routine." The provision at issue in the case "impose[d] an unconditional obligation to operate in the ordinary course consistent with past practice." Since past practice did not involve making the drastic changes the seller did, seller had breached its obligation to operate in the ordinary course and the buyer was excused from closing. The court reached this finding even though it also found that the "circumstances created by the pandemic warranted those changes, and the changes were reasonable responses to the pandemic." Reasonableness in response to extraordinary events was not the relevant standard imposed by the contract.

In light of the court's findings and other provisions in the acquisition agreement, it ordered that the buyer be paid back its deposit of $581 million and recoup its transaction fees and expenses as well as its litigation fees and expenses.

Lesson Two:

An ordinary course covenant and material adverse change condition address different risks. A material adverse change condition "is concerned primarily with a change in valuation, irrespective of any change in how the business is being operated." An ordinary course covenant "recognizes that the buyer has contracted to buy a specific business with particular attributes that operates in an established way." In drafting the provisions, care must be taken to ensure that both risks are addressed and that their interaction is sensible.

The court found that the case law dictated the relevant analysis was to "compare the company's actions with how the company has routinely operated and hold that a company breaches an ordinary course covenant by departing significantly from that routine."

Lesson Three:

The court noted that there was a safety valve that might have allowed the seller to take its ordinary responses to extraordinary events. The agreement provided that the seller could ask for the buyer's consent to take actions outside of the ordinary course and such consent could not be unreasonably withheld. If seller had consulted with the buyer before taking its extraordinary responses, it may have kept buyer in the transaction.

Lesson Four:

The court noted that the ordinary course covenant could have been drafted to provide that only a deviation from the ordinary course that constituted a material adverse change would excuse buyer from closing, but the ordinary course provision at issue did not. It did not allow seller to take ordinary responses to extraordinary events without jeopardizing the transaction.

Meythaler & Zambrano Abogados

Quito, Ecuador

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Founded in 1995, Meythaler & Zambrano Abogados is considered nationally and internationally as one of the most innovative and respected law firms in Ecuador. We have been recognized by several international rankings such as Legal 500, Chambers & Partners and Leaders League.

Meythaler & Zambrano helps its clients to realize opportunities and manage risk, by combining legal expertise with a global perspective and local insight. The firm provides practical and accurate advice in corporate, competition, regulation and trade, mergers & acquisitions, administrative and public law, commercial litigation, corporate crime, enforcement and investigations, intellectual property, tax disputes, and public procurement.

We have advised clients of great international and national prestige who have placed their trust in us. Likewise, we are part of the most reputable and relevant professional circles.

Our team is made up of highly qualified professionals who not only have the skills and experience to execute any advice and transaction, but also add value to all the operations that are entrusted to them. Our lawyers are enthusiastic, committed people who relish the challenges and opportunities that they encounter every day.

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José Meythaler is president and principal partner of Meythaler & Zambrano Abogados. He began his career in 1988 as a litigation attorney, and he has advised many companies on a wide variety of legal matters. Due to his successful track record, he is recommended by various legal boards, including Chambers & Partners.

The experience, technical skill and commercial awareness of our lawyers allowed us to provide our client with a complete dispute and investigation service of the highest quality.

A Case Study in Breach of a Service Contract

Meythaler & Zambrano Abogados advised a client on a trial relating to the breach of a service contract worth more than US $1 million.

Our client's business relationship with the defendant arose as a result of the contracting process for the rehabilitation, maintenance, expansion and administration of an interprovincial highway of nearly 400 km (248 miles), commissioned by the National Ministry of Transport and Public Works.

As a result of this commission, the defendant signed a service contract with our client, in order to comply with the commitments required by the State, particularly the studies of the commissioned highway. This contract had three conditions: (i) the approval of the studies by the Ministry of Transport and Communications, (ii) the completion of the construction stage and the start of the expansion phase of the concession contract, and (iii) the obtaining of credit.

Our client completely fulfilled its commitment and all the conditions for its payment were met. However, the defendant argued otherwise. According to them, the last condition was not met, and there was no documented evidence of them receiving a credit. The defendant intentionally did not allow our client and judicial inspectors to evidentially learn whether a credit was received or not.

Ironically, the defendant's general manager confessed under oath that they obtained financing from other sources and publicly confirmed that the commission continues to run up to date. The confession proved that all factual elements for the payment of our client were met, and that the defendant simply did not pay our client for an arbitrary reason.

The claim raises highly topical legal issues and is of keen interest to private companies with exposure to public procurement trials. The defendant's refusal to allow our client to acquire proof showing the conditions for payment were met, even after several judicial dispositions which ordered the defendant to do so – in addition to the defendant's refusal to pay our client what was rightfully owed – constitutes abuse of rights, procedural fraud, as well as enrichment without cause.

We advised on an ordinary procedure and helped our client secure a favorable outcome. The Court ruled that, as the norm, doctrine and jurisprudence teach that for there to be damage, the unlawful act must first be proven. The unlawful act was proven in the trial. The fact that the defendant refused to pay our client by pretending that the conditions were not met amounted to an unlawful act, thereby resulting in abuse of rights, and procedural fraud.

The Court did not allow the defendant to continue benefiting from the lack of documentary evidence. Instead, it concluded that since the commission was being executed, and therefore the defendant had received money for the services rendered, the excuse of lack of evidence was no longer applicable.

The experience, technical skill and commercial awareness of our lawyers allowed us to provide our client with a complete dispute and investigation service of the highest quality.

A Warning to the Unwary: Examine Local Law Closely Before Making COVID-Related Distributor Changes

COVID-19 has turned the business world upside down in a myriad of ways. Some markets have dried up, while others are booming. Supply chains have shifted as companies go out of business or change priorities. Given this turmoil, many businesses are considering making changes to their distributor relationships, whether by terminating distributors, changing territories or revising compensation structures. But beware. In the U.S. and elsewhere, local laws may constrain the changes a company can legally make to its distributor network, the timeframe under which those changes can be made, and the permissible grounds for making a change. As the penalties for non-compliance can be severe, any business looking to make a change should consult with competent counsel who is licensed in the distributor's jurisdiction.

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For instance, consider Wisconsin's Fair Dealership Law, Wis. Stat. § 135.01, *et seq*. (WFDL). For distributor relationships that fall under the WFDL (dealerships), the party who engages a distributor (grantor) can terminate, cancel, fail to renew or substantially change the nature of the dealership only upon proper notice and with good cause. To be proper under the statute, the notice must:

(a) be in writing;

(b) detail all of the reasons for the change;

(c) be received at least 90 days before the change; and

(d) in cases involving performance deficiencies, provide the distributor at least 60 days to cure any deficiency. Good cause means either that the distributor (dealer) has acted in bad faith or has failed to comply substantially with the essential, reasonable and non-discriminatory requirements of the grantor.

Any failure to provide the statutorily-required notice, or any substantial change in the relationship without good cause, is a violation of the WFDL, requiring the grantor to pay damages and the dealer's attorneys' fees. With respect to damages, WFDL cases are generally brought after a dealer has been terminated, and the dealer argues that if the grantor had obeyed the statute, the dealer would have cured any purported deficiency and performed satisfactorily for an indefinite period. Damages therefore are the profits the dealer could have expected to earn over the foreseeable course of the dealership relationship.

For instance, if a dealer was making $10 million in annual profits and the dealership could be expected to last another 25 years, the dealer could seek the present value of $250 million in damages, plus its attorneys' fees in pursuing violation of the statute. Further, because the 90-day notice requirement is inflexible (except in the cases of bankruptcy or non-payment by the dealership for orders or other purchased goods), a simple failure to provide the required 90 days' notice and 60 days to cure could expose a grantor to liability for

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decades of expected profits. In other words, failure to give the proper notice in this hypothetical could be a $250 million mistake!

Of course, grantors in circumstances like this have argued that, at most, the dealer is entitled to just 90 days of expected profits (the notice period), but that argument doesn't always win, and the law is construed in favor of the dealer.

I cannot tell you the number of times an out-of-state company, unaware of the WFDL, has terminated a Wisconsin distributor relationship in full compliance with the termination provision of the distributor contract, and was shocked to get hit with a WFDL suit. Under Wisconsin law, you cannot alter the requirements of the statute by contract, so a termination that is perfectly within the grounds agreed to by the parties may still be in violation of the statute and expose the grantor to substantial liability. In addition, choice of law or venue clauses providing that another state's law governs the relationship or that lawsuits must be brought in a non-Wisconsin venue are often deemed unenforceable due to Wisconsin's public policy interest in enforcing the WFDL. So, there is no sure-fire way to contract around the WFDL's requirements.

The most common defense to a WFDL suit is to argue that the relationship does not fall under the statute. By its terms, the WFDL only applies to "dealerships," which are relationships that involve:

(1) a contract or agreement between two or more persons to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol; and

(2) a "community of interest."

The term "community of interest" is a fuzzy concept that addresses whether the parties have a sufficient continuing financial interest and level of interdependence such that a grantor's decision to cancel or alter the relationship would be a threat to the economic health of the dealer. The quintessential example is the owner of a gas station, who has invested their livelihood in the partnership with a given petroleum company and would be devastated if the gas company suddenly decided to terminate the relationship.

The Wisconsin Supreme Court has laid out an 11-factor test to determine if a community of interest exists, and has explained that it is a totality of the circumstances test in which no one factor predominates. Given the lack of clarity in what the concept of a "community of interest" means, the debatable nature of each of the eleven factors, and the fact that no one factor clearly outweighs the others, the end result is that lawyers argue about whether the statute applies in virtually every WFDL case, and the ultimate answer is uncertain in most situations.

While I've used Wisconsin as an example for discussion purposes, 18 other U.S. states have distributor laws that override the parties' contract, and many more states have statutes that provide default rules in the absence of contractual language otherwise. Outside the U.S., many countries have laws that impose mandatory requirements on distributor or franchise agreements, and nearly all countries with developed legal systems regulate these kinds of relationships in some way. Not every jurisdiction has laws as stringent as the WFDL, but discovering what those laws require *after* a termination letter has already been sent can be a very painful and expensive lesson.

> COVID-19 has turned the business world upside down in a myriad of ways. Some markets have dried up, while others are booming. Supply chains have shifted as companies go out of business or change priorities.

With competent advice from a lawyer licensed in the jurisdiction where the distributor is based or primarily works, exposure to laws like the WFDL can be minimized or eliminated altogether. In Wisconsin, good cause is something that can usually be established with a proper paper trail and a history of trying to work things out with the dealer, and notice is simply a matter of planning ahead and knowing the rules. Any business that is considering a "COVID shakeup" would be wise to consider the requirements and potential legal exposure involved in changing relationships with distributors *before* any ultimate decision is made.

ZBA Law

Zagreb, Croatia

Our team of reliable legal experts, with its speed and experience, approaches each new case with the necessary attention.

The law firm Župan, Babić & Antunović (ZBA Law) was established in 2018 by merging the joint law firm of Ivan Župan and Melita Babić with the law firm of Luka Antunović. We understand the challenges and pressures that appear in each individual case, and we are here for you, at every step.

With more than 20 years of joint experience, you can rely on the advice of our three firm partners – Ivan Župan, Luka Antunović and Melita Babić. The rest of the team at ZBA Law consists of renowned attorneys who gained knowledge and experience in an international environment. A pleasant working atmosphere, quick advice and smiling faces have become the trademark of our firm. Do you need to open a new company? Or close an existing one? Are you thinking about hiring foreigners? Maybe about some less pleasant aspects of labor law? In any case, our law firm will provide you with advice that will help you realize your business goals – not only in Croatia, but all over the world.

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Pandemic or not, what we strive for in our law firm and for our clients is a friendly and people-oriented working environment with happy and productive employees.

Human Resource Management During a Pandemic

Due to the global pandemic, our clients faced several challenges in their business operations as they learned to operate within the "new normal." Most of them had to adapt day-to-day operations to comply with new health regulations set by the government.

Working in a "home office" has become commonplace for most of our clients, as well as for our firm. Although this is quite unusual for the legal profession, considering our daily face-to-face meetings as well as attending hearings that required our presence in Court, our employees quickly became accustomed to the situation. At first, most of our work was done from the "home office" since all meetings and court hearings were suspended.

In addition to advising domestic and international clients, at that time we found ourselves in a situation where we had to organize our business in a short time in a way to protect workers, and at the same time ensure the continuation of a successful business. Once our employees were able to return to the office, the company provided transportation for all employees.

We also applied the procedures we recommended to our clients in our office by advising clients to regulate the work of employees from home. We also suggested supervision over the efficient performance of their employees' daily tasks.

One of our clients had the idea to reduce the number of workers in order to save the company's business. To preserve this client's business, we suggested a more favorable legal solution, by proposing amendments to the Rules of Procedure and thus reducing the salaries of all employees equally, including the management for a definite period of time. The move allowed the client to keep all the workers in the period when, due to the lockdown, it operated on a reduced scale and with reduced revenues.

The lack of Court hearings and the inability of foreign investors to come to Croatia to invest, also resulted in reduced operations for our law firm. We modified our business operations to provide long distance legal counseling, in order to provide our clients legal services with equal quality as if we held personal meetings.

Pandemic or not, what we strive for in our law firm and for our clients is a friendly and people-oriented working environment with happy and productive employees.

New Fair Debt Collection Rules Impact Consumer Financial Services Industry

The Consumer Financial Protection Bureau (CFPB) has published its final rule on debt collection (the Rule). 12 C.F.R. Part 1006. Unless further modified by the new administration, the Rule will take effect November 30, 2021.

Addressing technological advancements since the Fair Debt Collection Practices Act (FDCPA) was enacted in 1977, the Rule expands significantly on the provisions of the FDCPA while attempting to clarify how debt collectors can use new communication technologies including email, voice mail and text messages. The Rule establishes rules for engaging in communications with consumers and identifies certain policies and procedures that, if implemented, would create safe harbors for debt collectors. Of particular note, the Rule contains a robust official commentary which includes sample language for such things as opt out notices and a model form for debt validation notices. This article will highlight some of the more noteworthy provisions of the Rule.

Who's Covered

While the proposed rule raised concerns as to whether first party creditors were included, the final version of the Rule expressly states it applies only to "debt collectors" as that term is defined in the FDCPA. First party creditors, however, need to be mindful of the CFPB's warning that the Rule is not intended to address whether activities performed by entities not subject to the FDCPA would violate other statutes, including the unfair, deceptive or abusive act provisions (UDAAP) found in the Dodd-Frank Act. In other words, it is foreseeable that the CFPB will use the Rule as a framework for enforcement actions against banks and other covered financial service providers.

Limited Content Messages

Limited Content Messages are a new concept introduced by the Rule in its definitional section (1006.1) and are intended to provide a safe way for debt collectors to leave non-substantive messages for a consumer requesting a return call, while not inadvertently disclosing the debt to third parties. The Rule and its comments make clear that Limited Content Messages are not communications regarding a debt. To qualify as a Limited Content Message, the message must be left by voice mail and only contain the specified limited content set forth in the Rule.

Call Frequency Limitations

Section 1692d(5) of the FDCPA prohibits a debt collector from causing a telephone to ring and from engaging a person in telephone conversations repeatedly or continuously with the intent to annoy, abuse or harass. Section 1006.14 of the Rule creates clearly defined numeric limitations on the placing of telephone calls. In its final version, the Rule creates presumptions of compliance and violation. Generally, and subject to certain very limited exceptions, a debt collector is presumed to have violated the provision if: (a) it places telephone calls to a particular person in connection with a particular debt more than seven times within seven consecutive days; or (b) after having had a telephone conversation with a particular person regarding a particular debt, makes a call within seven days of that conversation. The converse is also true. The

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Caren Enloe leads Smith Debnam's consumer financial services litigation and compliance group. Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services committee and as co-chair of the National Creditors Bar Association's Bankruptcy Section. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. An active writer and speaker, Caren oversees a blog dedicated to consumer financial services and has been published in various publications.

debt collector is presumed to have complied if it stays within the call frequency limitations. First party creditors, including banks and financial service companies, should take notice of this section as it is a likely point of enforcement for the CFPB against first parties using its Dodd Frank UDAAP authority.

Use of Electronic Communications

The Rule allows for the use of email and text messaging and sets forth procedures which provide the debt collector with a safe harbor if followed. Section 1006(d)(4) allows for email communications to the consumer: first, by allowing the use of an email address the consumer has either used to communicate with the debt collector (and has not subsequently opted out) or the consumer has provided prior express consent to use; and second, by allowing an email address used previously by the creditor or a prior debt collector subject to certain limitations and conditions. Section 1006(d)(5) allows for text messaging subject to similar conditions. The Rule further requires debt collectors allow consumers to opt out of electronic communications and further requires debt collectors provide a clear and conspicuous statement describing a "reasonable and simple method" for opting out. Banks and other financial service providers should be reviewing their credit applications and consumer facing contractual agreements to determine whether they have made or want to make provision for electronic communications and that the same comply with the E-Sign Act.

Reinventing the Debt Validation Notice

Section 1692g of the FDCPA requires debt collectors to provide consumers with a validation notice which includes the name of the creditor, the amount of the debt and the disclosure of certain statutorily prescribed consumer protection rights. The Rule reinvents the Debt Validation Notice by requiring significantly more robust disclosures. These disclosures fall roughly into three categories: (a) information to help consumers identify the debt; (b) information about consumer protections; and (c) information to help consumers exercise their rights, including a tear off dispute form with prescribed prompts. The Rule includes a model form and a safe harbor for those that use the model form. Deviations are allowed provided that the content, format and placement of information are substantially similar to the model form.

While the debt validation notice has no direct impact on banks and other financial service providers, it will have significant indirect impact as the Rule introduces a new concept – the "itemization date." The Rule now requires the debt collector identify an "itemization date" and provide an itemization of the debt from that date forward. Section 1006.34(b) allows debt collectors to choose one of five specified reference dates as their "itemization date" including:

- the date of the last periodic statement or written account statement or invoice provided to the consumer by the creditor;
- the charge-off date;
- the last payment date;
- the transaction date; or
- the judgment date.

Because of the nature of the "itemization date," its point of origin is the creditor. Banks and financial service providers should begin coordinating with their third party debt collectors to provide the requisite documentation to support the itemization date, the amount of the debt as of that date, and an itemization of any charges and fees accruing after the itemization date.

Restrictions on Credit Reporting

Banks and other financial service providers that rely on third party debt collectors to credit report should additionally be aware of the Rule's restrictions on credit reporting. Section 1006.30(a) generally prohibits debt collectors from furnishing information to a consumer reporting agency about a debt before the debt collector either speaks to the consumer about the debt in person or by telephone or sends its validation notice and then waits for a reasonable period of time to receive a notice of undeliverability. The Rule further presumes that a reasonable period of time is 14 consecutive days after the date that the initial communication is sent.

The Rule allows for the use of email and text messaging and sets forth procedures which provide the debt collector with a safe harbor if followed.

What's Next

The CFPB is looking at additional interventions, including the debt collector's obligation to substantiate debts. With the Rule in place, there are now clearer rules of the road for debt collectors, but the Rule remains ripe for litigation.

While first party creditors have avoided direct implications from the Rule thus far, there remain indirect implications. Third party vendor management requirements will need to be revisited and updated to reflect changes and to ensure compliance by third party vendors. By the same token, compliance departments for third party debt collectors, including law firms, should begin carefully reviewing the Rule and its comments and align their policies, procedures, media content and scripts to conform with the Rule and take advantage of the safe harbors contained within the Rule. Compliance with the debt validation requirements will additionally require increased cooperation and communication between debt collectors and their creditors to ensure information is accurately conveyed.

To Use or Not To Use: Remote Hearings in Hong Kong Courts

The outbreak of COVID-19 resulted in the closure of the Judiciary for months on end in view of public health considerations. The result was that many cases came to a screeching halt. With the pandemic having no end in sight, in order to ensure that justice was administered continuously and effectively without compromising public health and safety, the Judiciary began using alternative modes to conduct hearings remotely.

In April 2020, the Judiciary began using video conferencing facilities (VCF) for remote hearings for suitable civil cases of the High Court, and, in June 2020, it expanded use of remote hearings by the use of VCF and telephone in civil cases in civil courts, including the Court of Appeal, the Court of First Instance, the Competition Tribunal, the District Court and the Family Court.

Remote Hearings by VCF and Telephone

The Court considers which cases are suitable for disposal by a remote hearing using VCF and telephone. For remote hearing by VCF, parties who disagree with the Court's proposal may make written submissions stating any other proposal they put forward as more appropriate. The Court also considers applications by the parties for the use of VCF.

In deciding which hearings will be dealt with remotely, the Court takes into account the views of the parties, the availability of equipment, the subject matter of the proceedings and whether the proposed use of remote hearing is likely to promote the fair and efficient disposal of proceedings (including through the avoidance or reduction of delay) and/or to save costs.

Further factors to be considered include:

1. the importance and nature of the issue to be determined;
2. whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the parties;
3. whether the parties are legally represented;
4. the ability of the parties to engage with and follow remote proceedings meaningfully;
5. whether evidence is to be heard (and, if so, the nature of that evidence) or whether the case will proceed on the basis of submissions only;
6. the proposed length of the remote hearing; and

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7. whether there are other alternatives consistent with public health concerns and the need for safety, such as for some or all of the participants to take part in the court hearing by physical attendance in a courtroom.

Legal Foundation for Remote Hearing in Civil Proceedings

In *CSFK v HWH [2020] 3 HKC 64 and Cyberworks Audio Video Technology Ltd (In Compulsory Liquidation) v Mei Ah (HK) Co Ltd & Ors* [2020] 2 HKC 133, both the Court of Appeal and the Court of First Instance have discussed and confirmed the legality of conducting hearing by VCF and telephone.

In *Cyberworks Audio*, the Court of First Instance held that there was no provision in the High Court Ordinance (Cap 4) or the Rules of the High Court (Cap 4A) actually prohibiting attendance by alternative means other than actual physical attendance in the Court. Indeed, conducting hearing by telephone would permit the parties to be heard and promote the fair and efficient disposal of the proceedings.

In *CSFK*, the Court of Appeal further held that physical presence of the parties in a courtroom for civil business was not indispensable because a VCF hearing would allow parties to address the Court as effectively as an ordinary physical hearing. The hearing by VCF permitting members of the public and the public media to come to Court to observe the proceedings also duly served the requirement of open justice and right to public hearing. An official and accurate record of the hearing and the integrity of the same could still be maintained. The Court of Appeal held that it was permissible and lawful to conduct remote hearings through VCF.

Further, in *Tang Qiong v Zhang Tingtnig* [2020] HKCFI 1388, the Master held that, despite the fact that all witnesses were residents in Fujian, taking evidence by VCF is not uncommon nowadays and would not cause any inconvenience. The Master therefore refused the Defendant's application to stay the action on the ground of forum non conveniens. It can be foreseen that VCF hearing would be increasingly used in the Court and it would help expedite the case management process.

Limitation: No Remote Hearings in Criminal Proceedings

Currently conducting hearings remotely is only applicable in civil cases. Questions have been raised on whether criminal hearings could be also conducted remotely. In *HKSAR v Walsh Kent Andrew* [2018] 2 HKC 437, the Court has discussed the interesting question of whether physical attendance of the Defendant was required at arraignment. At that time, the Court held that the law had imposed an obligation on the Defendant to be present at his arraignment and trial, unless in exceptional circumstances.

While the Government of Hong Kong stated on June 24, 2020, that using remote means to conduct criminal hearings may not be permissible under existing law, the Judiciary is nonetheless examining whether it is desirable for any parts of criminal proceedings to be conducted by remote hearing in the long term. Several foreign Courts have allowed some criminal hearings to be held remotely.

In April 2020, the Judiciary began using video-conferencing facilities (VCF) for remote hearings for suitable civil cases of the High Court, and, in June 2020, it expanded use of remote hearings by the use of VCF and telephone in civil cases in civil courts.

For example, the United Kingdom Courts have allowed parties in criminal hearings, such as hearings for remand, custody time limit and sentencing, to take part remotely by any internet enabled device with a camera and a microphone to enable the criminal justice system to operate safely and flexibly, though remote hearings cannot be used for jury trials. The United States Courts and New Zealand Courts have also expanded the use of audio and video hearings in criminal proceedings and allowing participation of witnesses in criminal trials.

It remains to be seen whether, with the wider acceptance of remote hearings in the Hong Kong Courts, there will be a change in the status quo for criminal proceedings, following the progress already seen adopted in other Common Law jurisdictions.

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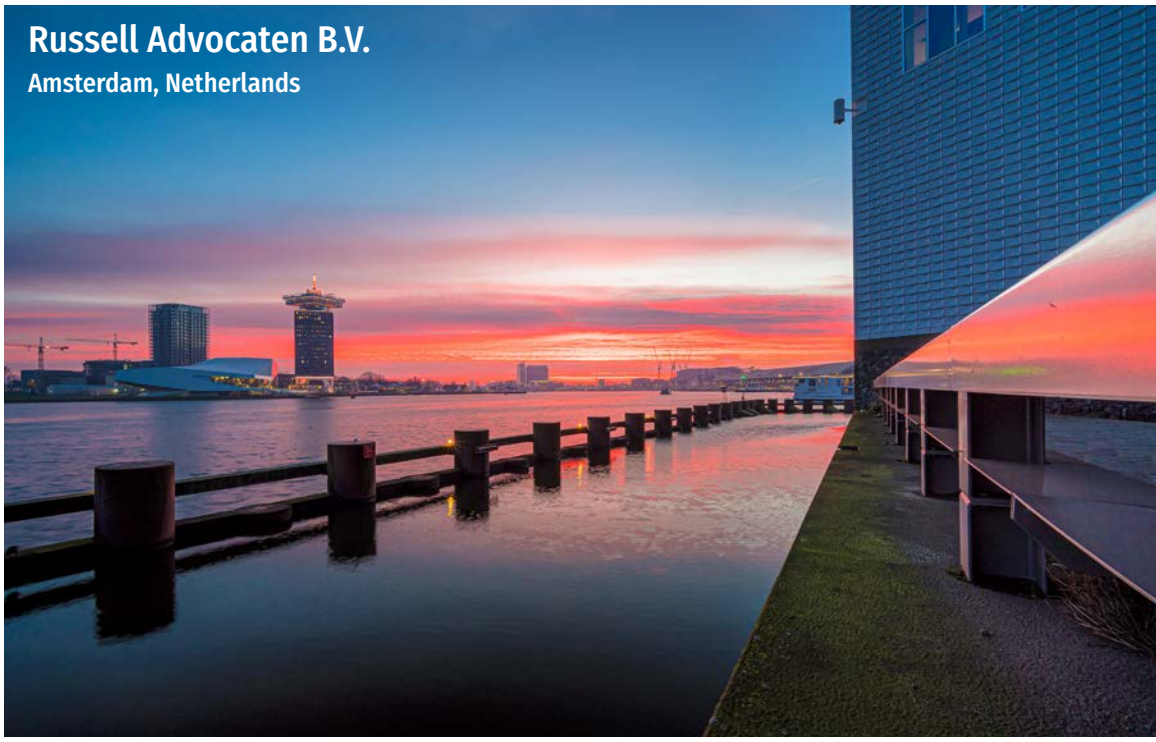

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What do you have to deal with when you start a business in Europe? And what do you need to pay attention to if you are planning to grow?

The Netherlands: Gateway to Europe

The Netherlands likes to present itself as "the gateway to Europe." And not without reason: excellent travel connections (Schiphol Amsterdam Airport and Rotterdam Seaport) and a highly educated population speaking several languages. Try practicing Dutch as a foreigner in the Netherlands. You don't stand a chance, because everyone will speak English to you. Especially after Brexit, the Netherlands has become even more attractive as a gateway to the European market.

What do you have to deal with when you start a business in Europe? And what do you need to pay attention to if you are planning to grow? We can tell you all about the rules for setting up a company, concluding contracts, human resources/personnel, corporate immigration and real estate.

But maybe a story from our practice better illustrates this question. In 2015, our Primerus partner Schneider Smeltz Spieth Bell LLP from Cleveland, Ohio, asked us whether we could assist one of their clients. The company was involved in the construction of the largest data center in the Netherlands and needed more visas for employees from outside the European Union (EU). Could Russell Advocaten find a solution to this?

Of course we could. As it was a large project, a structural solution had to be found allowing our client to stay in control as much as possible. To this end, the company had to be recognized by the Dutch Immigration and Naturalization Service as a sponsor that was allowed to attract employees from outside the EU. The first step was, therefore, the establishment of a Dutch branch of the company.

The next question was which rules the company had to comply with as an employer. The employees were from outside the Netherlands, but their contracts were not subject to Dutch labor law. However, the company needed to comply with certain minimum requirements. We looked into this for the client, so that he would not get into trouble with the Dutch labor inspectorate. We also ensured that the employees have sufficient social security for the employer not to be imposed any additional taxes.

Incidentally, we also checked whether our client's subcontractor building contract complied with Dutch law, the agreed applicable law. However, the style of the rather extensive contract was typically Anglo-Saxon. Fortunately, not much had to be changed, so that the client soon knew where he stood.

Our client's work is also in demand in other European countries. However, there are also legal issues in these countries. So, what could be more logical than to turn to your trusted legal advisor? Fortunately, through our Primerus partners, we can quickly provide our client with information on visas, sponsorships and employment law in, for example, the United Kingdom, Germany, Ireland and Belgium. Thus, thanks to Russell Advocaten and Primerus, the Netherlands has proven to be the "gateway to Europe" for our client.

Serving Documents Overseas: A Quick Guide

Serving documents outside the jurisdiction requires added due diligence and careful research. After all, improper foreign service could result in the document being dismissed with prejudice in the foreign jurisdiction. In extreme circumstances, the sovereignty of the foreign state may be violated, resulting in that state initiating a formal diplomatic note of protest. Thus, this article provides a practical guide for serving documents between countries where the Hague Service Convention applies.

A. The Hague Service Convention (The Convention)

I. About the Convention

The Convention is a multilateral treaty on international judicial assistance. It reconciles the differing service practices of most civil and common law countries by providing procedures and service methods to transmit both judicial and extrajudicial documents for service in other member states.

Before considering the Convention, consider the following questions:

- **Are you and the party you wish to serve in a state that is a party to the Convention?** The full list of countries is available on the "Service" section of the Hague Conference on Private International Law's website. If this is the case, then the Convention applies.
- **Is your matter limited to "civil or commercial matters?"** Article 1 of the Convention provides it only applies "in civil or commercial matters." As a measure of best practice, we recommend using the receiving state's understanding of this phrase.

II. Complying with the Service Convention

Generally speaking, where it applies, the Convention requires applicants to lodge an application requesting Foreign Service, consisting of:

1. A Letter of Request,
2. A Summary of Documents to be Served;
3. A blank Certificate of Service (the "Service" section of The Hague Conference on Private International Law's website contains a template, though each country may have particular templates); and
4. Two copies of all the documents to be served, alongside certified translations, where necessary.

We recommend the following steps:

- **Step One – Prepare a Letter of Request:** Most jurisdictions provide a Model Form for the Letter of Request; otherwise, one can be found at the Hague Conference's official website. A proper Letter of Request contains several elements, as detailed below.

a. **"Central Authority."** Under the Convention, all contracting states must assign a Central Authority that accepts incoming requests for service. These details are available under each State's "Practical Information" page of the Hague Conference website. The Letter of Request should be addressed to the receiving state's Central Authority or relevant additional authority (if permitted by that state), called the

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Receiving Authority. Additionally, the identity and address of your state's Central Authority should be included, called the Forwarding Authority Requesting Service. The letter of request should not contain yours or your client's contact details.

b. **Language.** The Letter of Request must be filled out in English, French or one of the official languages of the receiving state.

c. **Name and Address.** The Convention also requires the name and address of the party to be served to be known and written in the Letter of Request.

d. **Method of Service.** Several service options are available, as follows:

- **Option One – in accordance with subparagraph (a) of the first paragraph of Article 5 of the Service Convention.** This option is ideal if the documents are to be served by a method prescribed by the internal law of the requested country (formal service). However, note that costs may be incurred if a judicial officer or a person competent under the receiving country's laws (e.g. a process server) are employed to effect service.
- **Option Two – in accordance with subparagraph (b) of the first paragraph of Article 5 of the Service Convention.** This option should be selected if the documents are to be served by a particular method proposed by the applicant. As the onus is on the applicant to explain that particular method, the specific method must be clearly described in as much detail as possible, including what costs are likely to be incurred.
- **Option Three – in accordance with the second paragraph of Article 5 of the Service Convention.** This option is best suited for scenarios where the addressee is likely to voluntarily accept the judicial document (informal delivery. Documents being served under Option 3 may not need to be translated.

e. **List of Documents.** These documents must include the documents to be served (and their translations if necessary), the certificate of service, and the summary of the documents to be served.

- **Step Two – Prepare Necessary Translations:** Translation requirements ultimately vary between states (information which can be found online on the receiving State's "Practical Information" page from the Hague Conference website). Otherwise, assume all documents must be filled out either in English or French.
- **Step Three - Certificate of Service:** Although the "Service" section of the Hague Conference website contains a template of this certificate, most states have particular requirements and templates. What is consistent across all states is the requirement for the Certificate to be blank, as it can only be filled in upon service to the receiving state.
- **Step Four – Summary of Documents to be Served:** This document must distinguish between judicial and extrajudicial documents, with as much detail as possible being provided about each document.
- **Step Five - Additional Considerations:** Ensure that all other requirements are met. For instance:

a. Two copies of all documents to be served are usually needed in your application. However, depending on your state, three copies may be provided. For any avoidance of doubt, consult the "Practical Information" page on the Hague Conference website of both your State and the receiving state.

b. Check whether your state requires an undertaking that you or your client will be liable for all costs in making this request, as some states require this of the applicant.

- **Step Six – Receive Leave:** As your state's Central Authority is the one that serves as the Forwarding Authority for your application (that is, they are the ones to process your request and forward it to the Receiving Authority), some states require you to receive leave domestically before they refer your application to the Forwarding Authority. For instance, Australian applicants must first receive leave from their Supreme Court before the registrar refers the application to the Forwarding Authority. Refer to your state's relevant legislation for this process.

Once this is done, and assuming the Forwarding Authority is satisfied with the application, the application is transmitted to the receiving state's Central Authority, additional authority, or other authority. That foreign authority processes the request and attempts service in accordance with their domestic laws, before providing formal confirmation on the service's outcome.

B. Alternatives

Should the forwarding or receiving state not be a party to the Service Convention, alternative methods of foreign service may include:

1. **Bilateral Treaties:** Depending on your state, you might be able to lodge an application for a request for service under a bilateral treaty. In those instances, the steps may be similar, but check the details.
2. **Diplomatic Channels:** Should your state and the would-be receiving state neither be party to the Service Convention nor parties under the same bilateral treaty, a foreign authority might accept judicial documents for service via diplomatic channels. However, significant time for delays should be allowed for this option, as service through such channels may face challenge from receiving states who may see the incoming document as an impeachment of their state's sovereignty. In other instances, service may be restricted to citizens of your state only. Therefore, we consider this particular alternative a last resort. Also, you need to see whether the courts in your state are empowered to recognize service in this manner.

Transformation of Communication Strategy in Business Negotiations Amid the Pandemic

Studies reveal that non-verbal messages, primarily body language, constitute up to 90 percent of communication. However, the current pandemic has unequivocally impacted the way negotiators will communicate for the foreseeable future by virtually eliminating in-person meetings, while those that still occur require masks that cover the most expressive parts of participants' faces. Business counsel must adapt to this change in order to succeed in transactional negotiation. After all, inadequate negotiation could have an impact not only on the client, but also on the public and capital market at large.[1] Counsel that understands the dynamics of virtual negotiations may leverage them in his or her favor to reach better solutions.

The job of counsel during contract negotiation is akin to the game of whack-a-mole, where the moles are unforeseen circumstances and possible end-arounds with unstated assumptions and implicit understandings. The fundamental function of the negotiator involves articulation of the rights of the client.[2] Limitations on traditional negotiation interfaces may result in unintended consequences in the efforts to articulate those rights. For instance, a common error in international negotiations that counsel could avoid is the "continental trap." It arises since, under many international laws, anyone may assume legal obligations without the requirement of receiving consideration, which is a substantial distinction from the American general rule that consideration is required for an enforceable contract. Unintentional nonverbal communication could result in errantly triggering this trap. Negotiators may minimize the influence of subtle but meaningful factors in play during the negotiation in order to clearly establish the intended terms by remaining mindful of their own nonverbal cues. They may increase their effectiveness by intentionally interpreting the counterparty's nonverbal messages, noticing telling reactions, and expressly addressing assumptions.

Among available alternatives to in-person negotiation, video conferencing provides the most similar environment, as it allows both parties to receive instant verbal and visual information, including, under current circumstances, avoiding the issue of face-mask coverings. By default, the human brain and senses interact in a face-to-face mode.[3] In terms of virtual negotiation, video conference provides a more natural experience, enabling better chances of discovering available opportunities, building trust and developing business connections.[4]

Researchers often identify trust as one of the main challenges to overcome during online negotiations.[5] However, familiarity between parties encourages cooperation, and research identifies it as a key element for building understanding, and subsequently trust, between the parties.[6]

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In fact, emotions experienced and perceptions of familiarity may influence the outcome of negotiations between counterparties even more than empathy, which is regularly viewed as one of the most important negotiation skills.[7] Familiarity may develop between parties by exchanging pleasantries at the start of a meeting in order to identify common ground.[8] While this occurs naturally in the usual exchanges preceding an in-person meeting, that is less often the case in video conferencing settings. Intentionally carrying over these behaviors into an online negotiation setting will help develop trust between the negotiating parties.

As with traditional in-person negotiations, the negotiator should pay close attention to the nonverbal cues of their counterparty for added context to evaluate the efficacy of his or her argument.[9] Moreover, the negotiator should pay close attention to the nonverbal cues he or she provides. Strategically positioning oneself so that facial expressions, hand gestures, and body orientation are clearly visible within the frame adds depth to the message conveyed to a counterparty.[10] In an effort to overcome the "talking head illusion," where the negotiator leans into the camera portraying a close-up of himself or herself, limiting nonverbal messages transmitted through body langauge, counsel should ask his or her counterparties to adjust their positioning.[11] If requesting opposing counsel to adjust camera positioning is not feasible, counsel should focus on his or her volume, tone of voice and pace of speech.[12] Remain mindful as well that silence presents a nuanced challenge for virtual platforms, as evidence suggests delays of merely one and two tenths of a second may lead to a perception that the person is less focused, thus delaying or even inhibiting trust between the parties.[13]

Distance created through the use of a virtual platform, as opposed to sitting together at a conference table, typically leads to a big-picture focus between the parties.[14] Under this setting, skilled negotiators should realize when to summarize a discussion, as evidence suggests, in a virtual environment, frequent summaries are more effective than questions in measuring the counterparty's understanding of a topic and to confirm agreements.[15] Lastly, promptly follow-up with a written message summarizing the negotiation results.

Video conferencing warrants preference by counsel. "Negotiators communicating by video performed better than negotiators using electronic mail or texting, and those using a large computer screen performed better than those using a small one."[16] Based on studies, video conference genuinely compares to in-person negotiation when assessing available opportunity in connection with the likelihood of reaching value-maximizing agreements.[17] Negotiators aware of the foregoing factors and associated strategies hold an advantage in managing the process in an effort to not leave opportunity on the table.

Among available alternatives to in-person negotiation, video conferencing provides the most similar environment, as it allows both parties to receive instant verbal and visual information, including, under current circumstances, avoiding the issue of face-mask coverings. By default, the human brain and senses interact in a face-to-face mode.

Video conferencing is not always possible, and attorneys are certainly familiar with telephone and electronic mail. Most negotiations include a telephone or electronic mail component, even if it is not the exclusive means of communication. In this regard, some nuances exist with the utilization of these forms that are heightened in this era of reduced in-person contact.

Research confirms that a substantial number of nonverbal clues are discernible during telephone interactions. Tone of

voice, volume, pace, pauses, inflection and rhythm are amplified due to the lack of other social clues.[18] For example, pauses may mean an argument is not landing or they may indicate that an offer is under serious consideration, depending on the context and clues previously expressed. Researchers recommend negotiators build rapport by matching their voice, pace, and tone to that of their counterparty.[19] As with video conferencing, counsel should also clarify and summarize more often than he or she would during in-person negotiations. Furthermore, if possible, include reference to at least one visual cue, such as a contract or data, as visual access may significantly increase collaboration between parties.[20] As a final summary, follow-up in writing with the ultimate understanding of the topics discussed.

For e-mail negotiations, studies confirm the importance of adding the personal connection element that is inherent in other forms of communication. Connecting at the outset improves one's ability to virtually read the counterparty and may yield a higher pay off. E-mail negotiations where the parties engaged through e-mail in small talk before, or humor during, negotiation, including use of positive language and tone, were over four times as likely to enter the closing stage of a deal, or achieved better economic and social outcomes.[21] Similar to the strategy for telephone negotiation, counsel should ask more clarifying questions, elaborate more on detail than in a typical in-person session, and inquire about assumptions.[22] As Hal Movius, an author at Harvard Business Review, reflected, "Particularly in the [demanding] world of quarantines, making a personal connection can have a powerful effect on what follows."

In view of these findings, the ways in which corporate counsel utilizes and adapts to alternate means of communication to negotiate directly affects the quality of the process and the outcome of the negotiation. Business counsel may enhance their effectiveness based on proven strategies, such as intentionally carrying over practices used for in-person negotiation to build rapport, evaluating and positioning to provide nonverbal communication, and summarizing and elaborating the details of a discussion. Change is never easy; however, by embracing the recent, yet potentially everlasting, transformation in communication strategy for business negotiations, and refining their approach to the new norm of more virtual conferencing and exchanges, negotiators will achieve more efficient value creation and conflict-resolution, stronger professional relationships, as well as create a deal-making culture that produces consistent positive results.

1 See Basic v. Levinson, 485 U.S. 224 (1988).

2 See Elliott Associates v. Avatex Corp., 715 A.2d 84 (Del. 1998).

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6 Id.

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12 Comben, supra.

13 Komaromi, supra (citing to Katrin Schoenenberg, Alexander Raake, & Judith Koeppe, Why Are You So Slow? – Misattribution of Transmission Delay to Attributes of The Conversation Partner at The Far-End, International Journal of Human-Computer Studies (2014)).

14 Nasher, supra.

15 Tony Hughes, Effective Virtual Negotiation, Huthwaite International (2020), huthwaiteinternational.com/horizons/effective-virtual-negotiation.

16 Hal Movius, How to Negotiate — Virtually, Harvard Business Review (June 10, 2020), hbr.org/2020/06/how-to-negotiate-virtually/ (citing to C. E. Naquin & G. D. Paulson, Online Bargaining and Interpersonal Trust, Journal of Applied Psychology, Vol. 88 Ed. 1 (2003)).

17 Hughes, supra; see Comben, supra.

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Primerus Member Law Firms

Alphabetical by Country/Province/State

Asia Pacific

Australia
- **Carroll & O'Dea Lawyers**
- **HHG Legal Group**

China
- **HJM Asia Law & Co LLC**

Hong Kong
- **ONC Lawyers**

India
- **Giridhar & Sai, Advocates**

Japan
- **GI&T Law Office**

Malaysia
- **J. Lee & Associates**

Pakistan
- **Ishtiaq Law Associates**

Singapore
- **HJM Asia Law & Co LLC**

Taiwan, R.O.C.
- **Formosan Brothers**

Europe, Middle East and Africa

Croatia
- **ZBA Law**

Cyprus
- **AMG Mylonas & Associates, LLC**

Czech Republic
- **Glatzová & Co.**

Egypt
- **Legal Steer Law Firm, Ashraf Nessim & Partners**

France
- **Jasper Avocats**

Germany
- **Brödermann Jahn**

Greece
- **Bahas, Gramatidis & Partners**

Ireland
- **Sweeney McGann Solicitors**

Isle of Man
- **FIN | LAW**

Italy
- **FDL Studio legale e tributario**

Jordan
- **Daoud Law Office**

Europe, Middle East and Africa

Kenya
- **Njoroge Regeru & Company**

Lithuania
- **PRIMUS Law Firm**

Netherlands
- **Russell Advocaten B.V.**

Nigeria
- **Giwa-Osagie & Company**

Romania
- **Law Office of Marius Rimboaca**

Serbia
- **ŠunjkaLaw**

Spain
- **Dr. Frühbeck Abogados S.L.P.**

Switzerland
- **Suter Howald Rechtsanwälte**

Turkey
- **Bolayır & Doğançelik**

United Kingdom
- **Marriott Harrison LLP**

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Primerus Member Law Firms

Alphabetical by Country/Province/State

Latin America and Caribbean

Argentina
- **Badeni, Cantilo, Carricart & Bilbao**

Bahamas
- **Evans & Co.**

Belize
- **Quijano & Associates**

Brazil
- **Terciotti Andrade Gomes Donato Advogados**

British Virgin Islands
- **Quijano & Associates**

Chile
- **Magliona Abogados**

Colombia
- **Pinilla, González & Prieto Abogados**

Costa Rica
- **Guardia Montes & Asociados**

Cuba
- **Dr. Frühbeck Abogados S.L.P.**

Dominican Republic
- **Sánchez y Salegna**

Ecuador
- **Meythaler & Zambrano Abogados**

Honduras
- **Ulloa & Asociados**

Mexico
- **Cacheaux Cavazos & Newton**

Panama
- **Quijano & Associates**

Perú
- **Llona & Bustamante Abogados**

Puerto Rico
- **EDGE Legal LLC**

Trinidad & Tobago
- **Martin George & Co.**

North America

Canada

Manitoba
- **PKF Lawyers**

Ontario
- **Mann Lawyers LLP**

Quebec
- **Greenspoon Winikoff S.E.N.C.R.L., LLP**

United States

Alabama
- **Ball, Ball, Matthews & Novak, P.A.**
- **Christian & Small LLP**

Arizona
- **Burch & Cracchiolo, P.A.**
- **DeConcini McDonald Yetwin & Lacy, P.C.**

California
- **Law Office of Blane A. Smith**
- **Brayton Purcell LLP**
- **Brothers Smith LLP**
- **Coleman & Horowitt, LLP**
- **Demler, Armstrong & Rowland, LLP**
- **Dillingham & Murphy, LLP**
- **Ferris & Britton, A Professional Corporation**
- **Greenberg Glusker**
- **Hennelly & Grossfeld LLP**
- **Lynberg & Watkins, APC**
- **Neil, Dymott, Frank, McCabe & Hudson APLC**
- **Wilke Fleury LLP**

Colorado
- **Ogborn Mihm LLP**
- **Timmins LLC**
- **Zupkus & Angell, P.C.**

Connecticut
- **Brody Wilkinson PC**
- **Szilagyi & Daly**

Delaware
- **McCollom D'Emilio Smith Uebler LLC**

North America

District of Columbia
- **Harris, Wiltshire & Grannis LLP**

Florida
- **Agentis Legal Advocates & Advisors**
- **Bivins & Hemenway, P.A.**
- **Hodkin Stage Ward, PLLC**
- **Mateer Harbert, P.A.**
- **Nicklaus & Associates, P.A.**
- **Ogden & Sullivan, P.A.**
- **Saalfield Shad, P.A.**
- **Widerman Malek, P.L.**

Georgia
- **Fain, Major & Brennan, P.C.**
- **Krevolin & Horst, LLC**
- **Tate Law Group, LLC**

Hawaii
- **Roeca Luria Shin LLP**

Idaho
- **Elam & Burke**

Illinois
- **Elias, Meginnes & Seghetti, P.C.**
- **Kozacky Weitzel McGrath, P.C.**
- **Lane & Lane, LLC**
- **Lipe Lyons Murphy Nahrstadt & Pontikis Ltd.**
- **Roberts Perryman**

Indiana
- **Hackman Hulett LLP**

Kentucky
- **Eddins Domine Law Group, PLLC**
- **Fowler Bell PLLC**
- **Strauss Troy**

Louisiana
- **Degan, Blanchard & Nash, PLC**
- **Gordon Arata Montgomery Barnett**
- **Hargrove, Smelley & Strickland**
- **Herman Herman & Katz, LLC**

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North America

Maine
- **The Bennett Law Firm, P.A.**

Maryland
- **Thomas & Libowitz, P.A.**

Massachusetts
- **Hermes, Netburn, O'Connor & Spearing, P.C.**
- **Rudolph Friedmann LLP**

Michigan
- **Bos & Glazier, PLC**
- **Buchanan Firm**
- **Cardelli Lanfear Law**
- **Demorest Law Firm, PLLC**
- **McKeen & Associates, P.C.**
- **Silver & Van Essen, PC**

Minnesota
- **O'Meara, Leer, Wagner & Kohl, P.A.**

Missouri
- **Foland, Wickens, Roper, Hofer & Crawford, P.C.**
- **Roberts Perryman**
- **Rosenblum Goldenhersh**

Montana
- **Datsopoulos, MacDonald & Lind, P.C.**

Nebraska
- **Engles, Ketcham, Olson & Keith, P.C.**

Nevada
- **Laxalt & Nomura, Ltd.**
- **Richard Harris Law Firm**
- **Sklar Williams PLLC**
- **Winner & Sherrod**

New Jersey
- **Earp Cohn P.C.**
- **Lesnevich, Marzano-Lesnevich, O'Cathain & O'Cathain, LLC**
- **Mandelbaum Salsburg P.C.**
- **Thomas Paschos & Associates, P.C.**

North America

New Mexico
- **Hinkle Shanor LLP**

New York
- **Barton LLP**
- **Coughlin & Gerhart, LLP**
- **Ganfer Shore Leeds & Zauderer LLP**
- **Lewis Johs Avallone Aviles, LLP**
- **Nolan Heller Kauffman LLP**

North Carolina
- **Charles G. Monnett III & Associates**
- **Sharpless McClearn Lester Duffy, PA**
- **Smith Debnam Narron Drake Saintsing & Myers, LLP**

North Dakota
- **Pearce Durick PLLC**

Ohio
- **Mellino Law Firm, LLC**
- **Norchi Forbes, LLC**
- **Schneider Smeltz Spieth Bell LLP**
- **Strauss Troy**

Oklahoma
- **Fogg Law Firm**
- **The Handley Law Center**
- **Prospective Legal, PLLC**
- **Smiling, Smiling & Burgess**

Oregon
- **Haglund Kelley, LLP**

Pennsylvania
- **Earp Cohn P.C.**
- **Rothman Gordon**
- **Summers, McDonnell, Hudock, Guthrie & Rauch, P.C.**
- **Law Offices of Thomas J. Wagner, LLC**

Rhode Island
- **McKenney, Clarkin & Estey, LLP**

South Carolina
- **Collins & Lacy, P.C.**
- **Rosen Hagood**

North America

South Dakota
- **Lynn, Jackson, Shultz & Lebrun, P.C.**

Tennessee
- **Barton PLLC**
- **Kinnard, Clayton & Beveridge**

Texas
- **Caldwell East & Finlayson PLLC**
- **Donato, Brown, Pool & Moehlmann**
- **Downs & Stanford, P.C.**
- **Moses, Palmer & Howell, L.L.P.**
- **Stephenson Fournier**
- **Thornton, Biechlin, Reynolds & Guerra, L.C.**

Utah
- **Magleby Cataxinos & Greenwood**

Virginia
- **Goodman Allen Donnelly**
- **Wharton Aldhizer & Weaver, PLC**

Washington
- **Beresford Booth PLLC**
- **Johnson Graffe Keay Moniz & Wick, LLP**
- **Menzer Law Firm, PLLC**

West Virginia
- **Hendrickson & Long PLLC**
- **The Masters Law Firm, L.C.**

Wisconsin
- **Kohner, Mann & Kailas, S.C.**
- **Kravit Hovel & Krawczyk, S.C.**

Wyoming
- **Gary L. Shockey, PC**

To learn more about each Primerus firm, simply click on the firm name.

The Birth of the Primerus International Practice Committee

In this article, I want to share with you the background of the Primerus International Practice Committee (IPC).

Elephant, Giraffe and Kangaroo Video Meetings to Overcome the Trauma of COVID-19: Building Bridges across Nations as a Basis for Our Services to Clients

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The Idea and Launch

When COVID-19 hit the world, the private and professional lives of all of us changed dramatically. It hit me like an earthquake in Madrid, Spain, after an arbitration hearing, where I saw the first shocking pictures of the pandemic reaching Europe in Italy. For years, I had traveled around the world doing business, including arbitrations in China, state contract negotiations in Africa or visiting Primerus colleagues in other jurisdictions – sometimes only meeting my wife in the airport in Germany when crossing the country on the way from the United States to Asia. That has changed.

When things change fundamentally, it is helpful to think out of the box.

I took time off, participated in the team of the German Bar Organization giving input to the German government on its first COVID-19 legislation, wrote Primerus press releases once that legislation came into effect, and started giving lectures, in particular via Primerus webinars, on the differing national legal tools for coping with the impact of COVID-19 on contracts and supply chains.

Some jurisdictions considered COVID-19 as a force majeure issue with varying conditions, others provided for a right to negotiate a contract adaptation based on a fundamental change of circumstances. Concentrating on my first webinar in Spain, I received questions from Warsaw and New York. I witnessed the uniting power of the internet and of virtual conferences, and the chance of doing business in a totally different, new way.

I had one of these webinar experiences jointly with Marc Dedman from Barton LLP (Tennessee office). After the first Primerus International Convocation in 2018, Marc and I founded the Primerus UNIDROIT Principles Committee. That committee focused on general rules of cross-border contract law, in particular the UNIDROIT Principles of International Commercial Contracts 2016. This was developed between 1980 and 2016 by the International Institute for the Unification of Private Law in Rome, an auxiliary organization of the League of Nations that was founded in 1926. In our webinar on COVID-19 legal effects and based on my personal experience of using

Eckart Brödermann

Eckart Brödermann is the founding partner of Primerus member firm Brödermann Jahn in Hamburg, Germany. He is a German Bar-Certified Expert Practitioner on cross-border business law and a professor of law for international contract law, comparative and choice of law and international arbitration at the University of Hamburg. Eckart is the author of numerous books and articles, including an article-by-article commentary on the UNIDROIT Principles of International Commercial Contracts (Wolters Kluwer 2018; Chinese edition: Law Press 2021). He has studied in Paris, Harvard and Hamburg and is a member of the New York and Hamburg Bars. In his practice, he has both a strong international commercial contract and an arbitration practice.

the UNIDROIT Principles to draft COVID-19-clauses, a U.S. in-house counsel joined at 6 a.m. to learn about China. China has taken inspiration from the UNIDROIT Principles. It has a particularly subtle way of combining force majeure and hardship.

We decided that it was time to do more.

In liaison with Primerus president and founder Jack Buchanan, we revamped the UNIDROIT Principles Committee to become the International Practice Committee (IPC) to help fight the effects of COVID-19. Following three months of preparation, on September 1, 2020, we started with an inaugural ceremony to kick off the 2020-2021 Annual Webinar Series.

Since then, the committee has grown to 92 member firms with approximately 2,000 lawyers (out of the approximately 3,500 Primerus lawyers) with an international practice or openness in 48 jurisdictions. Its leadership stems from New York, Nashville, Mexico, Singapore/Guangzhou and Germany. It unites experienced lawyers in 24 practice areas.

2020-2021 Annual Webinar Series

The committee meets on a Tuesday once a month at 6 a.m. in California, 2 p.m. in London, 3 p.m. in continental Europe or 11 p.m. in Tokyo for 60 to 90 minutes. It is like a constantly vibrant internal Primerus fair.

In what we call elephant meetings, which are bigger and which take more time, we interview each other on general, business and private questions to get to know each other. After all, Primerus aims to unite "good people who happen to be lawyers" and who are willing to live their professional life by the Six Pillars (Integrity, Excellent Work Product, Reasonable Fees, Continuing Education, Civility and Community Service). It is therefore important that we continue to learn more about each other, regardless of the pandemic.

In giraffe meetings, we concentrate on the law. Using (virtual) long necks to look across the fence into our neighbor's gardens, we share experiences in our 24 international practice groups: building, exchanging and bundling comparative legal knowledge. We try to concentrate where our clients have needs. For example, following the end of the post-BREXIT transition period on December 31, 2020, and the conclusion of a treaty of 1,250 pages on December 24, 2020, BREXIT has become a hot topic for many in-house-counsel (including our friends at the Association of Corporate Counsel). To be better prepared for their questions, we have used the giraffe meetings to organize workshops on BREXIT-related issues with speakers from Marriott Harrison LLP, our Primerus partner in London. We meet, exchange know-how and discuss issues.

Fighting with time zone challenges, we also meet occasionally in kangaroo meetings at hours which are convenient for our Australian and New Zealand members. From that part of the world, priorities are yet again different.

Bridge Building Law

The IPC aims to bring to life the myriad of treaties and soft law rules on procedural and substantive questions (such as the UNIDROIT Principles 2016), practice areas (like comparative law, private international law, arbitration) and legal methods which help to bridge business among nations. Aligning with the Primerus University project for continued legal education, we at Primerus strive to always be one step ahead. Joining talents, know-how, efforts and goodwill from so many jurisdictions in a structured way, the IPC provides a great tool to overcome the trauma of COVID-19, building bridges across nations as a basis for our services to clients.

Burch & Cracchiolo Thanks Teachers for Their Work – Especially During the Pandemic

Above: **Attorney Ali Bull (right) with Paula Craig (center) of August H. Shaw Elementary**

Left: **Attorney Matt Skelly with students and teacher Jennifer Weworski of St. Louis the King School**

A fourth-grade teacher who started an afterschool homework program – on his personal time – and gives his students inspirational sticky notes to encourage them.

A behavior intervention teacher who transformed one boy from hating school to waking up in the morning eager to go to school.

A teacher who created a Chief Science Officer program in her school, organized weekend hiking trips for families to promote physical activity and helped students get involved in the Arizona State University Mars education competition – sparking interest in one girl to become an aerospace engineer.

These are just three examples of Arizona teachers who have received The Star Teacher Award from Primerus member firm Burch & Cracchiolo, P.A.

Since 2019, the firm has chosen one teacher every month to receive a $500 grant through a nominating process on the firm's website. Current and former students, parents, coworkers and others nominate teachers who they wish to honor and thank for making an impact, according to Chris Long, the firm's marketing and client development manager.

Teachers use the grant for classroom supplies, field trips and other non-covered costs that arise throughout the school year.

Long said the firm was pleased to support teachers before the COVID-19 pandemic, and that desire only grew given the added challenges teachers faced because of the pandemic.

Ashley Gamboa, records coordinator at the firm, said, "Teachers, in their capacity to mold young minds, have the power to change the world. Thank you to teachers who are encouraging hope, kindling

Thank you to teachers who are encouraging hope, kindling imagination and inspiring a love of learning.

Above: **Attorney Jake Curtis with students and teacher Suzanne Hanson of Morris K. Udall Middle School**

Right: **Attorney Laura Meyer with Chris Hamlin of Silver Valley Elementary School**

Far Right: **Attorney Susan Dana-Kobey (right) with Sarah Nenaber of Navarette Elementary School**

Below: **Attorney Wendi Sorensen (black jacket) with students and teacher Candace Greene (center) of Sevilla West School**

imagination and inspiring a love of learning during these unprecedented times."

Casey Blais, a partner with the firm, added, "We sincerely thank you, Arizona teachers and administrators. Thank you for your tireless efforts to prepare, teach and ultimately care for these children. Our family has been blessed with excellent teachers that our kids (and we as parents) have grown to love."

The firm's support of teachers extended beyond the Star Teacher program in November 2020 when they hosted the "Thank a Teacher" virtual 5K, raising $2,550 for the Million Dollar Teacher Project.

Friends and family of Burch & Cracchiolo employees participated by walking, running and hiking, earning donations from 52 supporters.

Burch & Cracchiolo president Andy Abraham said the firm's initial goal was to bring people together virtually or in very small masked groups and raise $1,000 for the organization.

"We are pleased to report we exceeded that goal by two and a half times. We thank all contributors very much," he said. "B&C hopes to make this an annual event as teachers are always in need of support in so many ways."

As a result of Abraham's leadership of firm community service efforts, including Star Teacher and much more, he was named the 2020 Arizona Business Angel of the Year.

Good people who happen to be good lawyers

Primerus Global Day of Service 2020

On December 5, 2020, Primerus firms around the world participated in the Primerus Global Day of Service. On this day of volunteer community service, firms chose a local non-profit and found creative and COVID-safe ways to make a difference in the lives of others.

Mandelbaum Salsburg in Roseland, New Jersey, organized a drive for Isaiah House, which helps underprivileged individuals and families. They collected donations and when the amount surpassed $1,000, the firm's chairman and CEO donned a pilgrim and turkey costume to celebrate. They also participated in Team Par 20th Annual Toy Drive to benefit Jersey Battered Women's Services (JBWS), as well as contributing the proceeds of their monthly denim day to the shelter run by JBWS.

In Colombia, the firm of Pinilla, González & Prieto Abogados supported the "Maria Madre de los Niños" foundation in its effort to support children from 3 to 17 years old with vulnerable backgrounds. They delivered toys, cleaning supplies, food, books, clothing and money – ensuring a happier Christmas for many.

In all, 27 Primerus firms participated. Here are those firms, and the names of the organizations that benefited from their generosity.

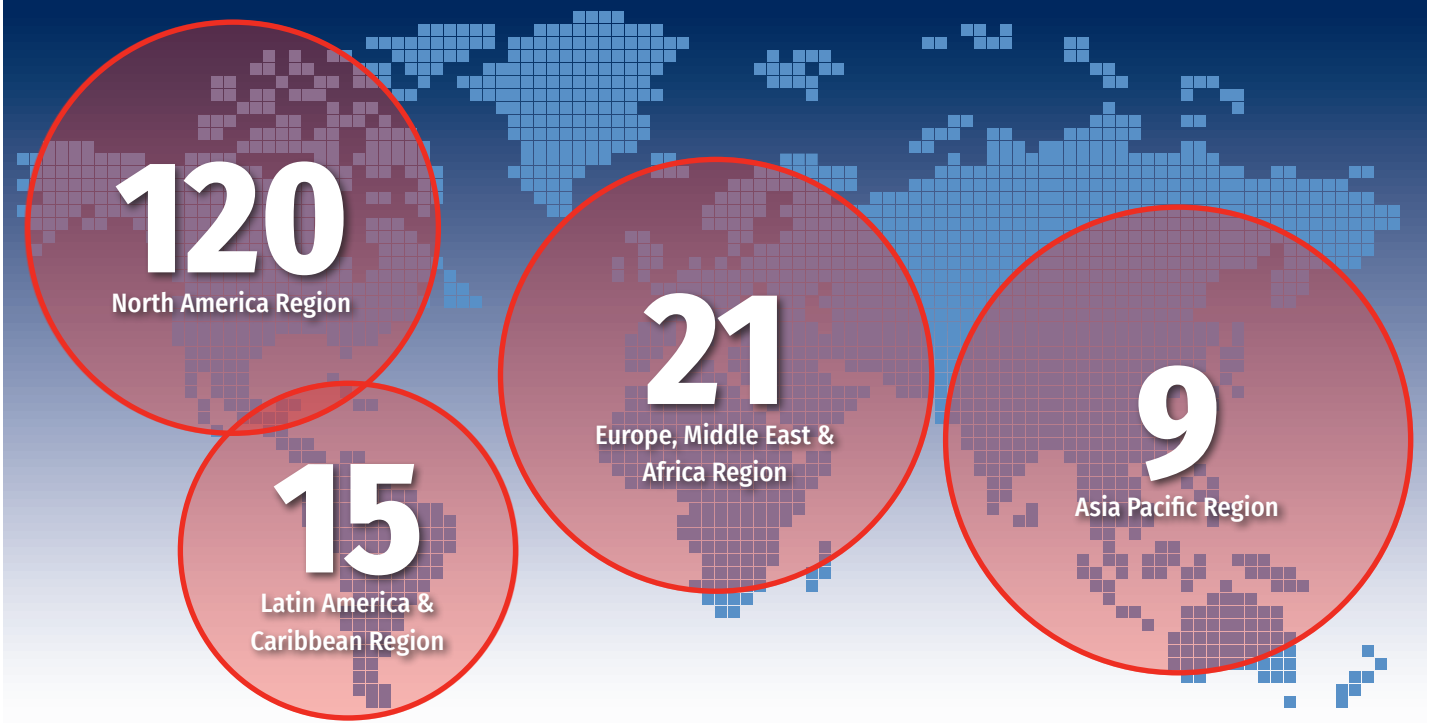
- **Beresford Booth PLLC**
- **Bivins & Hemenway, P.A.**
- **Bos & Glazier, PLC**
- **Brody Wilkinson PC**
- **Buchanan Firm**
- **Burch & Cracchiolo, P.A.**
- **Coleman & Horowitt, LLP**
- **Demorest Law Firm, PLLC**
- **Ganfer Shore Leeds & Zauderer LLP**
- **Goodman Allen Donnelly**
- **Gordon Arata Montgomery Barnett**
- **Greenberg Glusker**
- **HJM Asia Law & Co LLC**
- **Krevolin & Horst, LLC**
- **Lynberg & Watkins, APC**
- **Lynn, Jackson, Shultz & Lebrun, P.C.**
- **Mandelbaum Salsburg P.C.**
- **The Masters Law Firm, L.C.**
- **McCollom D'Emilio Smith Uebler LLC**
- **Ogden & Sullivan, P.A.**
- **Pinilla, González & Prieto Abogados**
- **Rothman Gordon**
- **Smith Debnam Narron Drake Saintsing & Myers, LLP**
- **Law Offices of Thomas J. Wagner, LLC**
- **Thomas Paschos & Associates, P.C.**
- **Widerman Malek, P.L.**
- **Zupkus & Angell, P.C.**

Primerus firms around the world participated in the Primerus Global Day of Service. On this day of volunteer community service, firms chose a local non-profit and found creative and COVID-safe ways to make a difference in the lives of others.

Organizations Supported

Aviva Family and Children's Services
Backpack Buddies - North Raleigh Ministries
Caterina's Club
Catholic Charities Archdiocese of N.O. – 2020 Adopt a Family Program
Children's Hospital of Los Angeles
Children's Museum of Pittsburgh
Elizabeth Coalition to House the Homeless
Elizabeth House
Equal Justice Initiative
Exceptional Care for Children
Families Forward Learning Center
Feeding America (West Michigan)
Forgotten Harvest
Free Store Wilkinsburg
Fulfill
Fundación María Madre de los Niños
He Intends Victory
Helen Wood Animal Shelter
Homage Senior Services
Isaiah House
Jersey Battered Women's Services
Kids' Food Basket
Legal Innovation Tournament
Los Altos Auxiliary of Hathaway-Sycamores
Los Angeles Regional Food Bank
Los Angeles Regional Food Bank
LoVE
Lowcountry Food Bank
Marjaree Mason Center
Million Dollar Teacher Project
Missionaries of Charity
New Tampa Family YMCA
OCSP Cat Rescue, Inc.
PADRE Foundation
PATH (People Assisting the Homeless)
Phoenix Indian Center
Re:Vision
San Fernando Valley Rescue Mission
Soldiers' Angels
Swirl: America
The Greater Bridgeport Bar Association's "Horn of Plenty" Food Drive
The Samaritan's Purse
Toys for Kids
Toys for Tots
United Way
Volunteers of America
Willing Hearts Singapore
WQED Multimedia

Primerus Member Firms Globally



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