

The Wilson Elser Study Report of Findings

*The Impact of the COVID-19 Pandemic
on
Litigation Management Practices*

October 2021



Conducted by Suite 200 Solutions

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Introduction

About the Wilson Elser Study

This Suite 200 Solutions' Industry Study was commissioned by the national law firm of Wilson Elser. The Study explored how the COVID-19 pandemic has affected insurance defense litigation management practices.

Specifically, we explored whether the rapid spread of COVID-19 related virtual litigation practices (virtual meetings, depositions, settlement conferences, mediations, trials, etc.) is here to stay. Are these practices saving money? Do buyers of legal services like them? Will claims organizations and other buyers of legal services take a more active role in mandating that certain legal activities be virtual in the future? Should law firms be promoting their ability to operate virtually?

In other words, will things return to the way they were before the pandemic, or has the playing field changed forever? These are important questions that will drive litigation practices for years to come.

All data and any information provided by the participants is strictly confidential. We have taken measures to ensure that no data sets can be correlated with specific organizations, and that any quotes are not attributed without permission.

As with all our studies, we view the information outlined below to be a point-in-time snapshot of the industry. As popular as our survey on this topic has been, this is a relatively confined data set. We caution against drawing too many statistical conclusions or then-to-now trends. That said, the results provide important insights into the influences being exerted upon our industry, where it appears to be headed, and the prevailing sentiments of its participants.

We encourage readers to use the Study for the primary purpose for which it was intended — as a framework and foundation on which all members of the litigation management industry — including claims organizations, corporations, litigation support services providers, and law firms — can collaborate and exchange ideas to promote the highest standards and best practices in our industry.

A Note to the Participants

We wish to thank each of the 112 participants who participated in the Study's survey. Without your participation this Study could not have been possible. The time you invested in participating in this project benefits your colleagues and peers, the defense attorneys who support our litigation management community, and the industry as a whole. Thank you.

Thank You to Our Sponsors

We also want to thank each of the sponsors who made this Study possible. Without their underwriting support, the effort and time required to perform this kind of Study is simply not possible, and these companies' recognition of that fact should be applauded.

Our sponsors recognize the importance of identifying and understanding emerging trends in the litigation management field, and each is a thought-leader in their respective litigation-oriented fields. This Study's sponsors are:

Commissioning Sponsor: The Wilson Elser Law Firm

Sponsors:

**CaseGlide
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More information about each sponsor, and a link to their organizations, can be found at the end of this Report.

Key Findings

The impact of COVID-19 on our social and professional lives cannot be overstated. As Paul Carroll, Editor-in-Chief of the *Insurance Thought Leadership* website, said to me when we discussed this Study, “it is as if we are all living in an unintentional experiment.” Entire industries have altered how they conduct business. Our comfort with previously new-to-us technologies has exploded. We are all re-thinking core assumptions about how we conduct our professional activities.

This is certainly true in our litigation management community. Collectively, we learned to conduct almost all previously in-person activities virtually and remotely. We are now roughly 18 months into this experiment, and this new way of practicing litigation management. This Study captures the sentiments of those who lead claims organizations, oversee litigation management practices, and manage litigated files, as they re-examine their own core assumptions and plan a route forward.

There are many facts and figures in this Report on which to draw your own conclusions about where we are and where the industry is going. We encourage readers to do just that as they digest the specific findings and particularly as they observe correlations (or lack of correlations) between different data points.

That said, as we assembled the data, we have made eight high-level observations, which we summarize below. We hope you enjoy the Report.

--- Taylor Smith, President, Suite 200 Solutions

8 Key Findings

1. **Most organizations experienced a decrease in legal spend during COVID-19.** That said, the number of organizations that experienced a decrease may not be as high many people assume. Just 51 percent reported a decrease. A total of 38 percent experienced no change, and 11 percent experienced an increase.

Of those who experienced a decrease in litigation expenditures during COVID-19, a full one in five (20 percent) participants attributed the decrease to “an increased use of virtual technologies.” (The remainder cited decreased file activity or, in fact, fewer files at all).

2. **Reaction to the virtual litigation management activities experienced during COVID-19 was positive.** Almost every organization reported experience with virtual depositions, mediations, and Workers Compensation (WC) hearings (if they write that business).

Favorable reactions to virtual WC hearings outweighed negative reactions 87 to 13%. Favorable reactions to virtual mediations outweighed negative reactions 76 to 24%. Positive reactions outweighed negative ones when it came to virtual depositions as well, though by not as defined a margin (54 to 46 percent).

Only in virtual trials were participants not bullish. Of the 36 percent of respondents who had experienced a virtual trial, almost three quarters of them (72 percent) said that they found virtual trials to be more detrimental than beneficial.

- 3. Virtual strategy meetings, settlement conferences, and mediations are the top three litigation activities most identified as a “default” way of conducting the activity in the future.** The preference for virtual strategy meetings as a default way of doing business was overwhelming at 79 percent. Slightly more than half (55 percent) identified virtual settlement conferences as a default medium.

When thinking about a future default approach, participants were more split when it came to mediations (at 49 percent support) and non-plaintiff depositions (43 percent support). Still, these numbers are quite high when we consider that more than four out of 10 industry leaders favor making mediations and non-plaintiff depositions virtual by default. We suspect, however, that if the plaintiff’s bar was polled, they would not favor virtual depositions of defendants. So, the impact on deposition practices remains to be seen.

The Study makes it clear that site inspections, plaintiff depositions, and trials are the least supported activities when it comes to virtual settings (at 8, 8, and 2 percent support, respectively).

- 4. Participants describe the primary benefits of virtual litigation management activity as cost-related, and less about cycle-time or work product improvements.** The cost reduction benefits of virtual litigation activities received an average score of 80 out of 100 (median score of 85). This was a higher ranking than the benefit of reducing cycle time (average score of 70; median score of 75), and much higher than the benefit of having a shared and better work product (score of 62 out of 100).
- 5. Participants identified litigation activities with high cost-saving potential as not being suitable for virtual environments.** Just because an activity has the potential to save significant costs when conducted virtually did not mean it is supported as a virtual environment candidate. This reflects the risks that respondents perceive to be associated with conducting these activities virtually. We view this to be very healthy as the industry evaluates these changes.

Witness and expert preparation, trials, witness interviews, and site inspections were all identified as having significant cost-saving potential when conducted virtually, but each scored very low when it came to preferred or default approaches.

- 6. Claims organizations and clients will be more directive to counsel in the future regarding which activities should be virtual.** In fact, a full 80 percent of participants indicated that organizations have “seen sufficient benefit from virtual activities to want to be more directive”.

Currently, 97 percent of respondents said their litigation guidelines do not address which activities should be virtual. Importantly, almost one in four (24 percent) said that, while their guidelines are silent on the topic now, “we plan to put such direction into our guidelines.”

When asked which activities are “best suited to be mandated as virtual activities,” participants identified strategy meetings, mediations, and non-plaintiff depositions (mirroring the preferences outlined in Key Finding No. 3, above).

- 7. Law firms that can describe their technologies and processes for operating in a virtual environment will be well received.** Law firms will benefit from being able to describe in detail their processes for “virtualizing” different areas of their practice, with a description of the technologies they use to support virtual and remote activities.

More than eight out of 10 (81 percent) of respondents said their response to a firm’s ability to do this well will be favorable, and that they would “be impressed that [the firm has] adopted efficient ways to conduct certain aspects of litigation management.”

- 8. Participant comments suggest that significant concerns exist with virtual litigation management activities, but that our industry has moved the needle on this issue a long way in a short period of time.**

We encourage readers of this Report to review the participants’ open-text comments, as they contain interesting and relevant observations. The comments reflect the reality that the business of resolving litigated disputes remains an art form, is a people-to-people business, and is rooted in the opportunity to read body language, assess credibility, create relationships, build trust, and “humanize” the parties and companies involved. Many comments reflect concern about the challenges of doing that in virtual and remote environments.

That said, we took note of the high volume of comments that assert that the “pros outweigh the cons,” that virtual environments are the future, and that we need “to embrace” that future. As one participant put it succinctly, “It really proved to us how much can really be accomplished virtually.”

In our view, virtual changes are here to stay.

Study Methodology

This Study was comprised of 42 questions classified into the following categories:

1. Tell us about your organization (9 questions)
2. What was your experience during COVID-19? (10 questions)
3. How virtual should the litigation management environment be? (11 questions)
4. How virtual do you predict our environment will be? (9 questions)
5. Please share some final thoughts (3 questions)

Almost all questions were formatted as multiple choice, including several forced-binary and preference-ranking questions. A small number asked for open text responses.

Survey participants fell into several categories:

1. Chief Claim Officers
2. Heads of Litigation
3. Front-Line Litigation Claim Professionals

Participants were given the option of not identifying themselves or their organization. (Only 6 of 112 respondents declined to identify their organization).

It was also optional for respondents to not answer certain questions. When reporting out data results, we have reported out only completed answers.

Lastly, the specific wording of survey questions matters when reviewing answers. Therefore, where possible, we have included the specific text used for each question in our summary of findings.

Participant Demographics

Number of Respondents

A total of 112 industry professionals participated in this Study. These included senior claims leaders (chief claim officers and heads of litigation) and front-line file professionals whose role it is to manage litigated files.

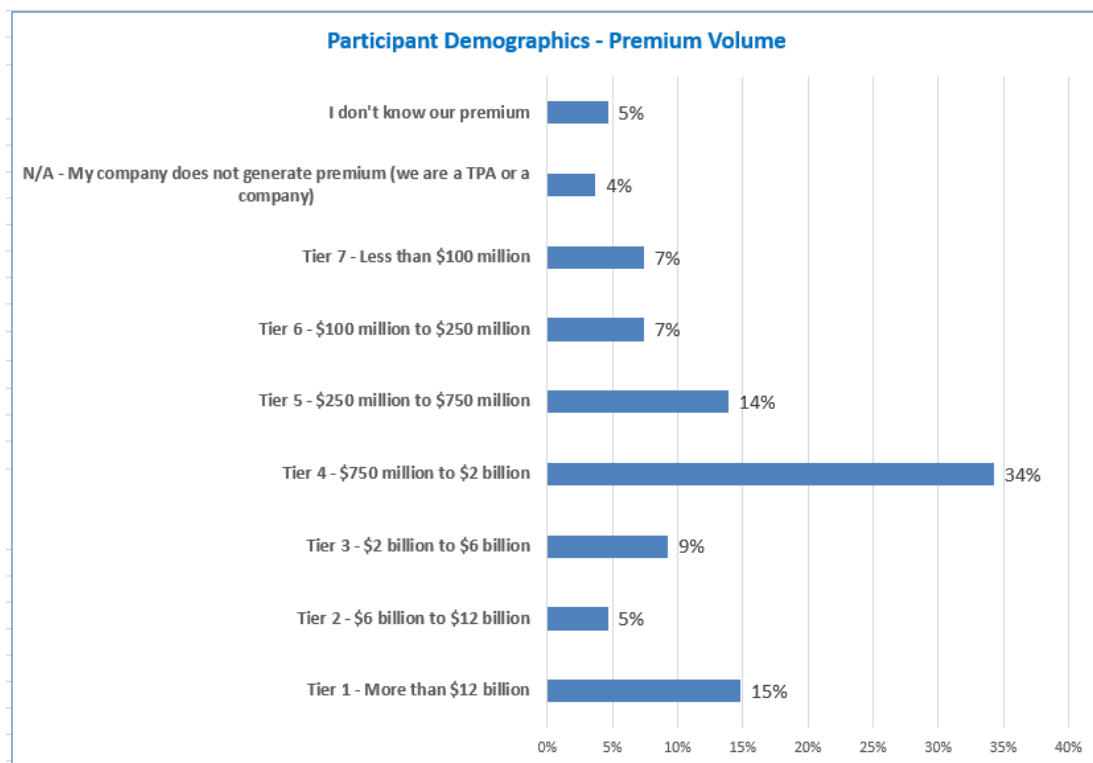
Roughly 75 percent of the respondents were either chief claim officers or heads of litigation. Importantly, we were unable to discern any obvious difference in sentiment to the questions asked between this “management group” and front-line claims professionals.

Size of Organization

Participants represented all sizes of organizations. Five percent did not know their organization’s premium levels. Four percent represented third-party administrators, corporations, or other non-premium producing organizations.

The remaining 91 percent of participants broke down broadly as follows:

\$250MM or less in annual premium –	14 %
\$250MM - \$2B in annual premium –	48 %
\$2B + in annual premium -	29%

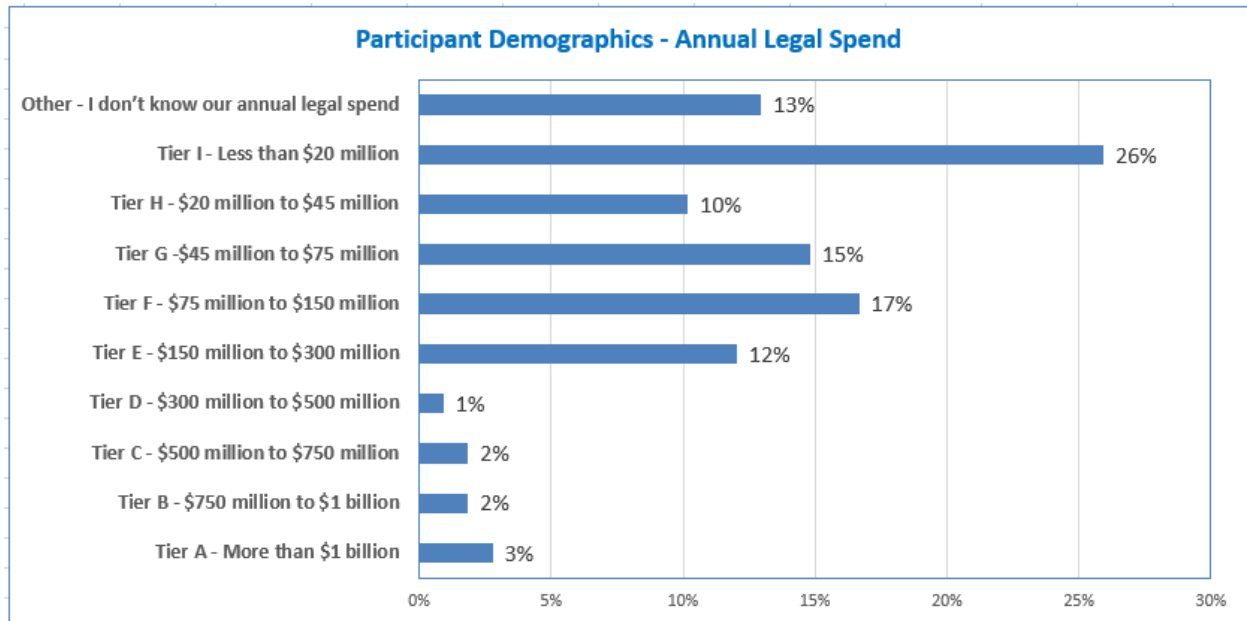


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Annual Legal Spend

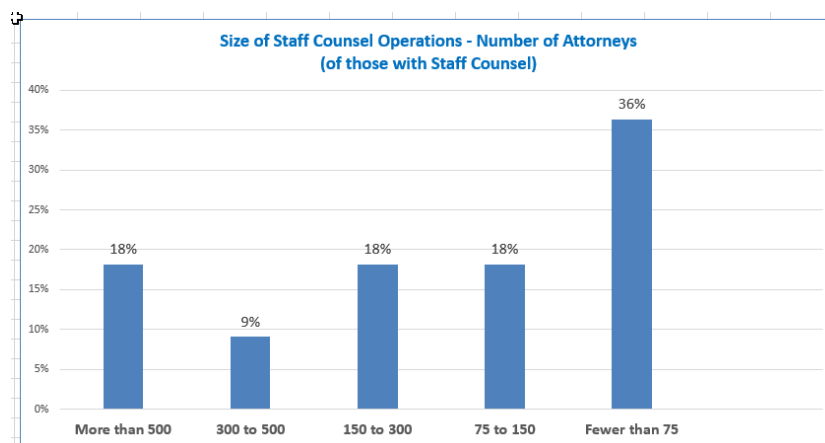
Roughly 13 percent of respondents did not know their legal spend. The remaining 87 percent who classified their annual legal spend fell into three broad groups, as follows:

\$45MM or less	36%
\$45MM - \$150MM	32%
\$150MM +	19%



Use of Staff Counsel

About one in five (19 percent) of participants reported that their organization maintains a staff counsel organization. The distribution of staff counsel organizational size can be seen in the following figure:



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Lines of Business

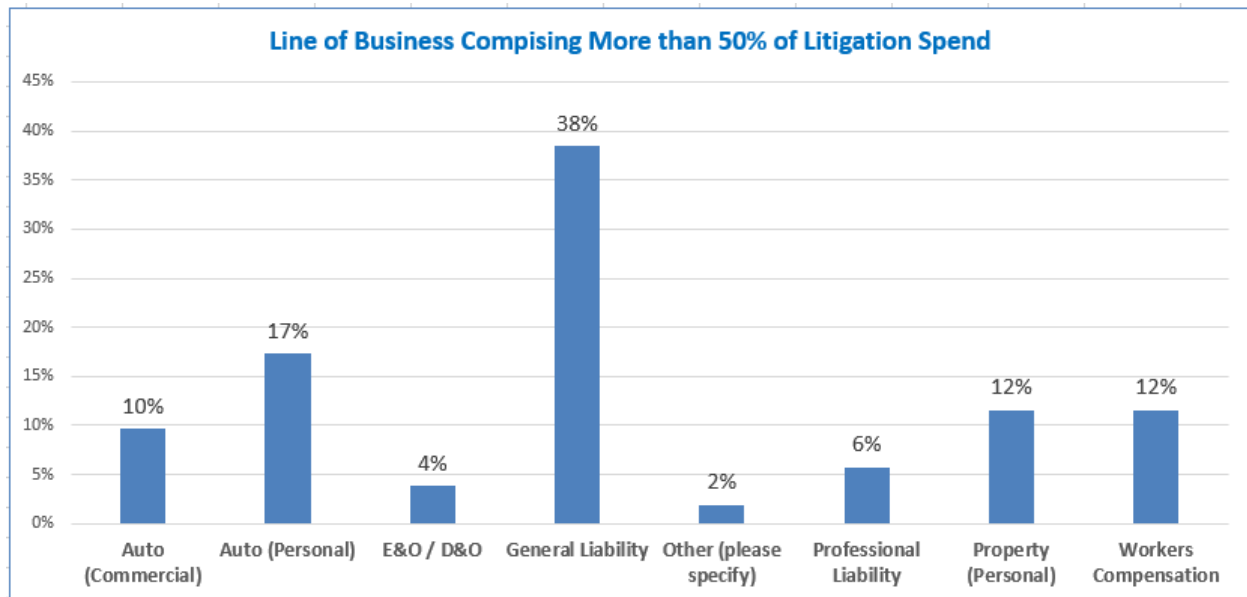
Slightly more than half (52 percent) of respondents reported that one line of business accounts for more than 50 percent of their annual litigation spend. The specific lines of business reported can be summarized as follows:

Personal Lines	29%
Commercial Lines	58%
Workers Compensation	12%

Sliced a different way, you can see that the litigation portfolios managed by participants can be summarized as follows:

General Liability	38%
Transportation related	27%
Specialty lines	10%
Personal Lines Property	12%
Workers Compensation	12%

More detail about line of business breakdown can be seen in this chart:



Experience During COVID-19

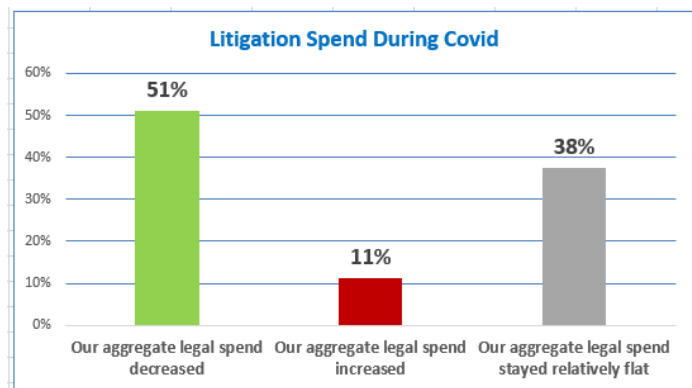
Obviously, the litigation management community in which we all work continues to be impacted by the COVID-19 pandemic. To provide some structure for participants, we arbitrarily assigned the period of March 2020 to March 2021 as the “height” of COVID-19 and referred to it generally as “during COVID-19.”

We asked several questions regarding the participants’ litigation management experiences during that time frame and then asked whether they observed changes in legal spend during the four months immediately following March of 2021 (April – July).

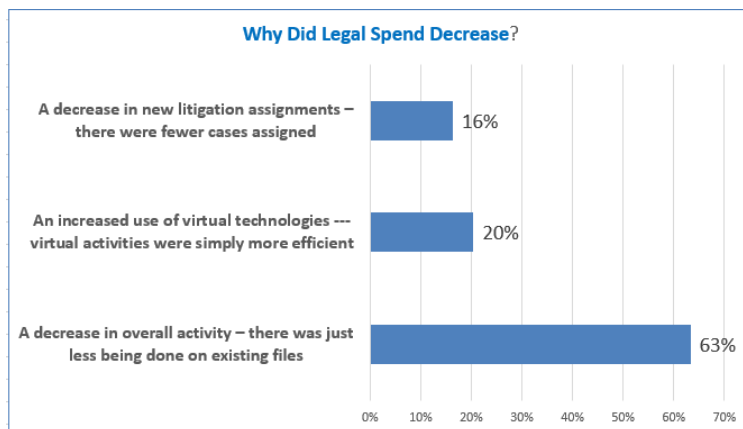
Legal Spend During COVID-19

The specific question posed was: ***“There is a commonly expressed belief that claims organizations spent significantly less on litigation fees and expenses during COVID. During the approximate period of March 2020 to March 2021, did your outside litigation spend change relative to the same timeframe immediately prior?”***

Legal spend did in fact decrease for more than half (51 percent) of participants. It increased for 11 percent and stayed relatively flat for 38 percent of respondents.



We also asked: ***“If your outside legal spend decreased, what do you feel was the primary cause of the decrease?”***



Two thirds (63 percent) of those who experienced a decrease attributed the decrease to less activity being conducted on existing files. One in five (20 percent) cited the use of virtual technologies as being the core driver of the decrease. Another 16 percent pointed to a decrease in new litigation assignments as the primary cause.

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Those who experienced an increase in legal spend during this period also commented on the reasons for that increase:

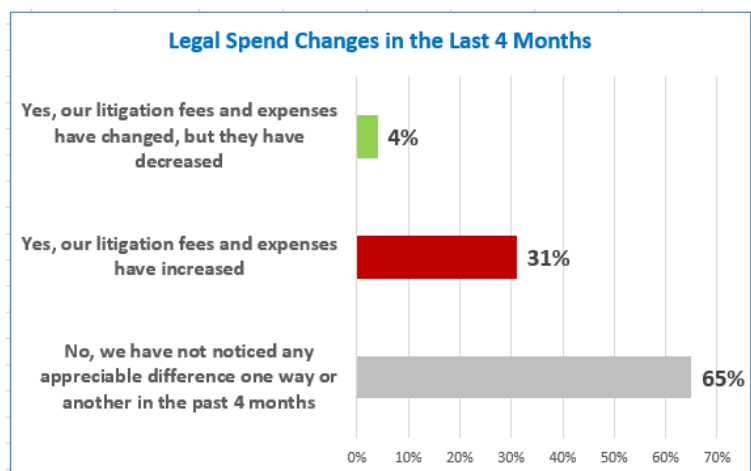
- Plaintiff lawyers kept busy, which in turn kept us busy
- Florida market-specific: roofer solicitations
- More employee-initiated litigation due to inability to get into doctors physically. Life of claims increased due to longer periods to get AMEs [Agreed Medical Evaluations] and QMEs [Qualified Medical Examinations] and to obtain hearing to resolve liens and claims.
- Primarily driven by an increase in our GL Construction Defect cases
- Some growth in claims volume, we also involved coverage counsel to assist in drafting COVID related declinations of coverage.
- Florida Property Litigation Hurricane Irma Notice Statute Expiring
- I found more cases were going into suit because plaintiff counsel wasn't prepared to operate remotely
- Volume (lawsuits) increased by nearly 200% and hearings have been hard to get which has increased the amount of time to get rulings on cases.
- Increasing use of experts and other third-party vendor services. Also, increased CABI exposures, social inflation, and attorney involvement in cancelling and resetting litigation activities. Increase in mediator fees due to virtual options offsets any savings for travel costs.

Period Following March 2021

The specific question posed was: ***"In approximately the last four months (since March of 2021) many pandemic restrictions have begun to "lessen." Many courts have begun to operate again. Do you perceive that outside legal fees and expenses have changed since March of 2021?"***

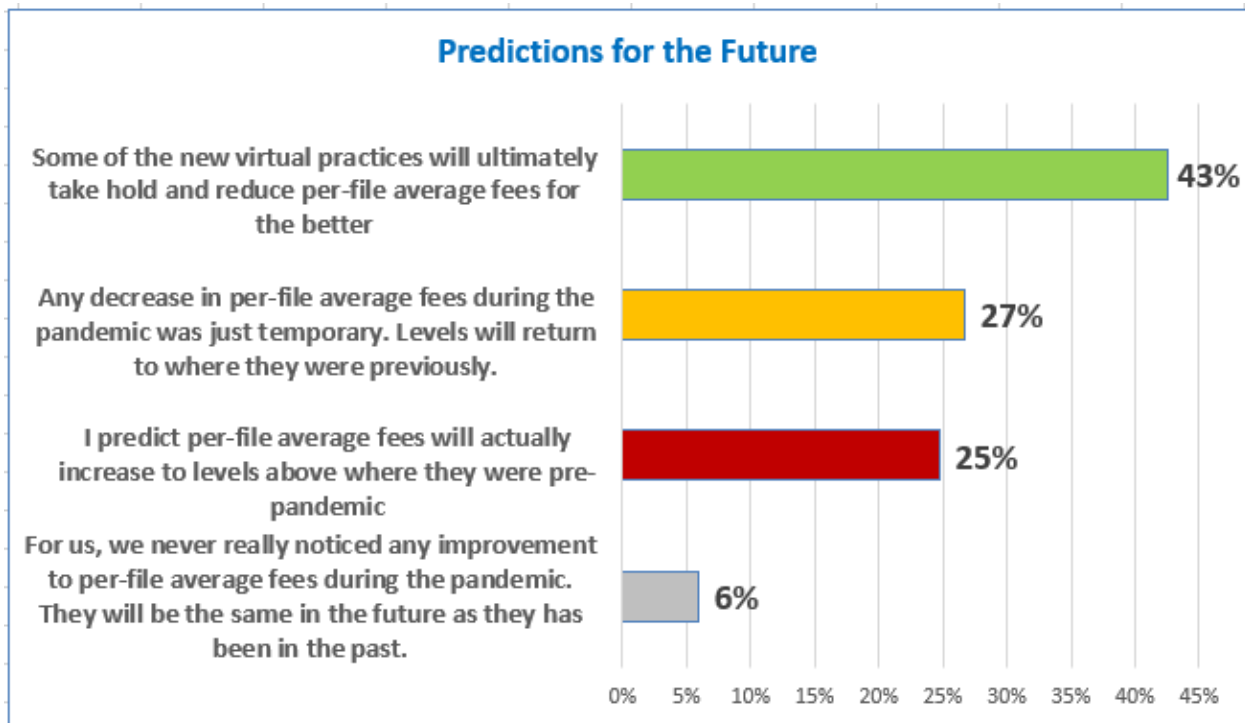
While for a very small number (four percent) litigation fees and expenses have decreased, for the vast majority (65 percent) there has been no appreciable difference in expenditures from April to July of 2021.

That said, for almost one out of three (31 percent), litigation fees and expenses have increased in the past four months, perhaps suggesting a return to pre-pandemic levels is not far off.



Predictions for the Future

With the future in mind, we asked participants to select a statement that resonated most with them in terms of their own prediction for the industry.



Broadly summarized, about half (52 percent) feel that per-file average fees will either return to normal or will in fact be higher than pre-pandemic timeframes. Roughly six percent experienced no difference during COVID-19 and don't anticipate future changes.

However, more than four of 10 respondents (43 percent) feel that the virtual practices initiated during COVID-19 are going to take hold and will reduce per-file average fees for the better. This is a significant number.

Experiences with Virtual Litigation

Respondents were asked to identify if their organization had experience during our defined "COVID-19 period" with:

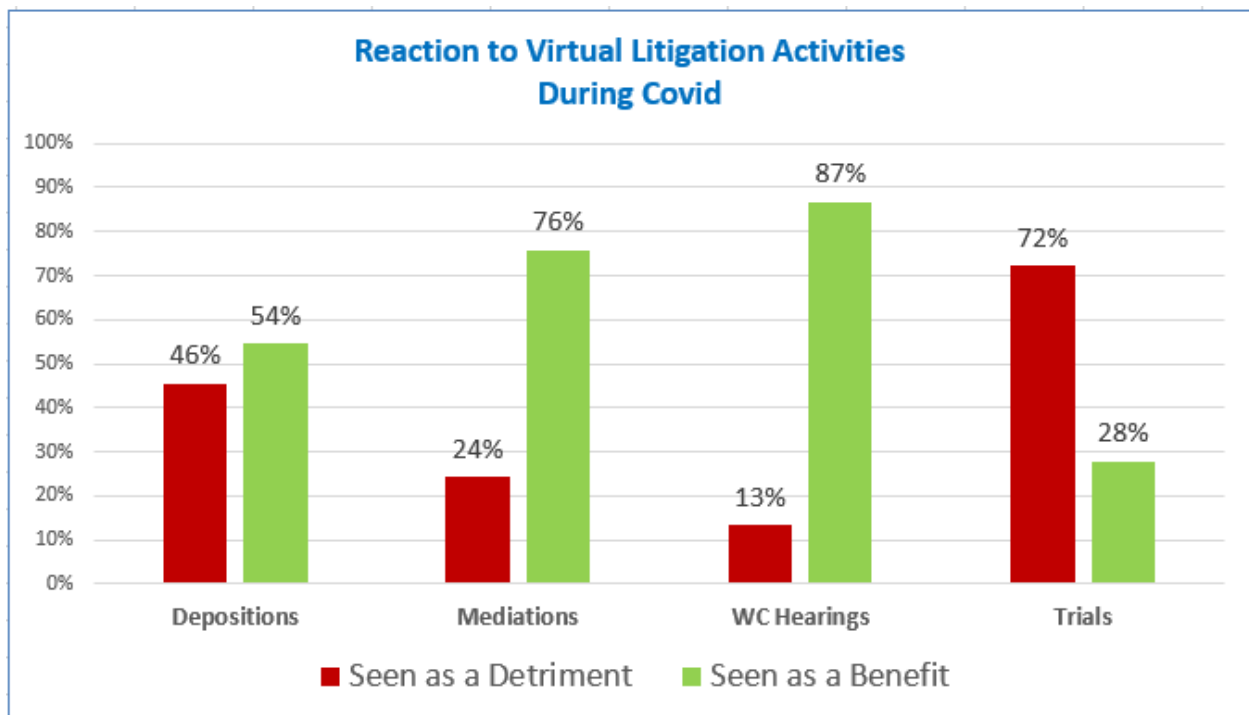
- Virtual depositions
- Virtual mediations
- Virtual WC Hearings
- Trials

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Except for virtual trials, almost every participant reported virtual experiences with these important case milestones.

No experience with virtual depositions	1%
No experience with virtual mediations	3%
No experience with virtual WC hearings	0% (of those with WC files)
No experience with virtual trials	64%

Those that had had experience with those specific case events in a virtual setting were then asked to identify whether they felt it was a benefit or a detriment to having those events conducted virtually.



Except for trials, the virtual nature of these activities was seen a benefit by most of the participants. For WC hearings and mediations this was overwhelmingly the case; sentiments about depositions were more mixed, with just over half (54 percent) identifying them as a benefit.

We comment more on how the participants define the core “benefits” of these activities being virtual, whether in terms of cost, work product, and speed, later in this report.

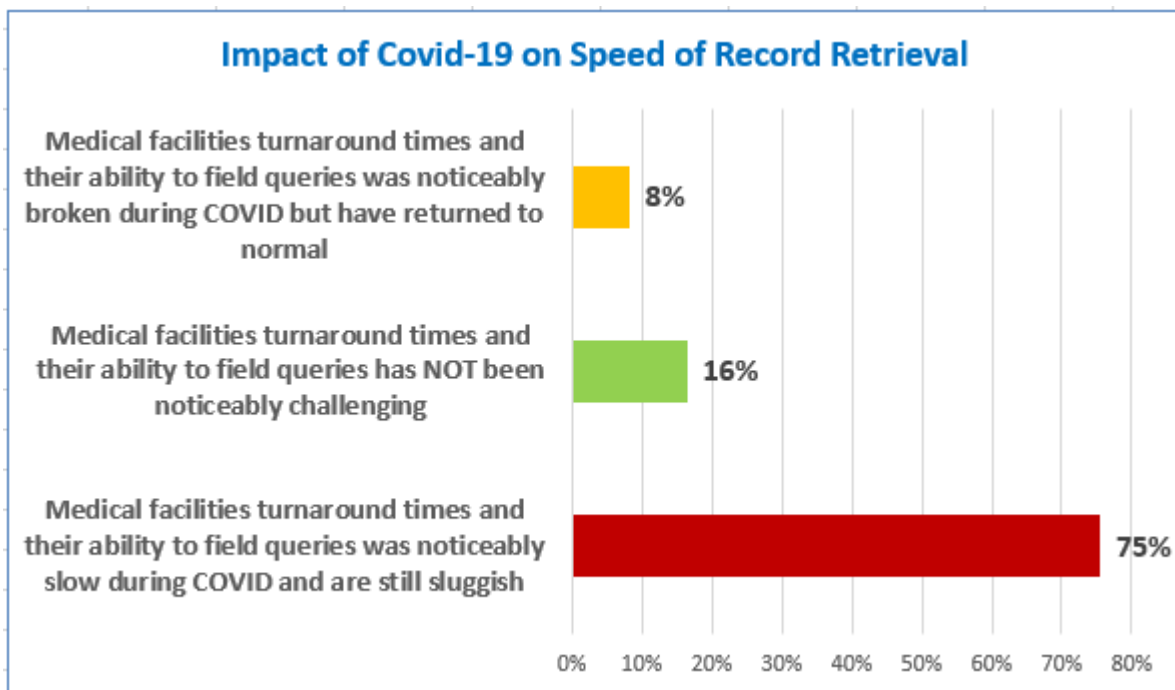
Impact on Records Retrieval

The speed with which underlying case records can be retrieved has a significant impact on the speed that claims can be resolved. We were therefore acutely interested in any impact of the pandemic on healthcare providers' ability to provide records.

The specific question posed was:

“Many claim organizations and law firms reported that healthcare providers were slower to respond to requests for records during the pandemic, slowing down case evaluations. Which of the following statements resonates the most for you on this topic?”

Roughly four of 10 (38 percent) respondents opted to not respond to his question, citing a lack of familiarity with record retrieval speed generally. Of those with direct experience with this topic, a full three quarters (75 percent) affirmed that retrieval speed has been, and continues to be, an issue.



For 16 percent, speed has not been noticeably challenging. The remaining eight percent reported that speed has been an issue but has returned to normal.

How Virtual Should Our Environment Be?

Participants answered a series of questions designed to explore their view of how virtual litigation management practices should be in the future.

Specifically, we were interested in whether our community:

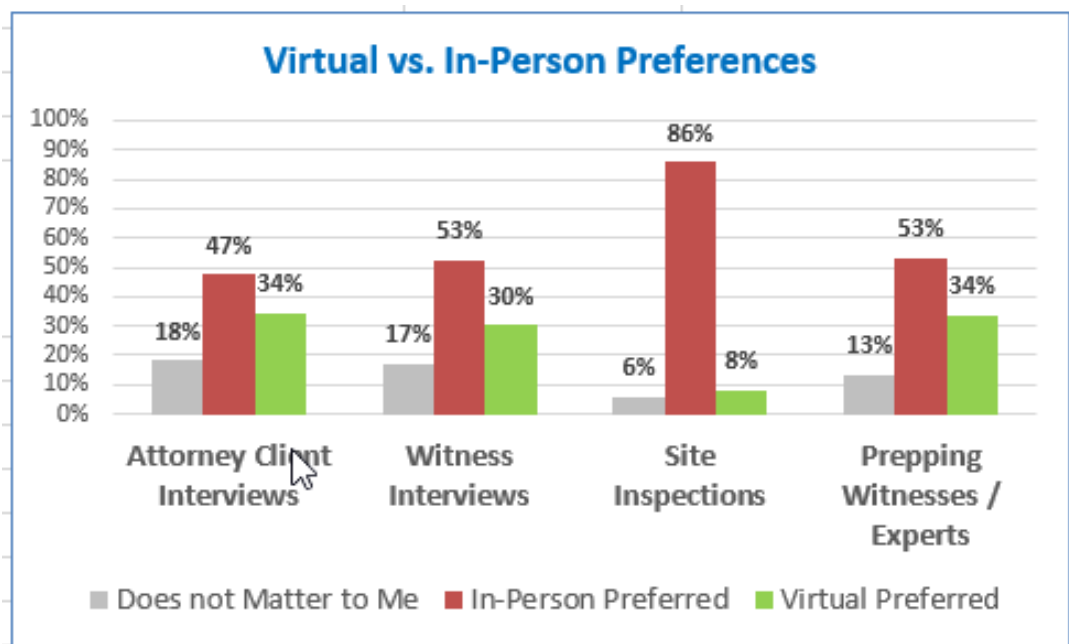
- perceives more risk or benefit to certain litigation activities being performed virtually.
- feels that, ultimately, counsel should be mandated to adopt a virtual approach to certain activities; and
- perceives that counsel's adoption of virtual practices will be considered a value-added reason for using their firm

To start this process, we asked participants to select from the following choices relative to a series of commonly conducted litigation management activities:

- **The default approach to this activity should be in person whenever possible. I see more risks than benefit in a virtual approach**
- **The default approach to this activity should be virtual whenever possible. I see more benefits than risks in a virtual approach**
- **It doesn't matter at all to me how this activity is handled.**

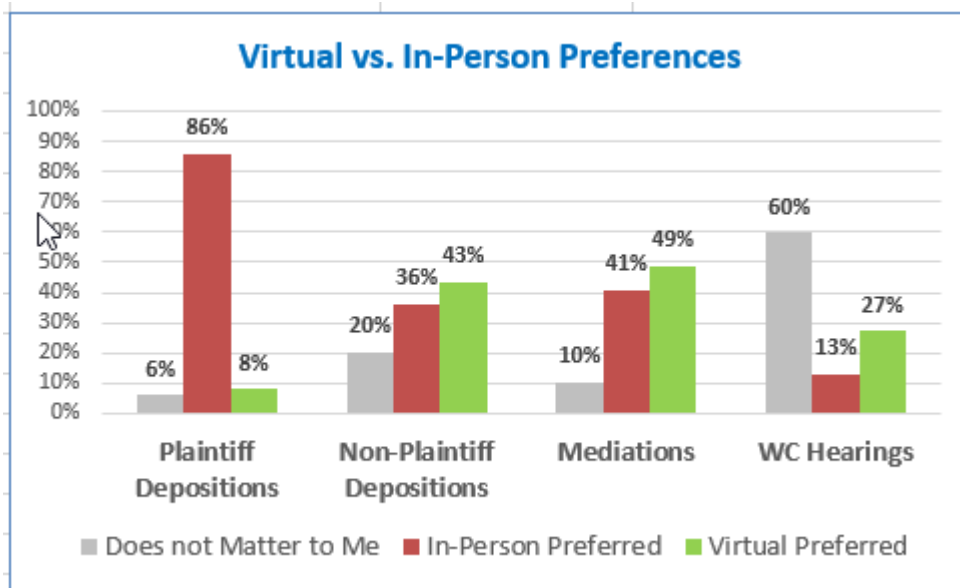
What Activities Should Be Virtual?

The results are depicted in these three figures. For ease of review, a preference for in-person is depicted in red and a preference for virtual in green. Neutral reactions are depicted in gray.

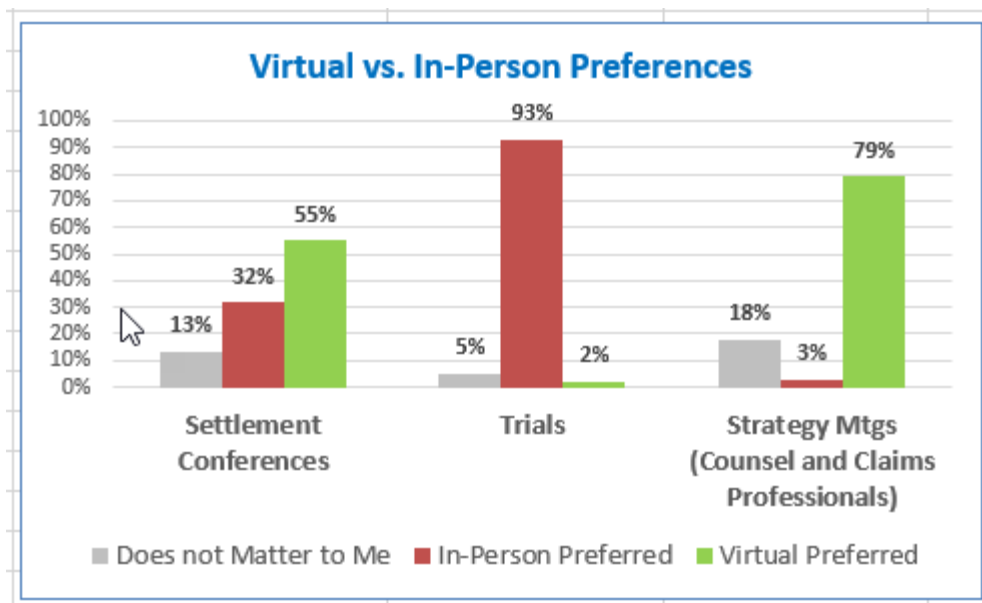


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From this figure we can see that most participants prefer attorney-client and witness interviews, site inspections and witness and expert preparation be conducted in-person. That said, almost one third (30 and 34 percent) support the conducting of witnesses and expert interviews virtually. Those are not small numbers.



We can see from the Figure above that there is majority support for conducting non-plaintiff depositions and mediations virtually. When it comes to plaintiff depositions, however, there is still a strong preference to conducting those in-person.



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Similarly, there is majority support for having both settlement conferences and (especially) strategy meetings between counsel and claims professionals conducted virtually.

We can see from this Figure which activities Study participants are amenable to (or in fact prefer) being conducted virtually.

	% of Support for Conducting Virtually
Strategy Meetings	79%
Settlement Conferences	55%
Mediations	49%
Non-Plaintiff Depositions	43%
Prepping Witnesses / Experts	34%
Attorney Client Interviews	34%
Witness Interviews	30%
WC Hearings	27%
Site Inspections	8%
Plaintiff Depositions	8%
Trials	2%

Virtual Activity Benefits

To better understand the perceived “benefits” of virtual activities, we asked participants to respond to three statements about the impact of virtual activities on cost, cycle time, and work product.

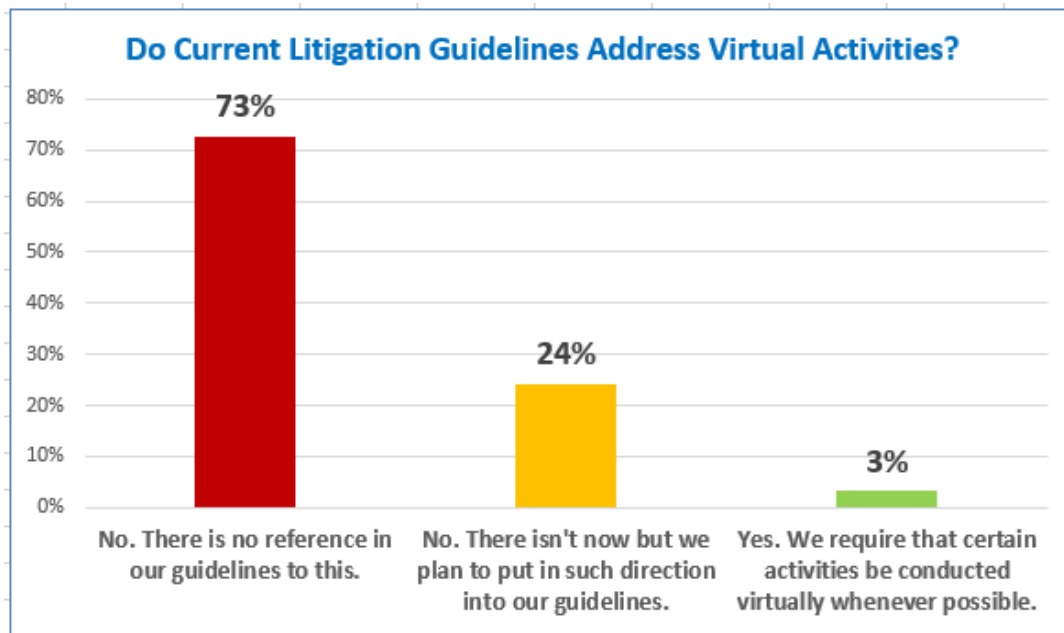
Respondents scored their reaction to the statement on a scale of 1 (completely disagree) to 100 (completely agree). The results can be seen in this Figure:

STATEMENT (Perceived Value)	AVERAGE (Scale of 1-100)	MEDIAN (Scale of 1-100)
COST Virtual activities bring down litigation costs through less billed travel time and fewer travel expenses	80	85
CYCLE TIME Virtual activities improve cycle time because activities can be scheduled more quickly and with less hassle than in-person activities. (i.e., things move along faster).	70	75
BETTER WORK PRODUCT Because virtual activities generally involve the use of video conferencing, they can be recorded. Those recordings can be shared with claims professionals, viewed at any time during the case, and this is a better work product for us.	62	62

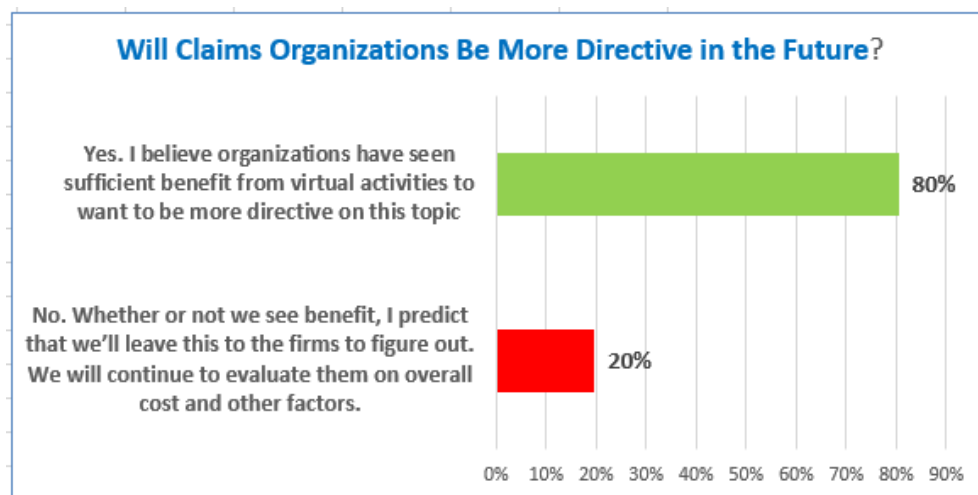
Litigation Guidelines and Virtual Activities

We were curious if current litigation guidelines for most payer organizations address which activities should be performed virtually. The specific question posed was: ***“Other than standard requirements to receive authorization before incurring travel time or costs, do your current Litigation Guidelines address in any way whether specific defense counsel activities should be conducted in-person or virtually?”***

The answers reveal that most guidelines in effect today do not. However, almost one in four (24 percent) indicated that they plan to incorporate such direction into their guidelines.



In addition, a full 80 percent of respondents predict that claims organizations will “address with more specificity which activities they would prefer the law firm conduct virtually.”

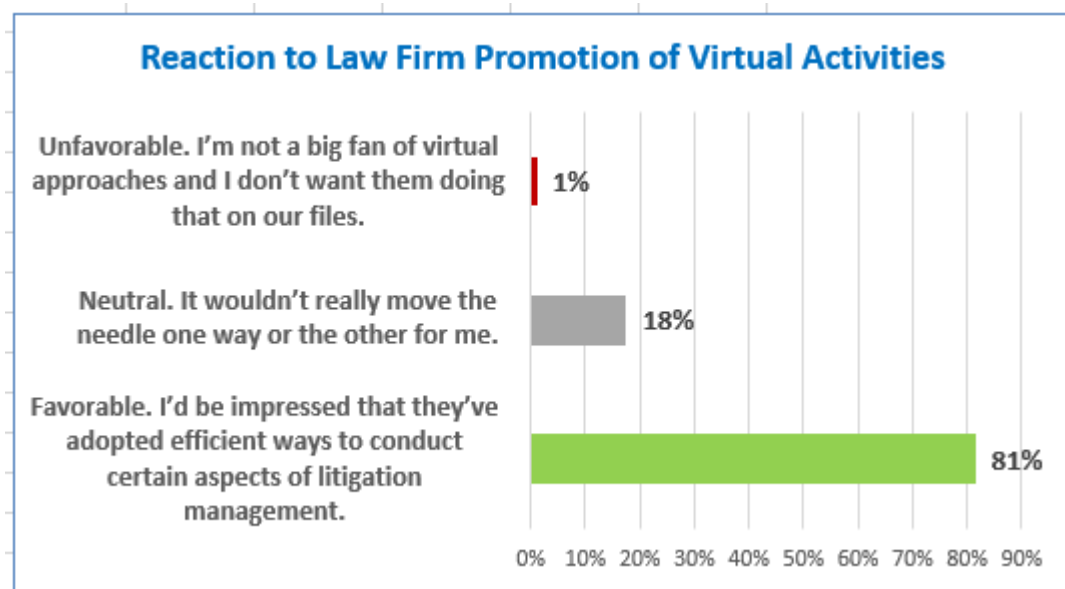


Should Law Firms Market How They Embrace Virtual Activities?

Study participants also indicated support for law firms that can describe in detail how they support virtual litigation management practice.

The specific question asked was: ***“If a law firm approached you and described in detail their processes for “virtualizing” different areas of their practice, with a description of the technologies they use to support these virtual or remote activities, which statement best describes your response?”***

The reaction was overwhelmingly positive, with 80 percent reporting a favorable reaction. Law firms would do well to take note of this.



Which Activities Should Be Mandated to be Virtual?

To better understand participants' reactions to which activities are best suited to virtual practice we asked two different questions.

First, we asked ***“If a claims or client organization were to mandate or very strongly encourage that counsel perform specific activities virtually, which of the following should be the most likely three candidates? (Please select a first, second and third choice).”***

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Best Suited for Mandated Virtual Activity	
Strategy Meetings	213
Mediations	120
Non-Plaintiff Depositions	58
Attorney-Client Interviews	58
Witness Interviews	50
Prepping Witnesses / Experts	37
Site Inspections	20
Plaintiff Depositions	15
Trials	6

Which Virtual Activities are Most Likely to Save Costs?

Second, we asked, “Which of the following activities has the greatest potential to lower fees and expenses if conducted virtually rather than in person? (Please select the Top 5 activities in order of cost reduction – i.e., #1 has the greatest savings, #2 has the next greatest savings, etc.)”

Most Likely to Reduce Cost	
Mediations	325
Strategy Meetings	201
Prepping Witnesses / Experts	167
Non-Plaintiff Depositions	146
Trials	136
Witness Interviews	127
Site Inspections	89
Plaintiff Depositions	82

Scores were tabulated by assigning values to the rank order of selections. Please note that, because there were only three rankings in the first question and five rankings in the second, the scores themselves should not be compared to one another. Compare instead the relative order of the activities.

Clearly in-person strategy meetings between counsel and their claims management colleagues and clients may be a thing of the past.

There also seems to be no question but that mediations are perceived to be both well suited to being conducted virtually, and a likely candidate for cost savings.

Participant Comments and Observations

We asked three open text questions as part of this Study. As we do with all our Study results, we present those comments here without attribution to specific individuals. Readers will find many interesting and astute comments on these topics, and we hope they prompt new thoughts and discussions across our community.

What “caught your eye” over the last 16 months?

First, we asked, **“Was there any aspect of virtual litigation management practice that caught your eye during the pandemic, or that interested you, or that you said, ‘we should be doing more of that!’”?**

Comments
Adjuster/Attorney interaction seems best suited for virtual. Better than phone calls, much timelier and more cost effective than in person.
Tr56As described, I think productivity, travel and overall expenses can be reduced with nominal impact to many areas of litigation. There are risks, and therefore mandating virtual for certain classes of work should include exceptions.
Attorneys are more accessible to discuss files rather than spending the whole day at court.
Being able to attend mediations remotely.
Claim handlers should be talking on the phone more with counsel. There is an over-reliance on email that is dragging on the cases unnecessarily.
Claims reps watching depositions, motion hearings and participating in conferences they could not otherwise attend
Examinations under oath, file discussions/conferences, settlement conferences
I am interested in what depositions our attys feel can be taken virtually and why. I was skeptical with virtual mediations, but our success rate was favorable- we will be discussing in more detail soon
I found Zoom mediations to have the same results as in person mediations. A lot does ride on if the mediator is a competent video conference manager.
I have been pleasantly surprised how well mediations and settlement conferences have been conducted. I have come to realize that conducting these two forums virtually has saved time and money, without losing efficiency or outcomes.
I like virtual mediations. They seemed easier to schedule and the technology exists to handle them appropriately. There is a real benefit to have them conducted virtually, from a cost and time savings, while allowing the claims personnel to participate.
I saw some benefit to jury research being conducted virtually at a lesser cost. However, I do still believe in person has many benefits as you don't truly get to observe the mock jurors' body language, level of interest, etc. in full during a virtual session. It is a cost-effective way to get some idea of case value and liability allocation, though.
I think in a dep or mediation, a witness is more likely to let their guard down if they're at home without counsel present to nudge or signal them. You get to see their home environment.
I thought virtual litigation management was a game changer -- much less wasted time traveling, easier to get together "virtually" to strategize, much more convenient for insureds and witnesses.
I was surprised that, for the most part, mediations were as successful.

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Initially, mediations seemed very promising. However, lately, it seems they have not been very productive.

It really proved to us how much can really be accomplished virtually.

Many aspects of litigation are extremely inefficient and expensive. In-person trials, key depositions, and mediations of complex matters remain important to me, but routine activities in all those categories are often better served by virtual practices.

Mediation

Mediation. Very effective. Mediations have a lot of "down time" when the mediators are having discussions with opposing party. A huge benefit of handling these virtually is having the ability to perform other tasks, respond to emails, etc.

Mediations

Mediations

Mediations - not only did they help reduce costs by doing them remotely, but we were able to resolve a significant portion of mediate cases.

Mediations and settlement conferences. Handling these matters virtually saved a great deal of time for adjusters since they did not need to spend time traveling.

Mediations conducted on Zoom (or any virtual platform). Saves \$\$ and perhaps more importantly, time that was used in travel.

Mediations conducted via Zoom.

Mediations.

Mediations. While there is a benefit of certain cases have in person mediations, a large majority of mediations can be equally successful by being completed virtually. However, it is important that the mediator be trained and able to work the technology so that the parties are able to have separate virtual rooms and can be moved from room to room if necessary.

Mediators preferred virtual mediation

NO LIVE MEDIATIONS. Huge benefit!

Non-critical depositions

Nothing outside of what has been referenced in your study.

Nothing is better than in person

Opportunity to have more case reviews and updates with assigned defense counsel as their schedules offered greater availability.

Piloting virtual trials - curious about whether a virtual trial afforded the plaintiff their day in court or whether adverse outcomes would be automatically appealable due to perceived procedural compromises that detracted from a fair trial.

Prior to the pandemic rarely were counsel discussions conducted via Zoom or WebEx. Now it is a must. I get "put off" if I get pulled into a call without all participants being on camera

Settlement conferences or mediations were effectively held.

Sharing video depositions, with notes emphasizing certain areas (times) of the video

The pandemic definitely forced us to accelerate progress on being paper lite. I would welcome new court rules expanding mandatory e-service and e-filing requirements. I would also welcome expanded use of virtual activities for case management conferences, mediation, minor depositions, interactions between claims and counsel, etc.

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The virtual mediations on what is considered smaller mediations (this will depend on the line of business). This gives a better feel for those we would have conducted by phone and better control when travel is not really necessary when our insured is not the largest target in a multi-player issue.

The virtual mediations. It was a smoother process to settle cases and close more files.

There was a general realization that activities that had astronomically been performed in person frequently could be performed just as well and more cost-effectively virtually, and that technology supportive of this is very capable and readily available.

Time saver with mediation for all involved. There are trade-offs with many of these areas/questions.

Using Zoom for counsel strategy meetings that pre-pandemic would likely have been phone calls has been great. Seeing counsel and collaborating over video is very helpful.

virtual "settlement days"

Virtual conferencing. Virtual court attendance Virtual depositions Virtual mediations

Virtual court hearings. [We] definitely should be doing more of that.

Virtual depositions allowed us (the claims handler) to watch the deposition live, allowing us to see plaintiff's body language and inflection of their tone of voice when answering the questions. This was helpful.

Virtual lien hearings would be the one area that I found highly beneficial and more cost efficient for virtual resolution.

Virtual Mediations

Virtual Mediations

Virtual Mediations are effective when planned accordingly. Need Plaintiff (s) to each be on camera. It really broadens the landscape of selection of top-notch mediators and creates efficiency by eliminating time away from the office.

Virtual mediations are much more efficient on 80% of files. The negative side is the plaintiffs don't have to invest much for virtual mediations making it tougher to get engagement.

Virtual mediations have been extremely helpful in scheduling due to the fact that no one has to travel. It saves expense dollars and tons of time.

Virtual mediations on most cases, but not in cases where plaintiff's in-person presence would be beneficial (i.e., having a mediator help them understand the value of their case)

Virtual mediations, especially on large cases with many parties. Hopefully the days of sitting in a conference center for 2 days to talk to a mediator for a total of 30 minutes are over.

Virtual mediations. We should not only be doing more of that, we should do ALL mediations virtually.

Virtual trial monitoring

When counsel utilized the technology effectively, virtual depositions were a tool to allow me, as a claims professional, to see the testimony BUT not a lot of my counsels did that - or even take a screen shot. Plus, virtual depositions left a lot to be desired as you never truly got the feel of the party being deposed

With litigation mgt, it's important for the claims professional and defense counsel to eyeball the insured, plaintiff, witnesses, accident scene, etc....doing those things virtually, not good. Nor is a virtual trial good.

Yes - mediations

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Concerns about Virtual Practice

Second, we asked ***“Is there anything that truly concerns you about conducting litigation management activities virtually? What are the core risks as you see them (if any)?”***

COMMENTS
Ability to assess key parties/witnesses as completely as needed. Ability to ensure that no interference, coaching, or inappropriate behavior takes place at significant events (deposition, inspection, etc.)
Ability to read body language of witness
As stated above, it's important for claims professionals and defense counsel to eyeball the insured, plaintiff, any witnesses, experts, accident scene, etc...doing those things virtually, not good, nor is a virtual trial good - very risky in my estimation.
Being able to evaluate responses
Being able to meet in person with parties involved provides a much better opportunity to assess the individuals, whether it be a plaintiff, insured, or witnesses. A virtual "meeting" does not provide the same ability to do so.
Can't determine body language
certainly trials or plaintiff depositions are risky, without the face to face experience. but I think virtual mediations are very useful -- again, so much wasted time to travel to mediations, sitting around doing nothing. granted, the inconvenience of travel might encourage settlement, but in my view parties (particularly plaintiffs) settle when they're ready to settle -- whether it's live or virtual.
Complex/severe matters need to be handled in person
Conducting depositions of Plaintiff can be dangerous as you cannot tell who else is in the room or what signals they may be receiving from an outside source.
Conducting plaintiff depositions virtually can sometimes leave out the body language that is necessary to identify truths and credibility. Virtual depositions could leave out necessary tells that only occur when you are face to face.
Depositions - you cannot see whether there's an outside influence on plaintiff's responses ("coaching")
Evaluation of the plaintiff should ensure the plaintiff has to appear live.
Getting a face-to-face read - where credibility and veracity are core to a matter, virtual interactions often fall short
I am not concerned about conducting these activities virtually, I still feel trials need to be held in person, for numerous reasons, but have no real issues with 90% of discovery and pre-trial tasks being conducted virtually.
I believe that mediations are best done in person. The virtual platform lacks certain elements - side bars in the hallway; pressure on plaintiffs to get it done today; ability to "read" the mediator and his or her effectiveness; ability to read or observe the interactions between insured, defense counsel, insurers. It does concern me that virtual will be recommended in certain circumstances. My coverage deals mainly with catastrophic events and injuries. Virtual mediations are lacking in the above areas. People are more motivated to get a deal done when they had to show up in person, often involving

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travel and associated expenses. Also, the mediator needs to develop rapport with plaintiffs directly in my cases and this is lacking in a virtual setting as well.
I do believe that virtual depositions should be limited and discouraged. There is a benefit of being in the same room and across the table from someone while asking questions as it is easier and better to gauge a person's credibility, demeanor and effectiveness in person.
I do think some activities are best handled in person, including many plaintiff depositions, and key defense witnesses, summary judgment arguments - activities where the ability to read the room or fully monitor what's going on is of heightened importance.
I felt mediations were not as effective virtually.
I think that the plaintiff deposition is better if taken in person so we can obtain their true measure. I think trials too because the jury needs the chance to see and observe the plaintiff. And both counsel for that matter.
I think the majority of depositions are better in person so you can observe the parties a little closer, etc.
I won't be hiring firms that do this.
If there is anyone else in the room coaching the witness... Would not be able to see this virtually depending on the setup.
Important depositions
In general, it's the in-person connection that simply cannot be replicated, even in a small way, in most of these virtual proceedings
Inability to adequately assess credibility of parties/witnesses.
Inability to control the setting; Potential for relaxed setting
Inability to read body language virtually.
Increased liabilities because everything is recorded and not everyone used the technology competently.
It is easier for plaintiff attorneys to delay moving the files to resolution.
I've not experienced a virtual trial but have concerns that jurors are staying focused, that others in the house may be eavesdropping and/or participating behind the scenes.
Losing the ability to witness, in-person, the plaintiff and witnesses' actions and demeanor by having face to face interaction, It's difficult to judge a person's body language virtually. Also, technology issues sometimes are unavoidable.
Loss of personal connections developed during in person proceedings. Concerns regarding witness coaching. Some cases need the pressure of in person mediations to resolve. Preparation for virtual activity may be different. Failure to account for the difference in visual presentation over in person presentation.
Making sure people are engaged/focused.
More difficult to judge honesty of person via nonverbal clues virtually. Risk of more coaching, reliance on reference materials during virtual testimony.
Most litigation tasks need to be performed in person, as that is the only way to really get a sense of who the person is, how credible they are and how they will present at trial.
No, I believe the pros outweigh the cons by a significant amount.
No. In the future. We need to embrace it
NONE

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None - Virtual is the way of the future.
Nothing really concerns me about this. I know a lot of attorneys were hesitant to take videoconferencing depositions and have found that, for the most part, things proceed well.
Obtaining documents from insureds is difficult without in-person meetings
Plaintiff's counsel filing to prepare their clients for depositions and mediations resulting in poor quality meetings and instances where the plaintiff is not present or not fully present.
Privacy and security issues, domination of virtual interactions by the loudest voice and/or highest ranked person, lack of relationship building, lack of the ability to observe people when they are not performing for the litigation
Relationship building between attorneys and clients
Some loss of depth in the interaction between parties in a virtual environment. The tendency to shorten conversations in a virtual environment v face to face.
Sometime, a face-to-face interaction is necessary. A blanket rule to do certain tasks virtually could result in missed opportunities to gain information or insights from the face to face interactions.
The inability to read the room. Conducting a mediation without seeing the plaintiff and their attorney interact leaves a void. Right now, the technology isn't there it create a more virtual meeting. However, especially for mediations, I believe the benefits of virtual far outweigh the negatives. Travel time is eliminated if nothing else
the in-person impact of certain litigation activities cannot be understated; direct communication with plaintiffs at mediation, body language and expression during depositions, etc.
The major risk is missing out on side bar conversations (at site inspections, deps, mediations, etc.) where it seems that just as much useful info is shared through this informal channel than during formal discussions/negotiations.
The relative anonymity that some people feel when doing things (like depositions) virtually. It's much harder to shade the truth when the questioner is sitting across the table from you. Further, evaluating a party or witness' demeanor and credibility is more difficult in a virtual setting.
The risk that we will be unable to uncover the truth in depositions and trial with the limitations of virtual practices.
There are activities that need to be performed face-to-face, and they don't all fall into categories that apply every time. Activities that involve assessing credibility or building trust come readily to mind.
There are risks - missing body language, missing items in site inspections not obvious in a virtual setting, missing opportunities to develop relationships, trust and closure to cases because of these things - however I think most "routine" cases these are nominal and can be overcome by corresponding virtual strategies.
There is always benefit in seeing someone in person vs virtually, however, in those instances where there is a benefit, is that difference material enough to support the added costs?
There is less formality and impact which could lead to decreased care taken with the proceedings and degrade the overall work product
Tougher to evaluate body language, coaching on other side of camera, lack of personalization and passion and commitment to relationship
trials
Trials and certain mediations should still be conducted in person to improve chances of resolution and/or overall effectiveness to achieve desired outcomes.

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Trials and depositions - part of the process is eyeballing everyone in the room and noticing body language. This is ineffective using a virtual format.

video trials and mediations become too impersonal- easy to give away someone else's money when they're just a face on a computer

Virtual mediations seem to take longer and are more tedious than in-person. I think the translation or conveyance of the message or tone is potentially lost. There seemed to be less of a sense of urgency to conduct a meaningful mediation virtually.

Virtual trials scare me; I did not have one, but the thought is terrifying

Virtual trials to me should be very, very rare. There is too great a risk that they will not be taken seriously. Otherwise, I'm in favor of performing as many tasks as possible virtually.

We need to choose correctly when something needs to be in person vs. virtual and should not adopt a policy of "all virtual" or "all in person" for any activity type. The value, risk and nuances of each case and each situation must be carefully considered to decide which activities can be virtual and which should be in person.

We see more cancellations than we did pre-pandemic. Plaintiffs or other parties frequently claim difficulties with technology as a reason to miss a deposition.

While they may be easier to schedule and cheaper, we found the interaction at mediations and other multi-party events was dampened in the virtual environment and may ultimately add to costs (less success meaning longer cycle time) or higher loss costs (less effective virtual)

Wi-Fi connections. You can miss a single word due to a poor connection (or background noise) and that could dramatically change the landscape of the case. Example: A deponent answers a question incorrectly because they didn't hear the word "not".

Yes - systems hacking risk

Yes, I still feel overall there is more value to be gained with in-person vs virtual and most likely worth the expense. Can our attys accurately evaluate the overall quality of a witness/plaintiff virtually?

You don't develop the same relationships or feel "for people that you may get in an in person setting

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Additional Comments

Lastly, we asked, ***“What have we not asked you about that you believe is important on the topic of virtual litigation management activities generally? What have we overlooked? Please share your thoughts with your industry colleagues.”***

As corporate defendants/insurers, we have always been instructed to humanize ourselves and our defense, specifically at trial time. How do we do this virtually? In other words, how do we humanize ourselves in an inhuman setting?

Courts are slow to adopt progressive practices so the ability to do these things will be unevenly applied. Likewise, counsel could be slow to adopt and adapt these with prevailing "old school" mentalities prevailing. Defense counsel is in the business of revenue generation so practices that curtail that goal could be resisted.

Do we or should we expect productivity and case management response time to improve with counsel's reduced travel? Should rates/costs go down as a result?

Educating all sides on the possibilities available - just simply knowing what is available is helpful

Ethical issues/counsel independent professional judgment/tripartite relationship issues

Going virtual allows for more vendors to participate in the mediation and deposition activities as well as trials this gives us more choices to find the better option for the activity

How does a virtual approach impact the overall exposure on cases?

I cannot think of anything additional that could've been asked.

I don't think trials can be conducted effectively in a virtual platform. The human element is lost when someone is testifying via Zoom. I observed some of a trial that was streamed live, unrelated to any of my cases. It just fell short. I think both sides might agree with that perspective.

I have benefited by virtual lectures and conferences in continuing education. Again, I can just pop in on the lecture for a low cost, with no travel expense.

I like the idea of having virtual collaboration meetings with counsel. This is a great way to discuss and share documents - prior to COVID most of these calls were by telephone. I think the virtual meetings offer a new improved way of conducting business. I like seeing counsel face to face.

I think many of the questions are more nuanced than currently phrasing permits. If I were in private practice, I would likely wonder whether or the degree to which virtual litigation management activities will increasingly affect the need to be proximate to a courthouse and with an abundance of office overhead. I anticipate that firms who embrace work from home models will be able to substantially decrease overhead costs for the mutual benefit of the firm and the paying clients.

I think there's a cost savings when people are working remotely and conducting activities remotely. We don't need big offices and travel costs should be curtailed; those savings should be passed on

Some efficiency from virtualization is good but just because it can be virtual doesn't mean it should be.

Take a look at overall effect on loss costs vs. defense costs. The combined cost of a claim should be the driving measure of success.

The survey was thorough.

There's reference to fees & costs within the questions, but the more important factor is the case outcome, whether via settlement or verdict. Accordingly, while virtual may save on involved time &

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fees, the more important question is whether less in person interaction has an impact on loss costs, not just legal costs. Would the inability to properly analyze a plaintiff or witness in person, and as thoroughly, adversely impact the outcome?

This may be the perfect time for our legal system to decide if the current approach of trial by jury in a courtroom needs to be entirely reinvented.

Virtual litigation management seems to work best for ancillary parties - minor defendants who need to only stay informed about the case.

Virtual trials favor plaintiffs

Virtual/Teams/Zoom mtgs ok for mediations and general discussions w/ defense counsel, but the core activities to litigation mgt should still be done in person.

You did ask about virtual trials, but I want to express my concern about going all out with a virtual trial and virtual jury. That I have grave concerns about.

You did not ask about how virtual litigation management impacted settlements, verdicts, or overall indemnity of cases.

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