



Introducing the New COVID-19 Impact Analyzer App

Though COVID-19 continues to disrupt all aspects of life and the legal profession, it is clear that businesses, law firms, individuals, and the courts themselves continue to push forward. The ramifications of COVID-19 can be seen throughout the legal system, from case filings to court behavior. Lex Machina is here to help you understand the constantly-shifting effects that COVID-19 has had on the legal landscape.

On April 30th, Lex Machina held a well-attended webcast with our CEO Karl Harris, in which he discussed the early effects of the pandemic on the court system. Now, we are following this webcast with a second webcast that will launch our newest product feature, the **COVID-19 Impact Analyzer App**. This trailblazing app will allow you to closely and accurately analyze the effects of COVID-19 on the federal court system. In launching this app, we are supplementing our trend updates by sharing the raw data and the legal analytics behind them. In addition, this app will be available to the wider public, in keeping with Lex Machina's public interest origins.

By leaving its imprint on the legal world, COVID-19 has shown us how quickly everything can change, but Lex Machina can help you stay on top of those changes. Listen to our CEO Karl Harris, and Christina Fugate, Partner at Ice Miller as they demonstrated the new app, described the power of its analytics, and shared insights on the most recent trends in this recorded webcast that launched our groundbreaking COVID-19 Impact Analyzer. Learn what this means for your organization, and what Lex Machina can do to help you succeed in uncertain times.



Karl Harris
CEO
Lex Machina



Christina Fugate
Partner
Ice Miller

Karl Harris ([00:06](#)):

Hello everyone. Welcome to our webcast about the newly released COVID-19 Impact Analyzer App from Lex Machina. With this COVID-19 impact analyzer, you can get information and trends about how the COVID-19 crisis is impacting litigation in the federal district courts. This data is not available anywhere else. My name is Karl Harris and I'm the CEO of Lex Machina. For those of you who aren't familiar with us, I'd like to introduce Lex Machina quickly, and I'll keep it really simple. Lex Machina is legal analytics, and legal analytics help you win. If you don't remember anything else about Lex Machina, I hope you remember this. Lex Machina helps you win more business and win more cases.

Karl Harris ([00:44](#)):

Specifically, we may be able to make data driven decisions to answer questions, like how is a judge likely to behave in a certain scenario? What is the best winning strategy for my particular case? How has opposing counsel behaved in cases like mine? How do I convince my client that I'm the best law firm to represent her in this case? And relevant to today's webcast, what litigation trends should I know about to best serve my clients and best manage my firm or in-house legal department?

Karl Harris ([01:16](#)):

In the next 30 minutes, we're going to take a look at some of the litigation trends we've seen in the federal district courts since COVID-19 really began impacting our lives. We're very fortunate today to have a fantastic speaker with us who I now have the pleasure of introducing. Christina Fugate is a partner at Ice Miller in Indianapolis. She chairs Ice Miller's franchise and distribution team, and co-leads the firm's COVID-19 task force. She has a lot of experience in franchise law and also has defended Fortune 500 manufacturers, distributors, and retailers against product liability, warranty, and indemnification claims. Welcome Christina.

Christina Fugate ([01:54](#)):

Thanks Karl. I'm happy to be here.

Karl Harris ([01:57](#)):

All right, so let's get started. I'm going to spend a quick minute giving you a tour of the COVID-19 Impact Analyzer App, and then we'll dive into some data and have a discussion with Christina about what she's seeing in her day to day practice. So I'm going to do now is I'm going to share my screen. And you can now see in front of you the Lex Machina homepage. So there's two ways to get to the COVID-19 Analyzer App. One, if you're a Lex Machina subscriber, you can simply log into Lex Machina, like I've done here. You can click on the apps link in the banner at the top of the page. And then you can see a list of all of our apps, including the COVID-19 Impact Analyzer App.

Karl Harris ([02:40](#)):

So again, our apps are about making legal analytics easy. So you can do things like compare the litigation behavior of parties in certain cases, you can compare the behavior of judges. You can look at trends in different courts, and you can compare the performance of law firms and litigation, all sorts of different things with easy one button clicks. For this webcast, we're talking about the COVID-19 Impact Analyzer App so I'll click here to enter the app.

Karl Harris ([03:06](#)):

Note that you'll also, if you're not a Lex Machina subscriber, be able to get to the app by simply going to lexmachina.com and you'll see a link to the app from our homepage because we want to make this information available to everybody during this COVID-19 crisis.

Karl Harris ([03:21](#)):

So just a quick tour of what you see when you open the app. There's really three types of data that we're analyzing week over week between 2020, 2019 and 2018. The first is case filings and we'll dive into details in a minute, but I'm going to go through this quick overview first so you'll see overall case filings trending year over year, and a breakdown in case filings by particular practice area. Then you'll see the second section, which is based on findings. So finding is a court enforceable determination. For example, it's a finding of infringement in a patent case or a breach of contract in a contracts case or a NFLSA violation in a NFLSA case. And you can see different findings of by phase and courtroom. So for example, you can see findings at summary judgment, findings at default judgment, findings at trial.

Karl Harris ([04:14](#)):

And then finally, the third section of data is complaints mentioning COVID-19. So, what this is is when somebody, if you run a search [inaudible 00:04:23] Lex Machina for COVID or coronavirus or pandemic, it means that a plaintiff has actually mentioned things related to Corona virus in the complaint itself, which is an indication that a case is about coronavirus, meaning that coronavirus actually caused this particular litigation. And we'll talk about these trends in a minute. So again, three big picture types of data. Complaints mentioning COVID-19, findings by case phase, and case filings over time.

Karl Harris ([04:52](#)):

So now let's take a minute and dive into the details. So let's look at case filings, and then we're going to turn it over to Christina to see what she sees in her practice. So big picture, what you're seeing here is a comparison of case filings from the first week of June for 2020, 2019 and 2018. And the first thing you can see is that total case filings are up significantly year over year, but that's because of an outlier. There are a few large multidistrict litigation cases and product liability, in particular, a 3M case that's being filed in Florida that are driving this big increase in numbers year over year. So I think that a more true baseline trend is to compare litigation year over year excluding product liability. And you'll see here that in the first week of June, cases were down 22% year over year from 2019.

Karl Harris ([05:43](#)):

And we'll dive into the previous weeks in a minute, but you'll see that this trend is consistent over time. So each week since the beginning of COVID-19 crisis, filings have been down from a baseline about 17 to 22% week over week, since the beginning of shelter at home and other things that impacted people's daily lives. However, I will point out that this is not evenly distributed across different practice areas. So, for example, just last week we saw that patent cases were increased 43% compared to last year, and antitrust cases were up 36%. And what I want to do now is dive into some of the previous weeks because you'll see we're able to unpack some trends.

Karl Harris ([06:29](#)):

So while big picture overall case filings are down again 17 to 20% week over week, you'll see that individual practice areas such as contracts, employment, insurance, patent and securities have quite a bit of variability week over week. So to do that, I'm going to click on the previous week's tab, and you'll see this as comparing

the last week of May. And you'll notice that for that week, insurance cases were actually up 10% compared to 2019. Antitrust cases up 56%, patent cases up 24%, securities cases up 39%. And if we dig back one more week for the same data, you can see that insurance cases were actually up 22% compared to the week last year.

Karl Harris ([07:16](#)):

So again, big picture takeaways, overall case filings down about 17 to 20%, but a bunch of variability within practice area. So we're seeing increases some weeks in areas like contracts, employment, insurance, and patent. Although there is volatility. But decreases in other practice areas like copyright and consumer protection and things like that. And now I'd like to turn over to Christina. Does this data match what you see in your practice or any surprises here or anything like that?

Christina Fugate ([07:46](#)):

Thanks, Karl. Yes, it does match what I have been seeing what I have been expecting to see. So, during the beginning of the shelter-in-place orders, obviously businesses were having to stop their operations or cut back pretty significantly. And so, a lot of businesses were looking to their insurance policies to see what coverage they may have for that business interruption. And so, I think when we were looking at some of these trends a few weeks ago, we saw a spike in the insurance cases. That's when businesses were filing lawsuits against some of the insurance carriers looking for coverage under their business interruption coverage. That makes complete sense there.

Christina Fugate ([08:34](#)):

On the employment front, we see some spikes here and there. We saw some big cases that were filed with respect to workers trying to obtain [inaudible 00:08:47] and damages who were essential business workers. And they were filing lawsuits relating to the safety precautions. And so we've seen some spikes in that front from those essential business operations for those employees that were continuing to have to work during the shutdown.

Christina Fugate ([09:06](#)):

Now as businesses are starting to reopen across the states, we're seeing those two areas not as prevalent. Same with contracts. A lot of events were canceled during the shutdown period, and even now, we're seeing some events that are being canceled into late summer and early fall. So we saw a spike in some contract disputes regarding some of these canceled events. We're seeing some landlord tenant actions being filed with respect to payment of rent for some businesses who aren't able to afford rent. So we're seeing those types of spikes and the contracts.

Christina Fugate ([09:46](#)):

You first mentioned, Karl, the patent cases, and we're seeing a big spike even this week in those patent cases. It's interesting, I read an article a couple days ago that talked about this same trend in patent cases back in the 2008, 2009 recession. Specifically, there was a study done in 2010 from what I read, which did a similar analysis that saw a huge jump in patent cases. And we're seeing that here now. Again, as the hose of the economy is going down, we're seeing these patent cases go up. A lot of these patent cases are high value. I think we're also seeing some litigation funding housing, some of these cases to be filed to fund the litigation costs on that front. That's somewhat surprising but consistent with prior trends as well.

Karl Harris ([10:41](#)):

That makes sense. That's fantastic insight. And I'm curious, you see these trends play out week over week by various measures. We're possibly 90, 100 days into the impact from the COVID-19 crisis. How are you thinking about these trends in terms of you managing your firm and aligning resources or retraining and stuff like that? Are you being proactive in terms of that or do you think these trends are going to be short lived?

Christina Fugate ([11:10](#)):

Absolutely. I think this is some valuable information to continue to look at to see what are the new issues, what are the new claims that are being filed out there so that we can make adjustments, and could be in your law firm or even in your in-house department to see where maybe some of the training needs to come in to adapt to cover some of these trends where we're going to see some spikes. So definitely on the staffing front.

Christina Fugate ([11:38](#)):

And then also too, it's helpful to keep our clients informed of what we're seeing out there. I think that's helpful on the risk management front, helping clients to forecast some of the issues that we're seeing. And also too, I think that this data is really helpful too. If you've got a client who does have some litigation involving some of these issues, COVID issues, this is really helpful to see what other cases are out there and to see if any of those cases have any orders or judgments that are entered in them. So that can provide some helpful information in terms of strategy of your own case.

Karl Harris ([12:20](#)):

Great. It's definitely critical to have data during these kind of volatile times. And you mentioned about the litigation funders. Have you seen in your practice an increase in activity from litigation financing? Is this kind of perceived as an opportunity by that segment of the market or is it more generally the same percentage that you've seen in previous times?

Christina Fugate ([12:47](#)):

I have not experienced personally any use of it, but I do see more funders out there reaching out and letting people know of what they can offer and what their capabilities are. And I think that's going to continue and there's some great advantage of looking into the litigation funding to see if that is a possibility to help with some of these cases.

Karl Harris ([13:15](#)):

Makes sense. That's great. Thank you for that insight. So again, big picture, we see case filings overall excluding product liability down about 17 to 22% with different results practice area by practice area. The next thing I want to hop into is the finding section. So what this is is it's showing key court enforceable determinations by phase in litigation.

Karl Harris ([13:43](#)):

And the real interesting thing for me, the trend that we've seen week over week here, is that when things first started, findings were down just across the board. It seemed like courtroom activity had ground to a halt. We weren't seeing anything happening at consent judgment, judgment on the pleadings, and certainly not at trial. But in the last few weeks, we've seen an increase in courtroom activity and particularly at summary judgment. In fact, I'll hop into last week. You can see here, summary judgment is just slightly below what it was for 2018

and 2019. But last week in particular, summary judgment was actually up week over week. So, more findings at summary judgment than either in 2018 or 2019.

Karl Harris ([14:31](#)):

I would think the data would suggest is that as we've seen courtroom filings down, but really only slightly, 17 to 22% down for filings is not as significant amount as one might predict based on how COVID-19 has so broadly impacted the economy. But with courtroom activity grinding a halt in the beginning, it kind of seems like courts, judges, clerks, lawyers are figuring out how to get cases moved back through the system, and we're seeing more and more findings, more and more events happen in the court as kind of that backlog is starting to be cleared out. Is that something that you've seen that resonates with you in your experience in the court and in your practice?

Christina Fugate ([15:14](#)):

It has. I think at the beginning of the COVID pandemic and the shelter-in-place orders, we were trying to figure out how to move forward. And part of it was learning the technology, figuring out what technology was out there to move these cases forward, and then getting comfortable with it. And so, even from the time the last webcast that I participated in with you, I had just participated in my first virtual mediation, and it was very successful. And since then, I've had multiple court hearings that have been either by video or telephonic. Clients are comfortable now communicating through video and participating in mediations or depositions.

Christina Fugate ([16:03](#)):

And so, as we're getting comfortable with this new normal, I call it, we are moving cases forward and our clients are wanting to move our cases forward, and judges want to move the cases forward. So, they are now I think moving them forward and we are getting more active, and this is definitely consistent with what I'm seeing.

Karl Harris ([16:28](#)):

Yeah, super interesting. The one thing that is not really moving forward is trial. So if we take a look here, you see findings at trial are down year over year. If we go back a week and scroll down to that section again, significantly less findings week over week. If we go back again to the previous week, the second full business week in May, findings at trial are down. And basically, if you dive into the data, you'll find that those are all bench trials. So, we haven't yet, from what I can tell from the data, figured out how to get cases in front of juries and move things towards that kind of ultimate step. Have you heard anything about how the courtrooms are going to be opening back up or how we'll be able to proceed with a case that might actually end up in a jury trial?

Christina Fugate ([17:24](#)):

Well, in some states, we are entering into the later phases of the shutdown orders. And so, we are starting I think to have a plan to bring people back into the courtroom. And in some states, the state that I'm in, Indiana, for example, I know that there's a plan to start moving forward with some in-person criminal hearings. So we are slowly I think going to look at bringing people back into the courtroom for those trials and other evidentiary hearings. Although I wouldn't be surprised though, if we can somehow figure out how we could use the technology to hold a jury trial. I'm still holding out that we might have our first virtual trial, and I'd be very interested to hear how that goes, or if there has been one out there yet. I think as we're beginning to reopen in states across the country, I think this number hopefully will start to move forward.

Karl Harris ([18:24](#)):

Yeah, that's great insight. I would be curious myself to understand more about the first virtual trial. So if you were kind of rolling this up, a client comes to you and kind of asks, hey, is now a good time for me to proceed with initiating this litigation, or what to expect if a litigation gets filed against me, would you say, if you're on the plaintiff's side, would you recommend this as good a time as any to file a case rather than waiting? And in terms of being on the defense side, would you no different expectations, this case will move forward and we'll be able to get a favorable outcome just like we would otherwise?

Christina Fugate ([19:07](#)):

Sure. And I think some of that's going to be a case by case basis. If the client has a good claim and wants to push forward, I would recommend doing so. And I think given the technology, we can still move forward with discovery. We can still move forward to get the evidence we need in order to maybe be filing summary judgment. So I think there is opportunity to move things forward. On the defense side, same thing, we can still move forward. I would caution everyone, it is a case by case basis and it depends on the judge and it depends on the court. So there could still be some courts that are moving slowly or moving slower than others. They haven't been able to adapt to the technology or they're not comfortable with it. So, again, there's a lot of factors that go into it where it's filed, what types of cases can we do the discovery virtually? But yeah, I wouldn't hesitate to move forward with litigation.

Karl Harris ([20:14](#)):

Makes sense. And the great thing is, with Lex Machina, you can dive into each of those particular venues or those particular judges to see what's happening in that case by case basis. So you can find the data wherever it's relevant to your clients.

Karl Harris ([20:30](#)):

So, last thing, let me hop back here and scroll down to the complaints mentioning COVID-19. So again, the way that this data is derived is by searching for COVID or coronavirus or pandemic in the actual complaint document itself. And you can see here, this is a totally new phenomenon. In the beginning of March, this was nearly unheard of for the first couple of weeks. And then it's basically exploded over time up to a peak of nearly 150 complaints matching that search term. But it looks like it's kind of evened out in the last five or six weeks between 125 and 140 cases per week. But again, those are new cases filed. So the total number of cases in the system citing coronavirus or COVID or pandemic is being newly filed week over week.

Karl Harris ([21:27](#)):

I'm curious to hear your thoughts around, is this kind of a new normal here in this kind of trend towards the end, or do you view something that's going to cause this number of cases citing these things to increase, or kind of baseline or level off? What are your thoughts about the future there?

Christina Fugate ([21:48](#)):

I think we're going to see some consistency, but I think we're going to see the types of cases differ. So what I mentioned earlier before the cases, a lot of them are in the insurance contracts, some of the contracts relating to events and so forth. I think as we move forward, we may see the continuation of cases being filed, but there may be a spike in, for example, landlord tenant actions. Money might start running out from PPP, for example, and tenants may again not be able to afford rent. So we could see some spikes there. As businesses are reopening, we could see some more employment actions trying to get past worker's comp, particularly if

there's no statutory protections that are entered or any legislation. I think that this is probably going to be consistent, although I think we'll see some differences in the types of cases that are being filed.

Karl Harris ([22:56](#)):

Yeah. That makes a lot of sense. And one of the things we can do here, which is fun, if you're a Lex Machina subscriber, you can dive into these 126 cases, and we can see a breakdown of what case types there are. So for example, last week of the cases that had that search term matching a complaint, 45 were contracts cases, 35 were insurance cases, and 23 were employment cases at the top of the list, which is exactly what you said. And I look forward to kind of tracking this mix over time because I think like you said, 90, 100 days into it, we'll see different things are starting to come through the pipeline in terms of how COVID-19 has affected the economy.

Christina Fugate ([23:37](#)):

I think we'll see some more bankruptcy cases in the future too. So I think there might be some increase there.

Karl Harris ([23:46](#)):

Exactly. All right. Well, we have just a few minutes left, so let me hop back over to the slides here and we will take some questions from the audience. So, the first one here is actually for you, Christina. So it says, do you find that customers are less likely to enter litigation due to cost concerns during this time?

Christina Fugate ([24:14](#)):

In customers, they mean customers going to a business?

Karl Harris ([24:21](#)):

I would imagine they mean clients. So, clients less likely to get things off the ground because of cost concerns. Yeah.

Christina Fugate ([24:33](#)):

To some extent. So I've seen a mix of some clients who are very conscious of the cost concerns, and they're saying, pens down, let's not move forward. But on the other hand, I haven't seen, there's been a number of clients who have not seen any effect in their litigation spend and they are wanting to move forward. So I think it all is going to depend on who the client is, what type of business they're in, what types of industries they're in and how they may be affected from the economy and from COVID. But for the most part, I have not seen a majority of clients saying we're not going to pursue this because of costs.

Karl Harris ([25:18](#)):

Got it. Makes sense. Let's see, one more question here. And this is maybe expanding on a point that you made earlier. So it says, can you expand on reasons or trends for the increase in patent litigation filings? So I know Christina, you mentioned you had done a little bit of reading and patent litigation filings are up. Is it kind of companies circling the wagons and taking a look at their IP portfolios during downturns or what kind of reasons did you find in your research there?

Christina Fugate ([25:49](#)):

It's interesting because I referenced an article that I had read that was a similar trend happened in the last recession. It didn't really go much into the details as to why. I'm still kind of wondering that myself. I think though it is the potential on the upside the value of the patents and these cases could be a factor there. And

again, litigation funding could play a part in this as well. I don't have any statistics to back that up but that's just the thought that I have as well. But I'm curious really as to what the reasoning is and look more into that. It is a very interesting trend

Karl Harris ([26:38](#)):

Makes sense. This one's for me. So it says, is there a way to get cumulative impact from pre-COVID to post-COVID, specifically on securities and employment practice areas? And the answer is yes. In the product Lex Machina product itself, you can do all of these searches over the complaints and things like that. And you can compare the trends over time, whether it be month to month or whether you want to compare the cumulative impact, you can do that in the product itself. And we'll also be evolving this particular app that you saw over time. And there'll be more and more functionality built into it itself.

Karl Harris ([27:19](#)):

So, let's see, maybe one more question here. Will the COVID-19 app be able to show in one chart the weekly changes for a specific practice area over time versus the view now, which is just week by week in isolation? And the answer to that is the COVID-19 app will be evolving, but you can take a look at specific practice area changes over time in the product itself. So there eventually will be two ways to do it. One now, you can do it within the product, and then the second is, we'll keep an eye on the COVID-19 app as it evolves over time.

Karl Harris ([28:03](#)):

All right. Well, I wanted to thank you, Christina, for joining us. It's always great chatting with you and getting your insights. As someone on the front lines, it's really valuable for us and for our participants here. I wanted to just remind everybody, so two ways to get to the app. So one is if you're a Lex Machina subscriber, you just log into Lex Machina, click on the apps link in the banner itself. And the second way is if you're not a subscriber, you can go to lexmachina.com and you will see a link to the app from our website, and that will be available to everybody in the general public. So, thanks again, Christina. It was really nice chatting with you and we'll wrap things up now.

Christina Fugate ([28:48](#)):

Thanks, Karl.