Rhode Island Bar Journal

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Special COVID-19 Issue

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RHODE ISLAND Bar Association 1898

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An Introduction to the Business Calendar, the Business Recovery Program, and Virtual Hearings

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The goal is to offer eligible businesses a moment to breathe, after which, the business will hopefully address its debts, have the time to take advantage of federal and state loan and grant programs, and begin generating revenues again.

The Business Calendar and Its Origins

Specialized courts have existed within legal systems around the world. England, France, Germany, and Austria, for example, have operated commercial courts for decades.[1] The United States also created specialized federal courts, such as the Bankruptcy Court, Claims Court, Court of International Trade, and Tax Court, just to name a few.[2] Some states have also created specialized courts; Delaware, for example, established the Delaware Chancery Court over two hundred years ago, which is an equity court of limited jurisdiction that has become known for its preeminence in business litigation.[3]

Despite the well-settled existence of specialized courts, "business courts" are relatively new to the judicial system. In the late 1980s and early 1990s, there were growing concerns about the efficiency, predictability, expertise, and knowledge of courts presiding over complex corporate and commercial disputes.[4] Consequently, a discussion emerged to create "business courts."[5] Advocates insisted that business courts would provide a more efficient disposition of cases–removing the burden from other judges whose dockets oftentimes contained time-consuming, procedurally complex business disputes.[6] Ultimately, the New York State Unified Court System implemented one of the nation's first business courts in 1993.[7] In its first year, New York's newly formed commercial division experienced a thirty-five percent increase in disposition of matters.[8]

After 1993, business courts steadily grew in number around the nation.[9] Following that national trend, the Rhode Island Superior Court Business Calendar ("Business Calendar") was created by an administrative order in 2001.[10] The Business Calendar's implementation resulted from the "immense" amount of time that business matters stagnated before the Superior Court.[11] Its main purpose, as then-Presiding Justice Joseph F. Rogers, Jr. explained, was to establish an efficient "tracking and expeditious consideration of actions affecting jobs and businesses."[12] Presiding Justice Rodgers further expressed his hope that "[w]ith early and frequent intervention by a judge," some "businesses will not fail, will not close, and jobs won't be lost."[13] Within its first eighteen months, under the leadership of Associate Justice Michael Silverstein (ret.), the Business Calendar's efficient disposition of business matters proved a "resounding success."[14] Thirty-eight percent of the cases on the Business Calendar were closed; an "extraordinarily fast" disposition rate.[15] Based upon the success of the Providence Business Calendar, in 2011, Presiding Justice Alice B. Gibney issued Administrative Order 2011-10, expanding the Business Calendar state-wide.[16]

Since its inception, the Business Calendar has provided businesses with an expeditious forum to litigate business or commercial disputes. Significantly, it provides a venue for a business to seek the appointment of a receiver for its orderly sale, wind down, or liquidation. In certain circumstances, justices presiding over the Business Calendar have appointed non-liquidating receivers allowing businesses to operate while reorganizing its affairs. The Business Calendar's efficiency in adjudicating and administering these matters has directly affected local businesses and jobs. For instance, receivership proceedings, using a quickly initiated sale process, have resulted in new owners purchasing the business who then further invest in the business.[17] That investment results in the continuation of the business and the retention of jobs, benefiting the entire economy.[18]

COVID-19 Pandemic

The COVID-19 pandemic has spared no one: it has upended our daily lives, exacted a human toll, and brought uncertainty to our State's economic outlook. The virus has had wide-ranging effects, causing, among other things, economic turmoil as a result of the stock market's largest thirteen-day loss since May 1896.[19] On a local level, the State's businesses have been blighted as a result of governmental orders that prohibit on-premises consumption of food or drink at restaurants and

bars;[20] close non-critical retail businesses, close-contact businesses, and public recreation and entertainment establishments that conduct in-person activities;[21] impose quarantine restrictions on travelers;[22] and implement stay at home orders.[23] The economic impacts of the COVID-19 pandemic have caused numerous businesses, especially those in the hospitality industry, to voluntarily close in an attempt to stave off the economic losses of operation.[24] Other businesses have performed extensive layoffs, resulting in 162,582 unemployment filings between March 9, 2020 and April 17, 2020.[25]

Rhode Island's judiciary was no less immune to the pandemic's effects. In an effort to contain the spread of COVID-19, the Rhode Island Supreme Court, through several executive orders, has continued all trial and non-essential matters, closed certain courthouses, and imposed limitations on staffing of courthouses that remained open only on a limited basis for emergency or essential matters.[26] As a result, unless it fit into certain exceptions, a business could not seek the sort of expeditious determination usually available on the Business Calendar.

Superior Court's Response to COVID-19: The Business Recovery Program and Virtual Hearings

The Superior Court has taken two major steps to combat the detrimental effects of the COVID-19 pandemic on the State's businesses. First, recognizing the devastating financial impact that the virus has inflicted upon businesses, the Superior Court created the COVID-19 Business Recovery Plan, a non-liquidating receivership program administered by the Business Calendar.[27] Designed to further the original purposes of the Business Calendar–the preservation of economic investment and jobs in the State[28]–the program permits eligible businesses to continue operations under supervised protections of the Court.[29] Such protection includes a Court-ordered injunction against lawsuits and collection efforts. While in the program, a business and its assets remain intact and the business may continue to operate pursuant to a Court-approved business plan, under the supervision of a non-liquidating receiver.[30] The goal is to offer eligible businesses a moment to breathe, after which, the business will hopefully address its debts, have the time to take advantage of federal and state loan and grant programs, and begin generating revenues again.

Second, at the outset of the pandemic, the Rhode Island Supreme Court procured, and the Superior Court implemented, a remote video conferencing system to address the lack of immediate access to the Business Calendar and its expeditious resolution process.[31] The Presiding Justice authorized the Business Calendar to conduct certain conferences remotely. Initially, the Business Calendar used the remote video conferencing system for chambers conferences and other *ex parte* relief. However, after running a pilot, videoconference hearing procedure, the Business Calendar has implemented tools to create a virtual courtroom to conduct hearings.

Business Calendar Virtual Courtroom

Judges and attorneys are most comfortable doing things the way they have always been done–attending chambers conferences or appearing "on the record" to argue motions or present evidence and cross-examine witnesses at trials. The "on the record" proceedings have–for the history of the court–almost exclusively occurred in the courtroom with the judge, sheriff, court clerk, court reporter, attorneys, clients, and members of the public and the media in the courtroom gallery. That will now change with the implementation of the Business Calendar's virtual hearing process, which will attempt to keep the wheels of justice turning during this unprecedented time.

With the roll out of this virtual courtroom, however, participants will need to keep an open mind. Change, after all, is ever present in the practice of law as it adapts to technological advances. Faxes have turned into emails, typewriters have evolved to computers, legal research occurs online instead of in the library, cell phones make communication instantly accessible, and paper, in-person filing of court documents has become electronic. While challenging at the outset, these innovations brought about some positive changes. So, before dismissing the idea of a virtual courtroom, remember a commercial for Life Cereal in the 1970s about a boy named Mikey.[32] Keep an open mind as you begin to learn about this new process. Who knows–it may become the new norm and you may like it!

Below are some common questions about the virtual hearing process and its procedures.[33]

How did this come about?

In March of this year, the Rhode Island Supreme Court licensed WebEx Meetings & Teams ("WebEx"), a remote conference and hearing platform, for use by the State's Courts. As a result of the COVID-19 emergency, the implementation of WebEx was accelerated to permit litigants access to the courts during this unprecedented time.

What authority does the Business Calendar have to conduct remote conferences and hearings?

Rhode Island Supreme Court Executive Order 2020-04, issued on March 17, 2020, restricted the courts to hearing only emergency/essential matters until April 17, 2020.[34] On April 9, 2020, though, the Supreme Court, pursuant to Executive Order 2020-09, extended that period until May 17, 2020.[35] Significantly, that order also delegated authority to the Presiding Justices and the Chief Judges of the lower courts to permit remote conferences and hearings.[36] However, if the hearing would have been held in open court, the Court, in using remote conferences and hearings, is required to have a stenographic record, and audio available to the public contemporaneous with the virtual conference or hearing.[37] In response to Supreme Court Executive Order 2020-09, on April 14, 2020, Presiding Justice Gibney issued Administrative Order 2020-05, allowing certain types of proceedings to be held remotely.[38] These hearings include dispositive motions, administrative appeals, pre-trial motions, pre-trial conferences, receiverships, other criminal or civil matters, and matters explicitly approved in advance by the Presiding Justice.[39]

Are other jurisdictions are holding remote conferences and hearings?

Just as Rhode Island was not the first state to ratify the Constitution (it was the last[40]), it will not be the first state to implement remote hearings and conferences. State courts, including those in New York, New Jersey, California, Texas, and North Dakota, are just some of the states that have implemented remote court proceedings. The National Center for State Courts recently held a remote seminar that included best practices and lessons learned from some of these other jurisdictions.[41] Some of those recommendations have been built into the Business Calendar's virtual courtroom.

Additionally, the federal courts are using remote conferences and hearings extensively. In fact, Chief Judge John J. McConnell, Jr. recently announced that the United States District Court for the District of Rhode Island, which is already conducting telephone hearings, will begin to hold remote video hearings using Zoom, another video conferencing platform.[42]

What equipment is needed?

The WebEx platform can be accessed from any desktop or laptop computer, either Windows or Mac, that has a camera and microphone. If on a laptop or desktop, the platform can be accessed through an internet browser.

The WebEx platform can also be accessed through any Apple iPhone or Android Device that is equipped with a camera and microphone. To access the platform from these devices, the WebEx application must be downloaded on the device.

How should the participants dress for the conference or hearing?

While additional guidance may be forthcoming, the best advice is to dress as if you were at the conference or hearing at the courthouse. For example, for "on the record" proceedings, the judge may be wearing his or her judicial robe.

Key Terms in Using WebEx.

"Meetings" are all remote video calls on the WebEx platform.

"Conferences" are one type of meeting that the Court will conduct via WebEx. Traditionally, conferences occur in a judge's chambers or conference room. However, on WebEx, conferences can take place anywhere. Conferences are not on the record and are not open to the public–the participants are limited to the attorneys, court staff, and the judge. Examples of conferences include status conferences, scheduling conferences, and pre-trial conferences.

"Hearings" are another type of meeting that the Court may conduct on WebEx. Hearings traditionally take place in a courtroom and are "on the record," meaning a hearing has a full stenographic record. On WebEx, hearings will be the same; although its participants will be in remote locations. Just as in the courtroom, a hearing may include the attorneys, clients, court reporter, court clerk, the judicial officer, and members of the public. Hearings include such proceedings as receiverships, non-dispositive and dispositive motions.

"Lobby" is where a WebEx participant will be directed when he or she first joins the WebEx meeting. The judge will receive a notification that a participant is in the lobby and will then let the participant into the virtual courtroom where the conference or hearing will take place.

How does a party schedule virtual conferences or hearings?

To request a virtual conference or hearing, a party must complete a request form and email that form to the court's clerk, with a copy to all other parties.[43] The clerk will respond to the request by scheduling a date and time for the conference or hearing. Then, the requesting party may file the pleading to be considered at the conference or hearing as usual, through standard e-filing procedures.

How are parties invited to a remote conference or hearing?

The party requesting a virtual conference or hearing, and all other parties entered in the case, will receive an email invitation from the Court to attend the conference or hearing. The invitation will include a weblink to join the WebEx meeting.

How should a party prepare for the virtual conference or hearing?

As an initial step, become familiar with the WebEx system through practice. You may sign up at webex.com for a free account and set up meetings with others to practice using the system. There are several good tutorials located at webex.com under the "Learning" tab. Once familiar with WebEx, find a

suitable location to appear in the meeting. The location should be quiet, well-lit, and have a stable internet connection. Also, once a location is determined, check what is within the view of the camera, including the foreground, such as information on a desk, or the background, such as information or pictures on walls. Then, ensure the device, its camera, and its microphone are working properly. Also, practice using the WebEx system before you need to use it for a conference or hearing.

How should a participant prepare on the day of the hearing?

Approximately fifteen (15) minutes before the conference or hearing, the "join" button in the email invitation from the judge will become active. Click the join button, which will place the participant in the judge's lobby. The judge will receive notification of participants in the lobby, and will allow those participants into the virtual courtroom where the conference or hearing takes place. Once in the virtual courtroom, ensure that the video and audio buttons are active. Also, choose the gallery view and, finally, make sure that the audio is muted unless you are the one speaking.

What are the buttons at the bottom of the screen?

After joining a WebEx meeting, buttons will appear at the bottom of a participant's screen. The button furthest to the left allows a participant to mute or unmute their audio. Similarly, the button second from the left allows a participant to turn his or her video feed on or off. The third button from the left–designated with an upward arrow–which, if selected, allows a participant to "share" something on his or her computer screen with all participants, such as videos, pictures, Word documents, or PowerPoint presentations. The button second from the right will, if selected, reveal a list of all the participants in the WebEx meeting. The next button will, if selected, allow a participant to "chat" either with all participants of the WebEx meeting, or just individual participants. Finally, the last button on the right allows the participant to leave the meeting.

How does a participant change his or her view of other participants?

Views of other participants can be changed by selecting the button on the top, right-hand portion of the screen, which will reveal three different viewing choices: gallery view, speaker view, and modified speaker view. However, until proficient with WebEx, it is suggested that a participant use the gallery view.

What is the process for a conference?

The judge will begin the conference once all of the parties have been admitted to the virtual courtroom. The judge may record all or part of the conference; if it is being recorded, the judge will let all participants know in advance, and, while in the virtual courtroom, each participant will see "recording" on their screen.

What is the process for a hearing?

Even though participants are in different locations, it is the same as if the hearing were occurring in the courthouse–the judge, court clerk, court reporter, the attorneys, clients, and the public. All participants will receive WebEx invitations from the judge to join the hearing. The public will have access to a link on the courts.ri.gov webpage to listen in real-time to the audio of the hearing. While the process outlined below may be familiar, it is important to remember that–for the efficiency and clarity of the virtual hearing–only one person may speak at a time. Any party not speaking should have his or her microphone on mute.

Once all participants are in the virtual courtroom, they will be shown a short informational video, and the court clerk will call the case. Then, the attorneys will be asked by the clerk to state their name and the client(s) that they represent for the record. The judge will next ask the movant to proceed with oral argument. The judge will then ask any questions of the movant. The respondent will then proceed with oral argument, followed by questions from the judge. Finally, the judge may permit the movant to briefly respond to the arguments of the respondent. After all arguments, the judicial officer will issue a bench decision or reserve decision. The court reporter will be asked if there are any clarifications required and if any party intends to order a transcript. The Court will then end the hearing.

Conclusion

The Superior Court's creation of a Business Calendar virtual courtroom is intended to serve as an impetus for technological advancements in the court system to make it as accessible and efficient as possible. Litigants suffering from devastating financial losses flowing from the wake of the COVID-19 pandemic need a technologically accessible and efficient court to keep a business operating and keep employees on the payroll. That is what these technological advancements can deliver, adapting the court system to unprecedented times, like those that the State–and the world–is facing today.

**Hon. Brian P. Stern is an Associate Justice of the Rhode Island Superior Court and is assigned to administering the Superior Court's Providence County Business Calendar. Christopher Fragomeni is an Associate Attorney at Shechtman Halperin Savage, LLP.* *The authors appreciate the assistance of Edward Pare III, Esq. and Andrew Stern, a student at Boston College School of Law, in editing this article.*

ENDNOTES

1 *Ad Hoc Committee on Business Courts,* Business Courts: Towards a More Efficient Judiciary, *52 Bus. Lawyer 947, 950 (1997), https://www.business-courtsblog.com/wp-content/uploads/2019/01/Toward-a-More-Efficient-Judiciary-1997-01554257xB05D9.pdf.*

2 ***Id.***

3 *Lee Applebaum,* The Steady Growth of Business Courts, *National Center for State Courts 73 (2011), https://www.ncsc.org/sitecore/content/microsites/future-trends-2011/home/Specialized-Courts-Services/~/media/Microsites/Files/Future%20Trends/Author%20PDFs/Applebaum.ashx;* ***see also*** *Ad Hoc Committee on Business Courts,* ***supra*** *n.2 at 955-56.*

4 *Ad Hoc Committee on Business Courts,* ***supra*** *n.2 at 947.*

5 ***Id.***

6 ***Id.*** *at 951-52.*

7 *John F. Coyle,* Business Courts and Interstate Competition, *53 Wm.*

*& Mary Law Rev. 1915, 1918 (2012); Ad Hoc Committee on Business Courts, **supra** n.2 at 957; Applebaum, **supra** n.4 at 70.*

8 *Ad Hoc Committee on Business Courts, **supra** n.2 at 952; **see also** The Commercial Division of the Supreme Court of the State of New York,* Celebrating a Twenty-First Century Forum for the Resolution of Business Disputes, *NYcourts.gov 4-5 (Jan. 25, 2006), https://www.nycourts.gov/LegacyPDFS/courts/comdiv/pdfs/ComDiv-Jan06.pdf (discussing later efficiencies and disposition rates of the court).*

9 *Applebaum, **supra** n.4 at 70; **see also** Coyle, **supra** n.8 at 1918.*

10 ***See** Rhode Island Superior Court Administrative Order 2001-9, https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2001-9.pdf.*

11 ***See** Costello, Bethany,* Court's Business Calendar a Success, *Providence Business News (Jan. 13, 2003), https://pbn.com/courts-business-calendar-a-success11297/ (Associate Justice Michael A. Silverstein, the justice appointed to administer the Business Calendar, commented that "[h]istorically, the time that it has taken for business matters to wend their way through the courts system was immense"); **see also** Pare, Michael,* Business Calendar Aims at Court Crunch, *Providence Business News (Apr. 31, 2001), https://pbn.com/business-calendar-aims-at-court-crunch5412/ (Justice Silverstein noted that business matters, like receiverships, "have a tendency to drag on for some time" if not assigned to a single justice).*

12 *Pare, **supra** n.12; **see also** PBN Staff,* A Business-Only Court Yields Good Results for R.I., *Providence, Business News (Aug. 25, 2017), https://pbn.com/business-court-yields-significant-good-results-r/ (the Business Calendar "came into being in 2001 with the idea that by pulling business cases out of the regular stream of court proceedings, they could be resolved more quickly").*

13 *Pare, **supra** n.12.*

14 *Costello, **supra** n.12.*

15 ***Id.***

16 ***See** Rhode Island Superior Court Administrative Order 2011-10, https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2011-10.pdf.*

17 *Costello, **supra** n.12 ("Through our sales process some of these businesses end up with new owners that invest more money in them. That means employees retain their jobs and the state's economy can benefit").*

18 ***Id.***

19 *Williams, Sean,* Coronavirus Stock Market Crash: 3 Stocks You Need to Own, *Nasdaq (Mar. 22, 2020), https://www.nasdaq.com/articles/coronavirus-stock-market-crash%3A-3-stocks-you-need-to-own-2020-03-22.*

20 ***See** State of Rhode Island and Providence Plantations Exec. Order No. 20-04, https://governor.ri.gov/documents/orders/Executive-Order-20-04.pdf.*

21 ***See** State of Rhode Island and Providence Plantations Exec. Order No. 20-09, https://governor.ri.gov/documents/orders/Executive-Order-20-09.pdf; **see also** State of Rhode Island and Providence Plantations Exec. Order No. 20-13, https://governor.ri.gov/documents/orders/Executive-Order-20-13.pdf.*

22 ***See** State of Rhode Island and Providence Plantations Exec. Order No. 20-03, https://governor.ri.gov/documents/orders/Executive-Order-20-03.pdf; **see also** State of Rhode Island and Providence Plantations Exec. Order No. 20-10, https://governor.ri.gov/documents/orders/Executive-Order-20-10.pdf; **see also** State of Rhode Island and Providence Plantations Exec. Order No. 20-12, https://governor.ri.gov/documents/orders/Executive-Order-20-12.pdf.*

23 *State of Rhode Island and Providence Plantations Exec. Order No. 20-13, https://governor.ri.gov/documents/orders/Executive-Order-20-13.pdf.*

24 *Amaral, Brian & Ciampa, Gail,* Several Providence Restaurants and Bars Close Voluntarily; City Closes Two for Limit Violations, *Providence Journal (Mar. 15, 2020), https://www.providencejournal.com/foodanddining/20200315/several-providence-restaurants-and-bars-close-voluntarily-city-closes-two-for-limit-violations.*

25 *PBN Staff,* COVID-19 UI claims reach 127,150 in R.I., *Providence Business News (Apr. 17, 2020), https://pbn.com/covid-19-ui-claims-reach-127150-in-r-i/?utm_source=ActiveCampaign&utm_medium=email&utm_content=13+more+COVID-19+deaths+in+R+I+%3B+cases+pass+4K&utm_campaign=Daily_2020_0417.*

26 ***See** Rhode Island Supreme Court Exec. Order Nos. 2020-04, 2020-05, 2020-06, 2020-07, 2020-08, 2020-09, https://www.courts.ri.gov/Courts/SupremeCourt/Pages/ExecutiveOrders/ExecutiveOrders2020.aspx.*

27 ***See** Rhode Island Superior Court Administrative Order 2020-04, https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/20-04COVID-19BusinessRecoveryPlan.pdf.*

28 ***See** Rhode Island Superior Court Administrative Order 2001-9, **supra** n.11 at 1.*

29 Business Recovery Plan, *Courts.ri.gov, https://www.courts.ri.gov/Courts/SuperiorCourt/Pages/BusinessRecoveryPlan.aspx (last visited Apr. 19, 2020).*

30 ***See id.***

31 ***See** Rhode Island Supreme Court Exec. Order 2020-04, https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-04.pdf.*

32 *You may even want to take one minute and watch this classic commercial: https://youtu.be/OiCIP6tQwz0.*

33 *In addition to the below, the Business Calendar has created an introductory video about the virtual hearing process, which can be viewed at https://stern145.smugmug.com/Superior-Court-Remote-Hearing/i-2CCWHhN/A. Additionally, the Business Calendar has conducted a full test virtual hearing, which can be viewed at https://stern145.smugmug.com/Superior-Court-Remote-Hearing/i-rNHth3N/A.*

34 ***See supra** n.32.*

35 ***See** Rhode Island Supreme Court Exec. Order No. 2020-09, https://www.courts.ri.gov/Courts/SupremeCourt/SupremeExecOrders/20-09.pdf.*

36 ***See id.***

37 ***See id.***

38 ***See** Rhode Island Superior Court Exec. Order No. 2020-05, https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorAdmOrders/20-05.pdf.*

39 ***See id.***

40 *Payne, Samantha,* "Rogue Island": The Last State to Ratify the Constitution, *archives.gov (May 18, 2015), https://prologue.blogs.archives.gov/2015/05/18/rogue-island-the-last-state-to-ratify-the-constitution/.*

41 Webinar: Lights, Camera, Motion!: Act II More Tips on Conducting Remote Hearings, *National Center for State Courts (April 15, 2020), https://vimeo.com/408411009.*

42 ***See** US District Court RI (@USDC_RI), Twitter (Apr. 20, 2020, 12:15 PM), https://twitter.com/USDC_RI/status/1252269800300167169; **see also** United States District Court for the District of Rhode Island,* Participating in a Zoom Video Conference, *https://www.rid.uscourts.gov/participating-zoom-video-conference (last visited Apr. 21, 2020).*

43 *A virtual hearing form is available at https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorMiscOrders/Business_Calendar_Motions_Protocal_4-21-20.pdf.* ◊

The Government CARES for You

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "Act"). The Act addresses the coronavirus pandemic by directing funds to address the strains on the health care system as well as alleviate the economic pressures facing the country's employers and workers through expanded unemployment benefits and individual and business tax changes. A brief look at them follows.

BUSINESS RELATED RELIEF

Employee Retention Tax Credit

The Act provides tax credits equal to fifty percent of employment taxes for qualified wages (up to $10,000), including health benefits, paid to each employee. The tax credit is effective for wages paid between March 13, 2020 to December 31, 2020. Eligibility for the credit is predicated on (i) the employer carrying on a trade or business in 2020 and the operation of that business is fully or partially suspended (for specified reasons) by the government (federal, state or local) due to COVID-19, or (ii) the business has seen a significant decline in gross revenue (50% less than in the calendar quarter of the prior year) and for so long until the business recovers to eighty percent of prior year's revenue. A business may not make this election if the business elects to receive a loan under the Paycheck Protection Program.

The Act allows defined benefit plan sponsors to delay making minimum required contributions to meet funding standards for the 2020 calendar year until January 1, 2021.

For businesses with one hundred (100) or fewer employees, all employee wages qualify for the credit, regardless of whether the employer is open for business or subject to a shut-down order. For businesses with more than one hundred (100) full-time employees, qualified wages are wages paid to employees when they are not working due to the COVID-19-related circumstances.

The Act postpones payment of employer and self-employed individual's payroll taxes (6.2 percent portion of Social Security taxes) until December 31, 2021 for half (1/2) of the amount due, with the other half due on December 31, 2022.

Small Business Support

The Paycheck Protection Program provides relief to small businesses (less than 500 employees), sole proprietorships, independent contractors and the self-employed, as well as non-profit organizations, tribal businesses and veteran organizations through loans to pay salaries, benefits, payroll costs, mortgage interest, utilities, and interest on certain debt obligations. Every applicant is required to certify that the funds "will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." For eligibility purposes, every business should count all employees, including full-time, part-time and temp workers as well as independent contractors. Businesses and owners currently in bankruptcy, delinquent on a federal loan or who have defaulted on a federal loan in the past seven years are not eligible for the loans. The program runs retroactively from February 15, 2020 to June 30, 2020.

The program provides for forgiveness of the loan in an amount equal to the sum of the following costs incurred (payroll costs, mortgage interest, rent obligations, or any covered utility payment) over an eight (8) week period after the loan is funded. Employees who make more than $100,000 a year are excluded. Any loan amount forgiven will not be considered taxable income to the business.

Loan Guarantee Program

The Act provides loans and guarantees for eligible businesses, states, and municipalities. The Act prohibits, as a condition of receiving the funds, stock buybacks or payments of dividends until twelve (12) months after the loan is no longer outstanding. It also limits compensation and severance payments for highly compensated employees. Even businesses that have laid off employees are eligible for funds if they intend to restore at least ninety percent of their workforce as of February 1, 2020, and to restore all compensation and benefits to workers no later than four (4) months

after the termination date of the public health emergency.

Paid Leave Provisions

Under the Act an employer can pay more than the $511 per day and $5,110 in the aggregate to employees either advised to self-quarantine or experiencing COVID-19 symptoms. Employees using leave to care for a family member, provide child care, or experiencing any other substantially similar condition to coronavirus can receive $200 per day and $2,000 in aggregate.

TAXPAYER RELIEF

Income Tax Credit

Qualifying individuals (those with a social security number and do not qualify as the dependent of another) will receive a refundable income tax credit in 2020. The credit amount will be calculated based on 2019 tax returns that have been filed (2018 returns in cases where a 2019 return hasn't been filed) and sent automatically via check or direct deposit to qualifying individuals.

The credit amount is $1,200 per individual ($2,400 if married filing a joint return) plus $500 for each qualifying child under age 17. The credit is phased out for those with adjusted gross income (AGI) exceeding $75,000 ($150,000 if married filing a joint return, $112,500 for those filing as head of household). For those with AGI exceeding the threshold amount, the allowable rebate is reduced by $5 for every $100 in income over the threshold and is fully phased out when AGI reaches $99,000 ($198,000 for married filing jointly).

Unemployment Provisions

The Act will provide individuals eligible for unemployment insurance benefits through their existing state programs, with an additional $600 per week of "Federal Pandemic Unemployment Compensation" to be paid through July 31, 2020. A state may also agree to waive its "waiting week" and pay unemployment benefits to eligible individuals on the first week of unemployment, with states receiving full reimbursement of those monies from the federal government.

Recipients may also receive "Pandemic Emergency Unemployment Compensation" in the form of an additional thirteen (13) weeks of unemployment benefits. These benefits will be paid through the states to individuals who have exhausted all other unemployment benefits and are able to work, available to work, are actively seeking work but unemployed, or unable to work because the individual: (i) has COVID-19; (ii) has a household member who has COVID-19; (iii) is providing care to a family member who has COVID-19; (iv) has a child who is out of school due to a COVID-19 related closure; (v) cannot get to work due to quarantine; (vi) cannot go to work because the place of employment is closed due to COVID-19; or (vii) has been advised by a health care provider to self-quarantine.

Eligible individuals also include those that are self-employed, an independent contractor or consultant, seeking part-time employment, or otherwise would not qualify for regular unemployment. Pandemic unemployment assistance is available not only if such individuals are "unemployed" but also if "partially unemployed." This benefit is not available, though, if and when such individuals are receiving paid sick leave or other paid leave benefits, including such benefits available to independent contractors under the federal Families First Coronavirus Response Act or a state law providing such paid benefits to self-employed workers.

RETIREMENT PLANS

Required Minimum Distributions

The Act removes the requirement for individuals to take a required minimum distributions (RMDs) from an employer-sponsored retirement plan (defined contribution plan or deferred compensation plan) or IRA in 2020. This includes any 2019 RMDs that would otherwise have to be taken in 2020. This applies to: (i) individuals that have been taking annual RMDs; and (ii) those who turned 70½ in 2019. Individuals that have already taken an RMD in 2020 have sixty (60) days to roll it back into the plan or IRA. In addition, if a retirement plan owner dies during this time period, the beneficiaries who inherit the plan can ignore 2020 when satisfying the five (5) year rule for distributions (effectively making it a six (6) year rule).

The ten percent early-distribution penalty tax that applies to distributions made prior to age 59½ (unless an exception applies) is waived for retirement plan distributions of up to

$100,000 relating to the coronavirus. When an employee makes a withdrawal from a company-sponsored retirement plan under this provision, the plan administrator may rely on the employee's certification that a withdrawal is coronavirus-related.

Loan Limits

Loan limits from employer-sponsored retirement plans are expanded from $50,000 to $100,000 (but not more than the plan balance), with repayment delays up to a year provided.

Required Employer Contributions

The Act allows defined benefit plan sponsors to delay making minimum required contributions to meet funding standards for the 2020 calendar year until January 1, 2021. Employers that take advantage of this relief must pay interest on the delayed contributions for the period from when the contributions were originally due to when the contributions are paid. The interest owed is calculated at the plan's effective interest rate for the plan year which includes the payment date.

Hardship Withdrawals and Distributions

Employers may adopt the Act's provisions for coronavirus-related distributions from 401(k), 403(b) and governmental 457(b) plans. Eligibility for a hardship withdrawal applies if (i) the participant or the participant's spouse or dependent is diagnosed with SARS-CoV-2 or COVID-19 by a CDC-approved test or (ii) the participant experiences adverse financial consequences due to a coronavirus-related impact on employment.

Coronavirus-related hardship distributions (i) must be made between January 1, 2020 and December 31, 2020; (ii) cannot exceed $100,000; and (iii) will not be subject to the ten percent tax. Participants can elect to recognize income on the distributions over a three (3) year period or contribute the amount to an eligible plan or IRA within three (3) years of the distribution.

CHARITABLE CONTRIBUTIONS

Individuals who do not itemize their tax deductions may deduct up to $300 for contributions made to charity in 2020. Individuals who itemize deductions may deduct one hundred percent of their contributions against their 2020 adjusted gross income. Corporations that make a contribution to charity may deduct up to twenty-five percent of their taxable income (increased from ten percent). The deduction is limited to gifts of cash to public charities and not to a private foundation, donor-advised fund, or supporting organization.

STUDENT LOANS

The Act provides a six (6) month automatic payment suspension for any student loan held by the federal government through September 30, 2020. The suspension applies to both principal and interest payments. Employer's may continue to pay up to $5,250 of an employee's student loan payments, under an education assistance program, and have it excluded from the employee's taxable income.

BANKRUPTCY RELIEF

The Act increases (from $2,725,625 to $7.5 million) the amount of debt a small business may have while reorganizing as part of a bankruptcy. The increased debt amount only applies to cases filed after the Act became effective and is applicable for one (1) year, absent an extension.

PRIOR LEGISLATIVE RELIEF

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was signed into law. The FFCRA included relief provisions (i) requiring health plans to cover COVID-19 testing at no cost to the patient; (ii) requiring employers with fewer than five hundred (500) employees to provide paid sick leave to employees affected by COVID-19 who meet certain criteria; (iii) paid emergency family and medical leave in other circumstances; and (iv) payroll tax credits for required sick, family and medical leave paid.

Eligible employers may receive two (2) types of refundable sick leave credits, as well as a child care leave credit. The credits vary depending upon whether the employee (i) is unable to work because of COVID-19 quarantine or self-quarantine, or who is suffering from COVID-19 related symptoms and is seeking a medical diagnosis; and (ii) is caring for someone with COVID-19 or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to COVID-19. ◊

The Constitution and Federalism in the Age of Pandemic

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Myriad fundamental constitutional guarantees are at risk during a public health crisis. The most prevalent are the First Amendment guarantees of the Free Exercise of Religion and the "right of the people peaceably to assemble" – both being applied to the states through the doctrine of incorporation under the 14th Amendment to the Constitution.

In the age of pandemic, we must understand what parameters the Framers of the United States Constitution (Constitution) laid, regarding federal and state powers, in anticipation of such uncertain and turbulent times as now. It is also necessary to examine the United States Supreme Court (Supreme Court) precedent relative to the constitutional guarantees of the people that are inevitably called into question during a public health crisis.

Our federalist system of government reflects the principle of subsidiarity–that the best guarantee of a citizen's happiness and liberty lies in the lowest level of his government. In 1788, James Madison wrote, "[t]he powers delegated by the ... Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.*** The powers reserved to the several States will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state."[1]

Affirming the basic principles of federalism, Chief Justice John Roberts, wrote, "[t]he Federal Government ... must show that a constitutional grant of power authorizes each of its actions."[2] "The same does not apply to the States, because the Constitution is not the source of their power. The Constitution may restrict state governments–as it does, for example, by forbidding them to deny any person the equal protection of the laws. But where such prohibitions do not apply, state governments do not need constitutional authorization to act. The states thus can and do perform many of the vital functions of modern government***even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the 'police power.'[3]

Moreover, "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."[4] "Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The Framers thus ensured that powers which 'in the ordinary course of affairs, concern the lives, liberties, and properties of the people' were held by governments more local and more accountable than a distant federal bureaucracy.[5] The independent power of the states also serves as a check on the power of the Federal Government: 'By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.'"[6]

Where does the Federal Government Fit in During a Pandemic?

"The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'"[7] Specifically, the President may not make laws, but only recommend laws he thinks are good, veto laws he thinks are bad, and "take care" to see that the laws of the legislative branch are carried out.[8] With proper authority, though, the President may impose Executive Orders, which liken to a general law. And, in the case of a national emergency or pandemic, the Congressional grant of authority to the executive branch is vast.

On March 13, 2020, President Donald J. Trump declared a National Emergency,[9] owing to the current pandemic COVID-19.[10] His Executive Order and the National Emergency Declaration primarily cite four statutes as sources of executive branch power here: National Emergencies Act[11] (NEA), the Public Health Service Act[12] (PHSA), the Defense Production Act of 1950[13] (DPA), and the Stafford Act[14] (SA).

The landmark case, interpreting the constitutionality of an Executive Order, is ***Youngstown Sheet & Tube Co. v. Sawyer.***[15] Justice Jackson's concurrence therein is most cited when a Presidential Executive Order faces a constitutional challenge. Specifically, Justice Jackson stated that,

a President's powers, "are not fixed but fluctuate depending on the disjunction or conjunction with those of Congress."[16]

"Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, '[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.' ***Youngstown***, 343 U.S., at 635, 72 S.Ct. 863 (Jackson, J., concurring). Second, '[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.' ***Id.***, at 637, 72 S.Ct. 863. In this circumstance, Presidential authority can derive support from 'congressional inertia, indifference or quiescence.' ***Ibid.*** Finally, '[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb,' and the Court can sustain his actions 'only by disabling the Congress from acting upon the subject.' ***Id.***, at 637-638, 72 S.Ct. 863."[17]

In today's pandemic, the executive branch is acting pursuant to broad specific Congressional grants of authority under the NEA, PHSA, DPA, and the SA. Neither Congress nor any state challenge the validity of these statutes. Under ***Youngstown Sheet*** and its progeny, the President's authority is presently "at its maximum."[18] Indeed, the power of the executive branch during a pandemic is arguably plenary. A review of the breadth of each Congressional grant of authority to the executive branch, and Congress' strict elimination of judicial review in time of pandemic, illuminates the analysis.

The most expansive Congressional grant of executive branch authority is the Public Health Service Act.[19] The executive branch's Secretary of Health and Human Services (HHS), Alex Azar, specifically invoked the PHSA 42 U.S.C. 247d on March 10, 2020 under a Declaration relating to COVID-19 preparedness and countermeasures.[20] And, President Trump's March 13, 2020 Executive Order also cites the PHSA as an enabling authority. The Centers for Disease Control and Prevention, Food and Drug Administration, and National Institutes of Health all fall under the executive branch's Department of Health and Human Services. The Federal Emergency Management Agency (FEMA) falls under the executive branch's Department of Homeland Security.

Significantly, the PHSA precisely restricts the level of judicial review of decisions made by the HHS Secretary during a pandemic–regarding federal countermeasures. Moreover, the PHSA sets forth a Congressional intent to preempt any alternative state plan that runs counter to the federal countermeasures plan.

Specifically, "[d]uring the effective period of a declaration [under the PHSA]..., or at any time with respect to conduct undertaken in accordance with such declaration, no State or political subdivision of a State may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that–

(A) is different from, or is in conflict with, any requirement applicable under this section; and

(B) relates to the design, development, clinical testing or investigation, formulation, manufacture, distribution, sale, donation, purchase, marketing, promotion, packaging, labeling, licensing, use, any other aspect of safety or efficacy, or the prescribing, dispensing, or administration by qualified persons of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]."[21]

Congress, exerting its enumerated power under Article III § 1 of the Constitution, to establish all "inferior [federal] Courts," including the kinds of cases they may hear, provided, in times of a pandemic, that the decisions of the executive branch made pursuant to the PHSA are entirely insulated from judicial review. Explicitly, Congress established that, "[n]o court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this [PHSA] subsection."[22]

At least as to the decisions of the executive branch in developing and executing countermeasures during a pandemic, the executive branch's power is plausibly plenary. Although one could thinly argue that a challenge to the Supreme Court would remain. The Supreme Court, ultimately, has the option of refusing to hear the case claiming that it is "non-justiciable" as a "political question"–meaning, it involves a dispute, the resolution of which is reserved for a coordinate branch of government (i.e. legislative or executive). Therefore, invoking prudential considerations of separation of powers, the Supreme Court would likely not reach the merits of any constitutional challenge in the narrow context of the PHSA.[23]

Collaborating and coordinating with the several states is integral in the time of a pandemic. The current President relied on the "major disaster" category of the Stafford Act to declare all fifty states a "major disaster."

"The Stafford Act is the principal federal emergency-response statute in the United States.*** While a powerful tool for the Executive Branch, the scope of the Stafford Act is narrow, and the key 'provisions are triggered only by severe, natural, or manmade disasters that exhaust local and state resources.'... The Stafford Act attempts to strike a balance between honoring states' prerogatives in addressing local and state events, and providing a federal coordination scheme when emergency events are too severe for local or state authorities to handle."[24]

"[E]mbedded in the Stafford Act are principles of federalism and dual sovereignty. With rare exception, the management of a disaster is reserved to the affected state, unless and until the state actively seeks federal assistance.*** In other words, the Stafford Act is state-centric in form, but its practical effect is to strengthen federal involvement following emergencies."[25]

The intent of Congress, "by [the Stafford Act], [is] to provide an orderly and continuing means of assistance by the Federal Government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which

result from such disasters."[26] Ultimately, the purpose of the Stafford Act is to provide a means for states to seek assistance from the federal government, in times like a pandemic, when their resources and state government systems have been overwhelmed and can no longer meet the needs of the state in combating the pandemic. Notwithstanding, the relief provided under the Stafford Act is to supplement–not supplant–the state's primary obligation, under the principles of federalism and the 10th Amendment (to provide for the health, safety, and general welfare of its citizenry).[27] Nevertheless, the fervent participation of both state and federal government is essential–without which the disaster may never be ameliorated.

Are constitutional guarantees suspended in the time of a pandemic?

In the age of pandemic, the first casualty will always be liberty to some degree. How does a government provide for the common good and safety of its citizens while preserving the fundamental constitutional principles of liberty, justice, due process and equal protection? The longer the deprivation of the citizens' constitutional guarantees persists, the greater the likelihood the citizens will challenge the scope of the state's actions. "Society [,however,] based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy."[28]

Presuming that the legislative branch of each state properly empowered its Governor to issue pointed Executive Orders in times of a public health emergency like a pandemic, the Supreme Court has generally held, that, "While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law."[29] Specifically, the Supreme Court has held it constitutional for a state to quarantine, against his will, an apparently healthy American Citizen who had traveled aboard a ship where there were cases of "yellow fever or Asiatic cholera," and also upheld a Massachusetts mandatory vaccination law during an outbreak of smallpox.[30] The state's power in a public health crisis, however, is not absolute.

Excepting the Free Exercise of Religion discussed below, the Supreme Court generally applies a mere rational basis test in reviewing state government actions in the time of a public health emergency–extending significant deference to the medical and other experts analyzing the crisis on the ground.[31] To strike down a state regulation in such time, the challenger must prove there is a "palpable invasion of rights secured by the fundamental law" of the Constitution, "beyond all question," by proving that the "means prescribed by the State," "to stamp out the disease," [have] no real or substantial relation to the protection of the public health and the public safety."[32] If so proven, "... it is [then] the duty of the courts to so adjudge, and thereby give effect to the Constitution."[33]

Myriad fundamental constitutional guarantees are at risk during a public health crisis. The most prevalent are the First Amendment guarantees of the Free Exercise of Religion and the "right of the people peaceably to assemble"–both being applied to the states through the doctrine of incorporation under the 14th Amendment to the Constitution.[34] Challenges of state violations of a citizen's constitutional "due process" and "equal protection" guarantees are also at the forefront now.[35] However, "in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."[36]

Still, even in the time of a public health crisis, "the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations **so arbitrary and oppressive in particular cases as to justify the interference of the courts** to prevent wrong and oppression."[37] The inquiry is one of degree. How much is too much? How long is too long? The Supreme Court has not held that restraints against individual constitutional guarantees may be imposed until the pandemic is totally eradicated or a definitive cure or vaccine is found.

To date, notwithstanding Rhode Island being so near to the East Coast epicenter of the COVID-19 pandemic, Governor Gina M. Raimondo marshaled significant cooperation from the community (i.e. religious leaders, business owners, and representative delegations of various industries), along with the voluntary participation of the majority of Rhode Island's citizens. There are, however, other states whose restrictions may be reasonably challenged as "arbitrary and capricious," or "wrong and oppressive."[38]

For example, to allow a citizen to ride in a canoe but not a powerboat, to buy groceries but be denied purchasing garden seeds in the same store, to prohibit simple activity on one's own property, to restrict the Second Amendment, to fine religious service participants in a "drive-through" religious service, and the establishment of a curfew, are executive orders which a citizen may justifiably call in to question. Protests are inevitable and generally protected by the Constitution.

However, much like a person does not have the constitutional right to yell, "Fire!" in a crowded theater, a state may be within its authority to restrict protest gatherings that do not comport with the un-challenged restrictions advancing protection of the public health and safety of the citizens at large. Because, "[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or property, regardless of the injury that may be done to others."[39]

What about the religious institutions?

Few religious leaders formally challenged various state's determination that "religious organizations" are "non-essential" to the citizens of their state. Notwithstanding, the first lawsuits filed in this pandemic involve claims of deprivation of the First Amendment guarantee[40] of the "Free Exercise of Religion."[41] These cases fall into two general categories: (1) the exclusion of

religious organizations from the state's designation of "essential" businesses; and, (2) a state's different treatment of religious organizations, which were designated as "essential" businesses, as compared to other secular "essential" businesses in the same state. The present cases fall within the second category.

In support of one of the suits, the Justice Department recently argued that, "The Court should apply heightened scrutiny under the Free Exercise Clause if it determines, after applying appropriate deference to local officials, that the church has been treated by the city [or State] in a non-neutral and generally non-applicable manner."[42] They also argued that, "if the Court determines that the city's [or State's] prohibition is not in fact the result of a neutral and generally applicable law or rule, then the Court may sustain it only if the city [or State] establishes that its action is the least restrictive means of achieving a compelling governmental interest."[43] When states treat secular and non-secular institutions equally, the Supreme Court has upheld public health laws and regulations which may go against individual religious beliefs.[44] But, targeted unequal treatment of any religious organization is forbidden.[45]

When will it end?

Constitutional rights are not extinguished in a pandemic. However, "...the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."?[46] The state may place reasonable restrictions on those rights–provided they are not arbitrary, capricious, or oppressive, and are substantiated by facts and science. Even so, those reasonable restrictions cannot be overreaching or indefinite.

Particular freedoms, like the free exercise of religion, may enjoy a higher level of judicial scrutiny–and, challenges to the "non-essential" designation of religious organizations are likely ripe for judicial review. The federal and state governments are meant to work in concert in the time of pandemic–with states carrying the greater burden to provide for its citizens, while being subject to federal guidelines and preemption. The federal government provides assistance to overwhelmed states. One truth emerges in time of pandemic–the government established by the Framers of the Constitution is sufficiently instituted to provide for the protection of liberty and the preservation of the people of these United States.

ENDNOTES

1 *The Federalist Papers, No. 45 (J. Madison).*
2 ***See, e.g., United States v. Comstock**, 560 U.S. 126, 130 S.Ct. 1949, 176 L.Ed.2d 878 (2010).*
3 ***National Federation of Independent Business v. Sebelius**, 132 S.Ct. 2566, 567 U.S. 519, 183 L.Ed.2d 450, 80 U.S.L.W. 4579, 23 Fla.L.Weekly Fed. S 480, (2012); **See, e.g., United States v. Morrison**, 529 U.S. 598, 618-619, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000).*
4 ***See, New York v. United States**, 505 U.S. 144, 181, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). (internal quotation marks omitted).*
5 *The Federalist No. 45, at 293 (J. Madison).*
6 ***National Federation of Independent Business v. Sebelius**, 132 S.Ct. 2566, 567 U.S. 519, 183 L.Ed.2d 450, 80 U.S.L.W. 4579, 23 Fla.L.Weekly Fed. S 480, (2012), **citing, Bond v. United States**, 564 U.S. 211, 222, 564 U.S. 211, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269, 280 (2011)).*
7 ***Medellin v. Texas**, 128 S.Ct. 1346, 552 U.S. 491, (2008) **citing, Youngstown Sheet & Tube Co. v. Sawyer**, 343 U.S. 579, 585 (1952).*
8 ***Youngstown Sheet & Tube Co. V. Sawyer**, 343 U.S. 579 (1952); U.S. Const., art. II, § 3.*
9 *50 U.S.C. § 34 1601 et seq.*
10 *Presidential Proclamation, Proclamation of Declaring a national Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020). https://www.whitehouse.gov,presidential-actions/proclamation-declaring-national-emergency- concerning-novel-coronavirus-disease-covid-19-outbreak/.*
11 *50 U.S.C. ch. 34 § 1601 et seq.*
12 *42 U.S.C. 247d.*
13 *50 U.S.C. App. 2061 et seq.*
14 *42 U.S.C. ch. 68 § 5121 et seq.*
15 *343 U.S. 579, 585 (1952).*
16 ***Youngstown Sheet & Tube Co. v. Sawyer**, 343 U.S. 579, 635 (1952).*
17 ***Medellin v. Texas**, 128 S.Ct. 1346, 552 U.S. 491, 525 (2008).*
18 *Notably, in **Youngstown Sheet**, the President did not rely on any congressional authority in his attempt to seize the steel mills to intervene in a labor dispute. Here, however, we have no labor dispute but a national emergency in the form of a pandemic. The President has rightly claimed the specific grant of Congressional authority to the executive branch under the Defense Production Act of 1950 to deal with and mitigate the pandemic.*
19 *42 U.S.C. 247d.*
20 *"Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19.", Federal Register Doc. 2020-05484 Filed 3-12-20; 4:15 p.m.*
21 *42 U.S.C. § 247d-6d(b)(7) – Targeted liability protections for pandemic and epidemic products and security countermeasures.*
22 *42 U.S.C. § 247d-6d(b)(7) – Targeted liability protections for pandemic and epidemic products and security countermeasures.*
23 ***Baker v. Carr**, 369 U.S. 186 (1962).*
24 *96 Nebraska L. Rev. 509. **Networking Emergency Response: Empowering FEMA in the Age of Convergence and Cyber Critical Infrastructure.***
25 *41 Wake Forest L. Rev. 835. **Regulating The Business of Insurance: Federalism in an Age of Difficult Risk.***
26 *42 U.S.C. ch. 68 § 5121.*
27 *Generally, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"–said inherent powers being restricted only to the extent the State action infringes on some other part of the U.S. Constitution's rights or guarantees to the people. U.S. Const., amend. X.*
28 ***Jacobson v. Massachusetts**, 197 U.S. 11, 26 (1905).*
29 ***Jacobson v. Massachusetts**, 197 U.S. 11, 38 (1905).*
30 ***Jacobson v. Massachusetts**, 197 U.S. 11, 29 (1905).*
31 ***Jacobson v. Massachusetts**, 197 U.S. 11 (1905).*
32 ***Jacobson v. Massachusetts**, 197 U.S. 11, 31 (1905).*
33 ***Id.***
34 *Constitutional challenges invoking the 4th Amendment to the U.S. Constitution and "Privileges and Immunities" Clause of the 14th Amendment to the U.S. Constitution are outside the scope of this article.*
35 *U.S. Const. art. 14.*
36 ***Jacobson v. Massachusetts**, 197 U.S. 11, 29 (1905).*
37 ***Jacobson v. Massachusetts**, 197 U.S. 11, 38 (1905) (emphasis supplied).*
38 ***Jacobson v. Massachusetts**, 197 U.S. 11, 38 (1905).*
39 ***Jacobson v. Massachusetts**, 197 U.S. 11, 26 (1905).*
40 *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const., amend. I.*
41 ***See, Temple Baptist Church, et al. v. City of Greenville**, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi); **First Baptist Church, et al. v. Governor Laura Kelly**, Case No. 6:-CV-01102 (U.S. District Court For the District of Kansas).*
42 *"The United States' Statement of Interest In Support of Plaintiffs," **Temple Baptist Church, et al. v. City of Greenville**, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi).*
43 ***Temple Baptist Church, et al. v. City of Greenville**, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi) at p. 8, **citing**, Church of the Lukumi Babalu Aye, 508 U.S. 520, 546 (1993).*
44 ***Jacobson v. Massachusetts**, 197 U.S. 11, 29 (1905).*
45 ***See, Trinity Lutheran Church of Columbia, Inc. v. Comer**, 137 S.Ct. 2012, 2019 (2017).*
46 ***Jacobson v. Massachusetts**, 197 U.S. 11, 26 (1905).* ◊

Conducting Arbitrations and Mediations Remotely During the COVID-19 Crisis and Beyond

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The virtual waiting room is an ideal feature for arbitrations and mediations, as it allows the host to select parties to communicate with privately, speak to attorneys separate from their clients, or to hold witnesses until their testimony is needed.

On March 9, 2020, Governor Gina Raimondo issued a Declaration of Disaster relating to the COVID-19 crisis, the first of more than two Executive Orders establishing restrictions and guidelines aimed at preventing the spread of disease. Executive Order 20-08, issued on March 22, 2020, required all business service providers, including legal services, to work from home and permitting only critical employees to work on the business premises.

As the litigation community struggles to conduct its business with court calendars suspended and lawyers and staff operating remotely, remote platforms that allow virtual meetings provide an excellent resource to accommodate our work. In Rhode Island especially, with low-cost, non-binding arbitrations available in many cases prior to suit[1] or while the suit is pending,[2] virtual meeting technology is especially useful in arbitrations and mediations.

Virtual Meeting Platforms

There are numerous video conferencing platforms, many of which are available for no cost to both the meeting organizer and participants–Skype, Google Meet, WebEx and Zoom, to name a few. In my arbitration practice, I have used at least three of these products, depending upon the specific needs of lawyers using my services, and have found all to have similar basic features–e.g., video conferencing, meeting management, and recording options–and are easy to use. In my view, Zoom's intuitive interface and integration with third-party software is superior, which is why Zoom is my default platform to conduct arbitrations and mediations and is the primary model in this article. Those unfamiliar with the platform can view a demo here (https://www.youtube.com/watch?v=VnyitUU4DUY).

How it Works

Zoom requires little to no training as it generally only requires a one-touch link to join or start a meeting from any number of devices, so long as they have a camera and speakers and, of course, secure internet access. Tech requirements can be found here (https://www.youtube.com/watch?v=FnFSBjFvK2o). As in all facets of a remote practice, a strong WiFi signal and adequate broadband speed are crucial. The video conference will be much more effective with strong, stable video and sound quality.

On most devices, you can join computer/device audio by clicking Join Audio, Join with Computer Audio, or Audio to access the audio settings. Those who can't access Zoom may want to dial-in instead of, or in addition to, video conferencing on your computer. Meeting invitations, as with my Zoom-integrated notices of arbitration, will have both a video link and a phone-in number, in addition to a meeting ID. A good practice is to use the one-click **Add to Calendar** feature on your invitation, otherwise you may find yourself scouring invites for the link as the appointment is about to begin. A sample:

Appointment Scheduled

for Roe v. Doe Sample Notice /Attys Smith and Jones

What Court-Annexed Arbitration (Melody Alger)
When Monday, June 1, 2020 12:00pm
Where ALGER LAW LLC
1300 Division Road, Suite 206
West Warwick, RI 02893
OR VIA ZOOM:
URL: https://zoom.us/j/98812842582
Meeting ID: 98812842582
To Dial-In to the Videoconference:
(646) 558-8656; Input Mtg ID when prompted

Change/Cancel Appointment
Add to iCal/Outlook Calendar
Add to Google Calendar

Powered by Acuity Scheduling

The attorneys may provide the link to their clients, witnesses, or adjusters attending, or provide the person scheduling the arbitration with emails of all attendees to be included in the invitation or notice.

Conducting the Videoconference

Attorneys should prepare for their virtual arbitration in the same manner as if the arbitration were being conducted in person. Prior to the date of the hearing, an arbitration package should be **emailed** to the arbitrator and other parties to ensure receipt prior to the hearing. Ensure you have communicated with your client or witness prior to hearing not only about the substance of his testimony, but also as to how the arbitration will be conducted.

When attending a conference or hearing remotely, it's tempting to ignore formalities. But, particularly when clients, witnesses or insurance adjusters are attending, dress professionally and be attentive of your background. If your surroundings aren't neat or reveal too much about you personally, one has the option of choosing a virtual background through Zoom.

In most cases, the link provided will take the participants to a virtual waiting room until the arbitrator allows them to join. When admitted, participants are connected and thumbnails at the top of the screen with the speaker–initially the arbitrator–in the center. A host's screen will appear like this.

Virtual arbitrations are conducted as effectively as those held in person. The virtual waiting room is an ideal feature for arbitrations and mediations, as it allows the host to select parties to communicate with privately, speak to attorneys separate from their clients, or to hold witnesses until their testimony is needed. A host's mute controls help control interference from background noise from attendees who aren't testifying.

Additionally, if parties have documents such as medical reports, maps, photos or videos that they would like to refer to in the arbitration, they can be shared with the other participants by having them open on your computer and using the "Share Screen" function. With a little practice, attorneys can use documents and visual evidence to present their cases and cross-examine witnesses as effectively as if the parties were in the same room.

It has also been my practice in arbitrations to meet with attorneys outside the presence of their clients at the conclusion of an arbitration to share my impressions and set expectations as to the forthcoming decision. Typically, after testimony is concluded, I will thank a witness or party and end his connection, leaving the attorneys to conclude their business.

Mediations

The Zoom platform also includes break-out rooms, a crucial component of an effective mediation. In contrast to a virtual waiting room in which parties are essentially "on hold" from the proceedings, break-out rooms allow parties and their counsel to speak in private virtual rooms adjunct to the primary proceedings. The conversations in the break-out rooms are conducted in the same format as the primary room but remain confidential. As in a live mediation, the mediator visits the break-out rooms periodically for offers, adjusted demands and discussion of settlement strategies and considerations. Attorneys in break-out rooms may request entry into the mediator's primary room at any time. A good habit is to message the parties before entry into break-out rooms in order to maintain privacy.

Concluding a Virtual Arbitration or Mediation

One challenge in concluding a successful mediation is reducing the agreement to writing, which should be acknowledged by the mediator and parties. In virtual settings, that can be accomplished by either sharing a document for e-signature or video-recording assent of all participants, both of which can be accomplished through the Zoom platform. In the case of arbitrations, I make it a practice to use voice recognition software to dictate an arbitration award within 24 hours of the hearing, while memories are fresh, and to email the award and bill to the parties. These long-standing habits, in addition to customized scheduling software with automatic reminders, Zoom integration and calendar add-ons, have been valuable in transitioning to a remote practice.

A Word About Security

Recent news reports have raised alarms about security issues with respect to Zoom and other video conferencing platforms. In my experience, these concerns usually involve webinars and video conferences open to the public and large groups; they are less relevant to smaller arbitrations in which all participants are invitees. Additionally, the host retains the ability to assign a meeting password, require all participants to be included on the initial invitation/notice, control admittance from the virtual waiting room, eject or mute any participant and utilize various encryption tools.

Technology is Here to Stay

Lawyers are notoriously resistant to change, but many have adapted to remote conferencing as a means of continuing work during a pandemic. Now comfortable with the platform, the popularity and efficiency of virtual conferencing is likely to result in its continued use even after social distancing restrictions are lifted. Delayed court conferences, discovery disputes and depositions will leave little time to travel, particularly where

traveling to an arbitrator's office can double the time budgeted for typically quick and simple arbitrations. The option of witnesses, clients and adjusters appearing remotely, even in cases in which the attorneys appear in person, significantly reduces the number of cancellations.

Once restrictions are lifted, it is likely that flooded court calendars and the precedence of criminal matters will leave a backlog of civil cases on the Civil Control and Trial Calendars, most with prejudgment interest accruing. Alternative dispute resolution vehicles, both binding and non-binding, are likely to be the best vehicle for timely resolution of civil matters for the foreseeable future.

ENDNOTES

1 *R.I. Gen. Laws § 27-10.3-1 provides, in part:*
(a) Every contract of motor vehicle liability insurance, issued in the state by an insurance carrier authorized to do business in the state, shall contain the following provisions:
(1)Any person, referred to in this section as "the plaintiff," suffering a loss, allegedly resulting out of the ownership, maintenance, or use of a motor vehicle by an insured or self-insured, and allegedly resulting from liability imposed by law for property damage, bodily injury, or death, may, at his or her election, whenever the claim is for fifty thousand dollars ($50,000) or less, submit the matter to arbitration pursuant to chapter 3 of title 10;

2 *The Superior Ct. Rules Governing Arbitration of Civil Actions provides, with enumerated exceptions that:*
All civil actions filed in the Superior Court in which there is a claim or there are claims for monetary relief not exceeding $100,000 total, exclusive of interest, costs and attorneys' fees, and district court appeals as determined from the arbitration certificate filed by counsel, are subject to court annexed arbitration under these rules…. ◊

Ada Sawyer Centennial Celebration

At this time, we are still pushing full steam ahead for our Ada Sawyer Centennial Celebration scheduled for **October 15, 2020** at Rhodes-on-the-Pawtuxet. Of course, this is based on a best-case scenario of moderate sized crowds being allowed to congregate in the fall, but we will keep members apprised of any changes.

Organized by the Bar Association's Ada Sawyer Centennial Planning Committee and supported by the RI Women's Bar Association and the Roger Williams University School of Law, the Ada Sawyer Centennial Celebration is scheduled for **Thursday, October 15, 2020** at Rhodes-on-the-Pawtuxet.

Join us for a plated dinner and cash Bar with keynote speaker RI Supreme Court Associate Justice Maureen McKenna Goldberg and Remarks from RI Supreme Court Chief Justice Paul A. Suttell. More information to come this summer!

Model Standstill Agreement for Business in Response to COVID-19 Crisis

Patrick A. Guida, Esq.
Duffy & Sweeney, Ltd.

The Agreement is not a permanent substitute for the underlying agreement and does not offer the more comprehensive solution made available by the Non-Liquidating Receivership Program or other remedies, but will allow time for reasonable minds to identify the best course of action for all involved.

Many commercial and other contractual business relationships are now, or will soon be, in breach in consequence of the COVID-19 pandemic. Rhode Island businesses and their attorneys should welcome the introduction and availability of a simple, bilateral standstill agreement crafted to provide a temporary, contractual bridge over the raging economic chaos instigated by the crisis. A model for such an agreement, and a short introduction thereto, has been drafted by Norman N. Powell and Jonathan C. Lipson and appears in the April 2020 issue of Business Law Today, published on Friday, April 17, by the Business Law Section of the American Bar Association. You can access the introductory article, styled as "Don't Just Do Something–Stand There! A Modest Proposal for a Model Standstill/Tolling Agreement" at: Corporations, LLCs & Partnerships (https://businesslawtoday.org/practice-area/corporations-llcs-partnerships/), with the Agreement itself labeled "MODEL STANDSTILL / TOLLING AGREEMENT" in both annotated version at: (https://businesslawtoday.org/wp-content/uploads/2020/04/annotated-version.html) and unannotated version at: (https://businesslawtoday.org/wp-content/uploads/2020/04/without-annotations.html) (the "Agreement"). Review of the annotated version is recommended.

I was afforded a pre-publication opportunity to review and comment on the introductory article and the Agreement. It is worthy of our serious attention, subject to certain considerations mentioned below for Rhode Island based transactions. Great attributes of the Agreement are that it can temporarily freeze legal relationships in place, forestall the exercise of irrevocably damaging legal remedies, and at the same time allow for the accommodation of one or another portion of the existing agreement to remain operable and subject to continuing performance.

Indeed, while recently enacted legislation in response to the COVID-19 crisis, including the CARES Act which established the two (2) main lending programs for small and mid-sized businesses–the Paycheck Protection Program ("PPP") and the Main Street Lending Program ("MSLP"), may provide a certain level of financial support for a period of time necessary to allow for the implementation of new business and legal structural accommodations, a contractual bridge mechanism in the form of the Agreement, or some reasonable variation thereof, is likely to be a necessary part of the legal aspects of the solution.

During the period following a breach or default of an existing contract, and until a more permanent solution might be established, there will be a great temptation for any aggrieved party to resort to more precipitous and devastating legal action and remedies traditionally and customarily resorted to during times of economic slump. In Rhode Island, that means litigation, arbitration, foreclosures, secured party sales, evictions, petitions for liquidating receivership, mechanics' lien claims, writs of attachment, bankruptcy petitions and other insolvency proceedings. In many situations, avoiding those more precipitous remedies will be of benefit to all parties. What can also be avoided, at least during the standstill period under the Agreement, are the forbearance and restructuring agreements oftentimes painstakingly negotiated to include acknowledgments of the breach, confession of the occurrence of event(s) of default, and a restatement of legal rights. Each of these traditional remedies are time-consuming and expensive and is likely to involve the overburdened workout resources of banks or the debt collection functions of other obligees. Further, and in addition to the tremendous strain such an onslaught of legal proceedings would place on our court systems, the ultimate outcome is likely to result in much more irrevocably ruinous consequences for the economy.

It is also important to note that Rhode Island Superior Court Presiding Justice Alice Gibney entered an Order on March 31, 2020 allowing for the Superior Court Business Calendar to administer a more measured response to the COVID-19 crisis in the form of a business protection/recovery

program, designated the "COVID-19 Non-Liquidating Receivership Program." The purpose of the Program is to allow the Superior Court to supervise and provide protection from creditors through injunctive relief for eligible Rhode Island business entities in order that they might remain operational while seeking new capital and rearranging their debt structure. This is not, however, a debt discharge program. Under the Order, a business entity, including a sole proprietorship, which was not in default of its obligations as of January 15, 2020, may voluntarily seek to be petitioned into a Non-Liquidating Receivership, whereby the business entity may demonstrate eligibility for the Program, have a Temporary Non-Liquidating Receiver appointed, and while protected by a Superior Court injunction, proceed to secure the approval of the Superior Court of a "Recommended Operating Plan," whereupon the Temporary Non-Liquidating Receiver may be appointed as the permanent Non-Liquidating Receiver to administer the Program. The ultimate objective being that a Receivership Business might exit the Non-Liquidating Receivership as a viable continuing business under order of the Superior Court. On the same date of March 31, Presiding Justice Gibney also entered an Order designating attorneys Mark Russo and John Dorsey of Ferrucci Russo P.C. as Program Coordinators, who, under Section 8 (b) of the Order, are assigned to interface with members of the Bar to assist business entities in entering the Program and providing other services relating thereto. All potentially eligible businesses should consider the opportunity to take advantage of this Program.

In the alternative to any one or more of the more traditional remedies or the new COVID-19 Non-Liquidating Receivership Program, and during the interim while other more permanent remedies are explored, the Agreement offers a simple, temporary standstill arrangement documenting an agreed upon delay of some or all terms of the underlying agreement for a specified period of time. Little or no negotiation of terms will be required to implement the Agreement, with the possible exception of the enumeration of those rights or obligations which are agreed to continue during the standstill period. Otherwise, all rights are preserved in place pending expiration of the agreed upon standstill period. The Agreement is not a permanent substitute for the underlying agreement and does not offer the more comprehensive solution made available by the Non-Liquidating Receivership Program or other remedies, but will allow time for reasonable minds to identify the best course of action for all involved. The standstill period can be used as an opportunity to renegotiate the rights of either party to the underlying agreement or as a bridge to the Non-Liquidating Receivership.

Another advantage of using the Agreement is the fact that it will carry the credibility of an ABA Business Law Section endorsed form which is likely to develop national recognition and acceptance.

I personally believe the Agreement is a valuable tool and recommend it to you for consideration and implementation, with the primary qualifications being that attention needs to be paid to statutory time limitations, such as an applicable Statute of Limitations. The Agreement specifically includes provision for a tolling agreement as relates to any applicable Statute of Limitations. Although authority is sparse, Rhode Island law appears to recognize contractually agreed upon Statute of Limitations tolling agreements.[1] That said, care must be taken to investigate possible Statute of Limitations related issues in order to determine any need for a tolling provision. For transactions governed by Rhode Island law, see existing Statutes of Limitations in several sections of the Rhode Island General Laws, primarily Title 9, Chapter 9-1 and Title 6A, Section 6A-2-725.

Likewise, with Mechanics' Lien claims, it is prudent to determine if a standstill period might interfere with a deadline for giving notice of or filing a mechanics' lien claim. Mechanics' lien claim deadlines could come prior to the expiration of the proposed standstill period in the Agreement. The requirements relating to the filing and pursuit of Mechanics' Lien Claims is in Rhode Island General Laws Title 34, Chapter 34-28.

Finally, keep in mind that in establishing a standstill period, the various time limitations set forth in the Uniform Commercial Code for certain requirements relating to giving notices and filings will continue to run unaffected.

The reasonably brief investment of time necessary to consider the feasibility of using the Agreement in the face of imminent breach of any business relationship resulting from the COVID-19 crisis should prove well worth the effort.

This article should not be deemed as legal advice in the context of any particular matter or to create an attorney-client relationship.

ENDNOTE

1 *(Am. Condo. Ass'n v. IDC, Inc., 844 A.2d 117, 134).* ◊

COVID-19 and the Clean Water Act: A Look at the Liability and Damages of "Flushable" Wipes

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We are sure many Rhode Islanders are wisely using disinfecting or cleaning wipes in their homes, cars, and the like, in order to avoid contact with COVID-19. A recent study demonstrated that COVID-19 can survive up to three days on certain surfaces when disinfecting procedures are not implemented.[1] Adequate cleaning products are essential in your daily routine right now, but proper disposal of these cleaning products is equally important.

The RI Department of Environmental Management ("RIDEM") has issued reminders about the fact that these items cannot be disposed of by flushing them away.[2] This warning is true even if the packaging advertises that they are flushable. The wipes must be thrown away as refuse. Why? They do not break down quickly enough (unlike toilet paper) because of the materials used in making them. RIDEM Director Janet Coit recently noted that "[p]roper functioning of our wastewater treatment system is critical to protecting public health by preventing viruses and bacteria from getting into your homes, onto roadways and into our waterways."[3] Thus, proper disposal of disinfecting wipes should be part of everyone's protective measures for health after using these wipes.

From a legal standpoint, it must be noted that several federal and state regulations govern the issues resulting from damage to wastewater treatment systems, both municipal and onsite. We review the different regulations below and discuss the practical implications of those regulations for municipalities and individuals that sustain damage to wastewater treatment systems as a result of flushing these disinfectant wipes. In short, a municipality or person will likely need permitting help to get out of the mess created by these clogs and the ensuing damage, and may face fines and/or imprisonment.

...damaged sewers or wastewater treatment systems can cause backups that spill into roads and/or basements, which may lead to violation enforcement actions against municipalities through the above NPDES and RIPDES programs and claims against the municipality by other landowners, further increasing the tax dollar needs.

Municipal Damage Caused by Flushing Wipes

A number of RI communities have unfortunately reported pump station failures and other damage to wastewater treatment systems as a result of clogging caused by these wipes. Reports of wastewater system overflows are occurring as well, which can lead to wastewater treatment issues. As one example, the Burrillville Sewer Commission notified RIDEM in March that equipment and pump stations have been continually clogged by disinfectant wipes, and crewmembers have been called out after-hours to clear clogged pipes in order to prevent sewage overflows.[4] In March alone, Narragansett experienced about $7,300 worth of repairs after disinfectant wipes clogged and damaged two pumps at one of the pump stations, and town wastewater employees had to respond before sewage was released into the surrounding environment.[5]

Permitting help for municipalities under these conditions will likely involve the federal and state governments. Quick access to permitting help will also prevent other issues, like enforcement actions for any potential regulatory violations.

Controlling Federal and State Regulations

The Clean Water Act ("CWA") makes it unlawful to discharge any pollutant into navigable waters of the United States unless authorized by specified sections of the CWA.[6] To implement this restriction, as well as the exceptions, the CWA has a complex system regulating all discharges into the navigable waters of the United States. This system includes the regulation and control of effluent discharges from municipal wastewater treatment facilities, which fall under the definition of Publicly Owned Treatment Works ("POTWs").[7]

The CWA seeks to control effluent discharges from POTWs in two stages. First, the CWA implements pretreatment standards which are used "to prevent the introduction of pollutants into [POTWs] which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs which will pass through the treatment works or would otherwise be incompatible with such works; and to improve

opportunities to recycle and reclaim municipal and industrial wastewaters and sludges."[8] Secondly, the CWA controls the release of pollutants through the National Pollutant Discharge Elimination System ("NPDES") permit program.[9]

The NPDES permit program allows the Environmental Protection Agency ("EPA"), or the approved state agency, to issue permits to individual pollutant dischargers. Rhode Island is one of the many states with delegated authority to issue these permits. In order to obtain such authority, the State had to follow the process defined in Section 402(b) of the Clean Water Act and 40 C.F.R. § 123.

Rhode Island municipalities are granted Rhode Island Pollutant Discharge Elimination System ("RIPDES") permits for their POTWs pursuant to R.I. Gen. Laws § 46-12 and the Clean Water Act.[10] A RIPDES permit will provide the specific effluent limitations the POTWs must comply with.[11] When a POTWs does not comply with the requirements of its RIPDES permits, there may be serious legal consequences.

Municipal Liability

Municipalities operating a POTWs are subject to liability under the CWA and state laws. The CWA allows the EPA and citizens to bring enforcement suits against municipalities.[12] Furthermore, state law provides for civil and criminal penalties against any violators of any permit, such as a RIPDES permit.[13] The liability that a municipality faces under these state and federal laws can add up quickly. Under Rhode Island state law, municipalities can be fined up to $25,000 per day of violation in civil actions, and face criminal penalties of up to five years imprisonment or fined up to $25,000, or both.[14] Meanwhile, the CWA provides the EPA with administrative, civil, and criminal enforcement options which include civil penalties up to $25,000 per day of violation[15] and criminal penalties ranging from one year imprisonment and/or a penalty of $25,000 per day of violation to fifteen years imprisonment and/or a penalty of $250,000.[16] Whenever an enforcement action is brought by the United States against a municipality pursuant to the CWA, the State is also liable for any judgment against the municipality.[17] A municipality may also face claims against it by landowners with damage to their property or home caused by sewer system backups and spillage.

Individual Liability

Importantly, problems caused by flushing disinfectant wipes are problems individuals face personally, as well. The increased costs of response and repairs fall primarily on taxpayers' shoulders if the discharger of the damaging waste cannot be located. Most wastewater management and treatment entities operate with tax dollars, and taxes increase for a municipality's citizens if the city or town has to spend more money to maintain or fix damaged wastewater infrastructure. In addition, damaged sewers or wastewater treatment systems can cause backups that spill into roads and/or basements, which may lead to violation enforcement actions against municipalities through the above NPDES and RIPDES programs and claims against the municipality by other landowners, further increasing the tax dollar needs.

At the local level, towns are authorized to establish and enforce pretreatment, sewer-use ordinances, and pollution control regulations for municipal wastewater treatment and sewer systems pursuant to state law.[18] An individual may face municipal penalties for damage they inflict on public systems, which could include fines and imprisonment as discussed in examples below.

Burrillville, which sustained damage as described above, has a Sewer Commission operating under the Burrillville Town Charter.[19] It has developed its own regulations requiring use of the public sewer system for all who are located near the sewer infrastructure (a sewer exists within 100 feet of the property line), and the owner(s) of each building is responsible for paying to install appropriate toilets and connect to the sewer.[20] The regulations also require town permits to use the Town Wastewater Treatment Facility.[21] The "Protection From Damages" provision states that any person who "maliciously, willfully, or negligently" breaks, damages, defaces, or tampers with the wastewater facility infrastructure and equipment "shall be subject to immediate arrest under charge of disorderly conduct…"[22] The penalties article provides for: a fine of up to $500 or imprisonment up to 30 days, per day of the existence of a violation, for violations of the "Protection from Damages" provision; fines and/or imprisonment for violations related to the construction of, connection to, or use of the public sewer system; and assessment of monetary charges against the discharger of waste that causes damage to the system up to $25,000 for work required to repair or clean.[23] The town may also discontinue wastewater services to the discharger and/or petition the Superior Court for issuance of preliminary or permanent injunctions for discharges that violate the Rules and Regulations.[24] Thus, in Burrillville, one of the towns impacted by flushed disinfectant wipes, the costs can stack up to lofty heights.

In Narragansett, also discussed above, the regulations are housed in Chapter 78, Article III of the Town Ordinances.[25] Narragansett likewise requires certain houses, buildings, and properties to use the public sewer system.[26] The "Protection from Damage" provision differs from the similarly-worded Burrillville provision in two places: the ordinance does not

include arrest for disorderly conduct, and it makes dischargers who cause damage "responsible for all costs associated with replacement or repair work" in addition to the other penalties as written in the ordinances.[27] Those additional penalties are more specific than those in Burrillville, but also include fines.[28] In short, Narragansett would also hold dischargers of waste accountable for costs associated with discharges that damage the sewer and wastewater treatment system, and assess fines on top of that.

If an individual is not tied into city/town sewer lines, the individual's own onsite wastewater treatment system ("OWTS") (septic systems, cesspools, and tight tanks), is just as easily damaged. Permitting help will be critical in these areas, especially to make sure repairs and replacements can occur as soon as possible. The costly damage requires lots of money to repair or replace, as well as permits from both the municipality and from RIDEM. The municipality construction permits must be obtained in accordance with the city or town's regulations. The RIDEM OWTS permits are governed by its OWTS Program using the "Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems."[29] As one last consideration: OWTS are the owner's responsibility: there may be municipal, health department, and/or legal consequences if system failures or damage subsequently cause damage to neighboring properties or homes.

Conclusion

Given the fact that the issue has been widespread enough for RIDEM to issue several reminders not to flush these disinfectant wipes, the damage is likely more widespread. The penalties that may be levied against individuals across the state who are liable for any damages resulting from this practice depend upon the municipality in which the actions and damage occur. The resulting damage to any public wastewater treatment infrastructure will likely require municipalities to work with the state and the EPA in order to resolve the problems caused. In short, it will likely be an expensive and time-consuming fix, potentially for individuals and municipalities alike, if these flushed disinfectant wipes cause any damage to public or private wastewater treatment systems.

ENDNOTES

1 ***COVID-19 basics***, *Harvard Health Publishing, Harvard Medical School (Apr. 22, 2020), available at https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics.*

2 *Erica Ponte,* ***DEM: Please stop flushing disinfectant wipes,*** *WPRI.com Eyewitness News (Mar. 20, 2020), accessed at https://www.wpri.com/health/coronavirus/dem-please-stop-flushing-disinfectant-wipes/;* ***see also Press Releases – As Reports Of Wastewater System Damage Increase, DEM Reiterates: Dispose Of Disinfectant Wipes In The Trash,*** *RI Government (Mar. 20, 2020), accessed at https://www.ri.gov/press/view/37978 [hereinafter Reiterates].*

3 ***See*** *Ponte,* ***supra.***

4 ***Press Releases – DEM Urges Rhode Islanders to Dispose of Disinfectant Wipes in the Trash to Help Avoid Sewer Backups,*** *RI Government (Mar. 16, 2020), available at https://www.ri.gov/press/view/37926.*

5 ***Reiterates, supra.***

6 *33 U.S.C. § 1311(a).*

7 *40 C.F.R. § 403.3(q).*

8 *40 C.F.R. § 403.*

9 *33 U.S.C. § 1342.*

10 *250-RICR-150-10-1.4(A)(91).*

11 ***NPDES Permit Limits,*** *National Pollutant Discharge Elimination System (NPDES), EPA (Nov. 29, 2016), available at https://www.epa.gov/npdes/npdes-permit-limits.*

12 *33 U.S.C. §§ 1319, 1365.*

13 *R.I. Gen. Laws §§ 46-12-13; 46-12-14.*

14 ***Id.***

15 *33 U.S.C. § 1319(d).*

16 *33 U.S.C. § 1319(c).*

17 *33 U.S.C. § 1319(e).*

18 ***See*** *R.I. Gen. Laws §§ 45-6-2.3; 46-12-23.*

19 ***See*** *Burrillville Municipal Code Sec. 18.06 (Aug. 29, 2019), available at https://library.municode.com/ri/burrillville/codes/code_of_ordinances?nodeId=REGEORTOBURHIS2004.*

20 ***See*** *Rules and Regulations Governing the Public Sanitary Sewer System in the Town of Burrillville, Rhode Island, Art. II Sec. 4 (Jan. 1, 2012), available at https://www.burrillville.org/sites/burrillvilleri/files/uploads/rules_and_regulations_1-1-2012.pdf.*

21 ***Id.*** *at Art. V Sec. 1.*

22 ***Id.*** *at Art. VIII Sec. 1.*

23 ***Id.*** *at Art. X Secs. 1-5.*

24 ***Id.*** *at Art. X Sec. 5.*

25 *Narragansett Town Ordinance Sec. 78 (Sept. 18, 2019), available at https://library.municode.com/ri/narragansett/codes/code_of_ordinances?nodeId=PTIICOOR_CH78UT_ARTIIISE.*

26 ***Id.*** *at Sec. 78-248(c).*

27 ***Id.*** *at Sec. 78-249 (emphasis added).*

28 ***Id.*** *at Sec. 78-250.*

29 ***See*** *250-RICR-150-10-6.* ◊

I Survived the Coronavirus

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The best thing that all of us can do to help reduce the spread of this highly contagious virus is to strictly follow the advice and guidelines of the medical experts and support one another as much as possible under the circumstances.

The above title is the caption on a t-shirt given to me by my sister. Although I do not need any reminders, the caption sums up my recent, surreal, experience.

What is coronavirus? According to the United States Center for Disease Control (CDC):

> "On February 11, 2020 the World Health Organization announced an official name for the disease that is causing the 2019 novel coronavirus outbreak, first identified in Wuhan China… abbreviated as COVID-19. In COVID-19, 'CO' stands for 'corona,' 'VI' for 'virus,' and 'D' for disease…
>
> "There are many types of human coronaviruses including some that commonly cause mild upper-respiratory tract illnesses. COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in humans."[1]

After I informed my family and some friends, I realized that despite HIPPA, news of my having contracted COVID-19 might get out into the public sphere. At that point, I felt obliged to inform people about its prevalence so that they could appreciate the dangers of this new disease. Accordingly, I posted the news on Facebook. This posting became an article, a subsequent follow-up article, and then I was interviewed about it on television.

In early March, before the severity of the outbreak had become apparent, I went to Park City, Utah, on a snowboarding trip. Although there had been several reports about the virus in the news, and although I admittedly did contemplate cancelling my trip, there were no restrictions on travel at the time and I thought that a trip to the fresh mountain air would be good for my health. Nevertheless, before I left for Utah, I read the Center for Disease Control (CDC) preventative guidelines. Already being a bit of a germaphobe, keeping antibacterial lotion in my pocket, practicing social distancing, and routinely washing my hands with warm water and soap seemed like very reasonable precautions to take to prevent my contracting the virus. However, these precautions proved futile.

While in Utah, I contracted COVID-19 at a restaurant where, unbeknownst to me at the time, an employee previously had tested positive for the virus. This occurred before most states, including Utah, had issued stay-at-home orders. Two days after eating at the restaurant, my friends and I happened to see a report on the news about how the restaurant had closed immediately after discovering that one of its employees had tested positive for the virus. The following day, I awoke with chills and a pain in my chest. I immediately went to a walk-in clinic to have my temperature checked. Because I had been "exposed" to the virus, the clinic automatically administered a COVID-19 test.

According to the CDC:

> "For COVID-19, the period of quarantine is 14 days from the last date of exposure because the incubation period for this virus is 2 to 14 days. Someone who has been released from COVID-19 quarantine is not considered a risk for spreading the virus to others because they have not developed illness during the incubation period."[2]

For me, it took three days to develop symptoms after my initial exposure. A major problem with this virus is that many who contract the disease are asymptomatic for many days while unknowingly spreading it to others during that period of time.

On the day that I was tested, practically everything in town was closed down due to the reports about the restaurant. I took it easy that day and went for a long walk on the following day. Considering that everything had been closed, my friends and I contemplated leaving earlier than originally planned. However, out of an abundance of caution, I asked the Utah Department of Health whether I could travel, given the fact that my test results were still pending. The staff assured me that I could travel. I followed CDC guidelines and wore a mask and gloves on the plane to protect against the possibility of transmitting the virus to other passengers.

After I returned home, I received a call from the Utah Department of Health informing me that I had tested positive for Covid-19. I also was told that the employee who had tested positive at that restaurant had not been present on the night that I had eaten there. Thus, it seems quite possible that I contracted it from someone who had been exposed to the sick employee but had not developed symptoms. Indeed, according to the leading physician in the United States who has served five administrations, Dr. Fauci, four out of five people exposed to the virus remain asymptomatic!

Upon being diagnosed, many questions swirled in my head.

To begin with, I questioned whether I had caught the virus from the restaurant food. However, according to the CDC:

> "Based on information about this novel coronavirus thus far, it seems unlikely that COVID-19 can be transmitted through food – additional investigation is needed."[3]

I also questioned whether I got it from surfaces at the restaurant. This seemed more likely:

> "People could catch COVID-19 by touching contaminated surfaces or objects – and then touching their eyes, nose or mouth… It is not certain how long the virus that causes COVID-19 survives on surfaces, but it seems to behave like other coronaviruses. Studies suggest that coronaviruses (including preliminary information on the COVID-19 virus) may persist on surfaces for a few hours or up to several days."[4]

Initially, the only symptoms I had were chills, slight body aches, and fatigue. I did not have any fever or runny nose. However, after six days of self-quarantine, I started to develop a 'dry cough,' but no congestion. A few days later, my doctor recommended that I go to the emergency room to have my lungs checked out. She called ahead, and I went there by rescue, after informing them of my COVID-19 diagnosis.

When I arrived at the hospital, the ER administered a second COVID-19 test, which gave a negative reading. This was not a surprise to me as it had been eleven days since my first exposure to the virus. However, my lungs had been damaged by pneumonia, so I nevertheless was admitted and stayed there for seven and a half days.

While I was alone in the hospital, I was relieved to discover that I was able to use my cell phone to communicate with my family and friends, including Facetime with my son, as well as to conduct business over the phone. This was very consoling, especially because like most other hospitals, COVID-19 patients are not allowed to receive visitors. I cannot say enough nice things about the people who treated me before and during my stay at the hospital. Everyone from the fire department rescue, ER staff, nurses, doctors and other providers went out of their way to make me feel very comfortable during my stay, and for that, I will be eternally grateful.

After a little while at the hospital, I began to feel much better and felt strong enough to go home. However, the doctors insisted that I remain as an inpatient out of an abundance of caution. Previous experience had demonstrated to them that releasing a patient with my initial level of pneumonia might result in re-admittance and possible intubation. Naturally, I heeded their sound advice.

One question that is asked frequently is whether COVID-19 symptoms can worsen rapidly after several days of illness. Harvard Medical School has stated that

> "Common symptoms of COVID-19 include fever, dry cough, fatigue, loss of appetite, loss of smell, and body aches. In some people, COVID-19 causes more severe symptoms like high fever, severe cough, and shortness of breath, which often indicates pneumonia. A person may have mild symptoms for about one week, then worsen rapidly. Let your doctor know if your symptoms quickly worsen over a short period of time. Also, call the doctor right away if you or a loved one with COVID-19 experience any of the following emergency symptoms: trouble breathing, persistent pain or pressure in the chest, confusion or inability to arouse the person, or bluish lips or face.[5]

On the bright side, unlike many other severe diagnoses, for most people, COVID-19, goes away. Please remember that. Note that British Prime Minister, Boris Johnson, walked out of the hospital with his pregnant wife, and CNN Anchor Brook Baldwin has returned to work.

There's a lot of information about COVID-19 in the news, on television and on websites. Much of that information describes its symptoms and how to avoid contracting the virus. I believe that we need to know this information to help all of us recognize the signs and symptoms of the virus and thereby place us in a position to be proactive. Thus, this information is vital both for our own health and for the health of society as a whole. According to the CDC:

> "Persons with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:
> - At least 3 days (72 hours) have passed *since recovery* defined as resolution of fever without the use of fever-reducing medications and
> - Improvement in respiratory symptoms (e.g., cough, shortness of breath); and,
> - At least 7 days have passed *since symptoms* first appeared.

Test-based strategy (simplified from initial protocol). Previous recommendations for a test-based strategy remain applicable; however, a test-based strategy is contingent on the availability of ample testing supplies and laboratory capacity as well as convenient access to testing. For jurisdictions that choose to use a test-based strategy, the recommended protocol has been simplified so that *only one swab* is needed at every sampling.

Persons who have COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:

- Resolution of fever without the use of fever-reducing medications and
- Improvement in respiratory symptoms (e.g., cough, shortness of breath) and
- Negative results of an FDA Emergency Use Authorized molecular assay for COVID-19 from at least two consecutive nasopharyngeal swab specimens collected ≥24 hours

apart*** (total of two negative specimens).[6]

Someone who has been released from isolation is not considered to pose a risk of infection to others."[7]

After I posted news about my diagnosis on Facebook and other websites, hundreds of friends and colleagues wished me well which was greatly appreciated.

However, not all of the feedback was positive. Some people anonymously posted snide and negative comments about me. It was alleged I had been seen in the Newport County Courthouse on a date when I had actually been in Utah. Notwithstanding, my court identification card proves that I was not in the Courthouse on that date. In another instance, someone called the Middletown Police alleging I had attended an event while contagious, when in actuality, I was at home fast asleep at the time.

In reality, from the moment I returned from my trip, I went straight home and stayed there in complete isolation until I was taken to the hospital. I did not go to my office, did not go to a store, did not go for a walk, and did not pass go! I made arrangements for my son and small pets to be safely taken care of, and I wore a mask and gloves when feeding my horses due to the fact that the possibility of human to animal transmission is inconclusive. Stated otherwise, I strictly followed CDC Guidelines, which state:

> "You should restrict contact with pets and other animals while you are sick with COVID-19, just like you would around other people. Although there have not been reports of pets becoming sick with COVID-19 in the United States, it is still recommended that people sick with COVID-19 limit contact with animals until more information is known about the new coronavirus. When possible, have another member of your household care for your animals while you are sick. If you are sick with COVID-19, avoid contact with your pet, including petting, snuggling, being kissed or licked, and sharing food. If you must care for your pet or be around animals while you are sick, wash your hands before and after you interact with pets…
>
> [updated]
>
> CDC is aware of a very small number of pets, including dogs and cats, outside the United States **reported** to be infected with the virus that causes COVID-19 after close contact with people with COVID-19. CDC has not received any reports of pets becoming sick with COVID-19 in the United States. To date, there is no evidence that pets can spread the virus to people…
>
> The first case of an animal testing positive for COVID-19 in the United States was a tiger with a respiratory illness at a zoo in New York City."[8]

I have been home for two and a half weeks as I write this and feel well. However, I was under doctors' orders not to exert myself much for a while. Luckily, our profession is sedentary, and I am able to work out of my home office.

Experts have stated that the majority of the population will likely contract COVID-19 at some point, and that we may get a second wave come winter. I am glad I survived it and it is behind me. As COVID-19 is a novel virus, there are still a lot of unknowns when it comes to understanding its implications. Dr. Fauci has stated several times that once a person contracts COVID-19, that person should be immune from contracting it again for quite some time. It is for this reason that the medical community wants to engage in wholesale testing for antibodies to determine who might safely return to work. The medical community also is anxious to obtain plasma donations from recovered individuals in order to help develop immunization treatments for patients currently suffering from the disease. I will be going to go to New York to donate my plasma to help cure others with COVID-19.

It is devastating that so many people are suffering and dying from this virus. Added to this devastation is the fact that patients have to go through such suffering without being surrounded by their loved ones. The best thing that all of us can do to help reduce the spread of this highly contagious virus is to strictly follow the advice and guidelines of the medical experts and support one another as much as possible under the circumstances. I hope that my own experience with the virus can serve as a lesson to everyone–even when you think you are safe and being vigilant, a very minor, casual contact with a contagious person may be enough to put you in the hospital.

ENDNOTES

1 ***See*** *https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics ("Why is the disease being called coronavirus disease 2019, COVID-19?").*

2 ***See id.*** *("Can someone who has been quarantined for COVID-19 spread the illness to others?").*

3 ***See id.*** *("Can I get sick with COVID-19 if it is on food?").*

4 ***See*** *www.who.int › docs › default-source › coronaviruse › 4/10/20.*

5 ***See*** *Coronavirus Resource Center - Harvard Health.*

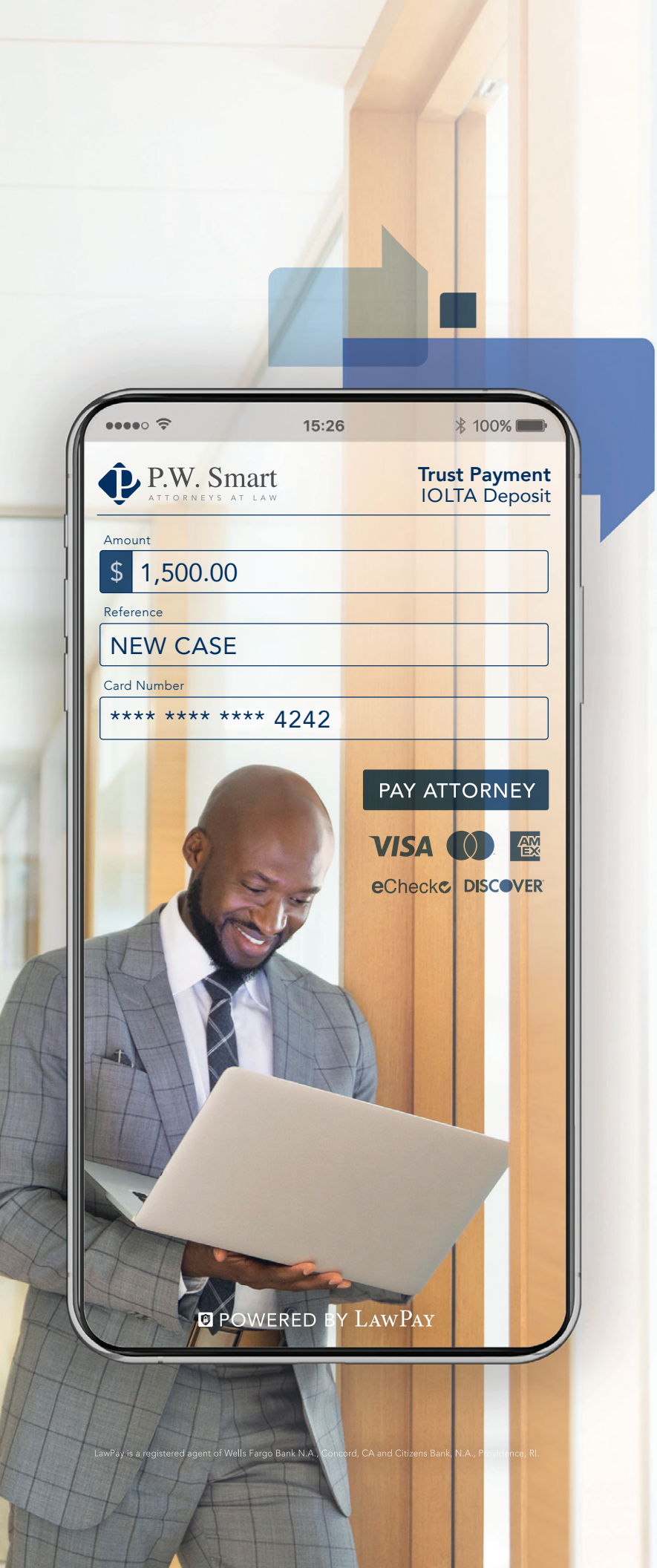
6 ***See*** *Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons Under Investigation (PUIs) for 2019 Novel Coronavirus (2019-nCoV)for specimen collection guidance.*

7 *https://www.cdc.gov/coronavirus/2019-ncov/faq.html.*

8 *https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html.* ◊

Municipal and Probate Court Operations during COVID-19 Crisis

Bar Association staff have organized a chart of probate and municipal court operations information during the pandemic. **This chart** will be updated regularly, so be sure to check for updates on the Bar's website at ribar.com under FOR ATTORNEYS, COVID-19 PROBATE AND MUNICIPAL COURT OPERATIONS.



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