

Best's Insurance Law Podcast

[Coronavirus Impact on Claims and Litigation - Episode #164](#)

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Guest Attorney: Frank Zacherl of [Shutts & Bowen LLP](#)

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John Czuba: Welcome to “Best’s Insurance Law Podcast,” the broadcast about timely and important legal issues affecting the insurance industry. I’m John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

We’re pleased to have with us today attorney Frank Zacherl, a partner in the Miami office of [Shutts & Bowen LLP](#), where he is co-chairman of the firm's Class Action and Mass Litigation Practice Group and a leading member of the Insurance Practice Group.

Frank concentrates his practice in complex civil litigation and electronic commerce, with an emphasis on trial work, class action defense, and high-stakes commercial matters. His practice areas include insurance litigation, electronic commerce and cyber security consultation and litigation, and commercial litigation.

Frank has tried the issue of class certification in numerous large class action cases and has coordinated complex insurance litigation and class actions on a state and national level for insurers and telecommunications companies.

Frank has also served on the Civil Litigation Committee and Professionalism Committee of the Miami-Dade County Bar Association and is a frequent speaker on electronic commerce, class actions, and insurance issues.

Frank, we're very pleased to have you with us today.

Frank Zacherl: Good afternoon. I'm pleased to be here.

John: Today's discussion with Frank is on the Coronavirus and its impact on the insurance claims industry. Frank, can you tell us what's happening now with COVID-19? What's happening now and in the foreseeable future?

Frank: I can. I'm giving this podcast from my home office with my kids and my wife locked in a backyard so that you all do not hear them in the background. That's a sign of the times.

We can all agree that this COVID-19 is a seismic event, certainly unprecedented in my lifetime. Probably in all of our lifetimes. I don't think anybody knows what the lasting impact will be, but it's possible that life will be very different going forward.

One of the things I've been doing, because we're not as busy now, with all court proceedings being closed, is I've been doing a lot of reading while I'm stuck at home. I ran across a quote by Thomas Friedman in "The New York Times," which I thought was very apt.

He referred to a before-corona and after-corona worldview. That is accurate. This is one of those events where things are going to be different going forward, both in the culture and in the business world, with regard to what we talk about, insurance claims and litigation of those claims.

The primary impact is going to be a fast track of our entire industry into an even more digital landscape. What we've seen so far, in the couple of weeks that we've been enduring this, is that the entire legal ecosystem has been impacted.

The courts have tried to do limited hearings. They've tried to do phone hearings. They've tried to do video hearings. Now a lot of them are closed.

Lawyers like me, I'm a trial attorney. I primarily handle trials, hearings, depositions, client meetings, those sorts of things. I'm sitting here with very little to do. I have people who write briefs for me who are more busy, but I think that this is a significant impact that's going to go on for quite some time.

John, one thing in particular that I've seen and I've heard from these people are the legal service providers -- court reporters, translators, etc., -- they're seeing a very sharp downturn in their business.

All of us are trying to adapt. In the future we're going to see a lot more remote working, as we're doing now, a lot more video conferencing, a lot of workarounds that don't require physical presences. You're going to see the judges take more advantage of this.

We've seen this. It's been happening. We've all attended phone hearings, but this virus has really turbocharged our move towards remote work.

I also think that law firms and in-house legal departments are going to be adapting and changing using the technology as we go forward with remote work, in particular, being more widespread. We're all recognizing the inefficiencies that exist in our current process.

Within my firm we're seeing entirely new workplace procedures. In order to input time, all of the lawyers now have phone apps, which we knew existed but we weren't really making use of. We all now input our time on our phones. That's going to be the way things are done going forward.

All of our billing at this point is being done electronically. There's nobody in the office to send out a paper bill.

All of my review, as a senior partner in my firm, of the associates' and the junior partners' work product is happening remotely. All of our firm management meetings are happening remotely.

I do think what's happening now is a shock to all of us. If you look at the Florida Supreme Court and the way they're trying to deal with this, there are some emergency orders that have been enacted allowing court reporters to administer oaths remotely, for example, allowing evidentiary hearings to proceed without all the parties being in the same room.

We've seen the state government is now allowing local municipalities to operate without physical quorums so that if you have remote attendees you've got your quorum that you need.

This is how I see this happening going forward. A lot of the legacy requirements in the law of physical presence and the perception that you need to be present, that's going to change, John, and going forward we're going to see a huge increase in the use of technology by all participants in the system.

John: Frank, how about the impact on cash flow of insurers and outside defense law firms?

Frank: [laughs] That's a good question. Obviously, all of us in outside law firms are quaking in our boots right now. There is no question that the COVID-19 outbreak is impacting the insurance industry's economy, as well as the outside law firm economy.

Unfortunately, according to what we're seeing, we think this impact could be very extensive and could be longer lasting. What's really happening is unimaginable in many ways.

With regard to the economic impacts, a lot of economists are saying that we're already in a recession as of today, March 26th, 2020. We think that as this goes forward the pandemic is just going to put even more stresses on the US economy.

The 2008 financial crisis was really focused on banks and the finance industry, but this recession will impact businesses across the board. There's an example that I was thinking of, in terms of the idea of trickle-down economics versus trickle-up economics. Right now money isn't flowing. It's frozen. It's like it's been stopped in time and it's not happening.

Let's say a small business goes out of business. They can't afford to pay their payroll, but they can't afford to use their accounting firm.

Let's say there's a professional accountant in that firm who now has nothing to do and the firm has to furlough that employee. That employee has an insurance bill to pay. How is he going to get money to pay that bill if he's not working?

Unless he has savings, that bill may go unpaid. Then that money will not be available to trickle-up, as I said earlier, to the insurer and, ultimately, then, to outside counsel.

I have seen already, in the last week, increased utilization of in-house lawyers by insurance companies. I have one very large retail client, not in terms of revenues to my firms but in terms of their presence in the marketplace. They've told us they have a cash crunch, and they've told us to put our pencils down. They're going to handle their legal work with their in-house lawyers for the foreseeable future.

As a result of all this, there's no question that there's going to be lower profits per partner in 2020, and maybe in 2021, depending upon how long this goes. I don't think it'll be long before we start seeing furloughs and layoffs within the law firms. You'll see both staff and less productive lawyers start to get laid off, John.

John: Frank, what kind of impact are you seeing on Florida's local economy?

Frank: We are already seeing a very significant impact with regard to closures. The governor and the local governments have said unless you run an essential business, like a hospital, or something like that, you're closed.

What that means is that Florida, which is a huge tourism economy, the hotels are shut down. Travel is shut down. Conventions are shut down.

I already know, from my firm's hospitality practice, that there are layoffs in droves. There's a lot of people who yesterday or two days ago had a good-paying job in a very strong industry who are now without a job, and former employers, these companies they used to work for, who are facing zero cash flow for the foreseeable future.

We're seeing the same thing with restaurants, with bars, with other kinds of entertainment in South Florida. Sporting events.

All of this is very dire, John. There's no money coming in. As I said earlier, the flow of money is frozen, but in particular in the things that Florida is known for.

We are really seeing an impact. Recently we've had our beaches closed. As I said before, all the restaurants, all the bars, all the hotels were closed.

Boat ramps and marinas. Boating and fishing are huge industries here. They are both completely shut down.

Vacations to Florida, canceled. Weddings, parties, band performances, all these other outings are canceled.

We've had shelter-in-place orders in many cities in South Florida, and I expect this to be the norm going forward. Even the local parks, for the most part, are closed.

The impact on Florida's economy in the short term is going to be very significant.

John: Frank, how about the future impact on the insurance industry and insurance defense law practices?

Frank: Obviously, we've given a lot of thought to this. I've been practicing in this space for roughly 28 of my 30 years as a lawyer. My conclusion right now is it's hard to tell exactly what that impact's going to be, both in terms of how the business operates and from an economic standpoint.

You're going to see the industry immediately start to respond on multiple fronts. For example, I think that the folks that are paying the claims may see pressure. I'm not saying that I've heard this, but this is something I think is coming. If you don't have the premium revenues coming in, you're going to have pressure to lower those claims payments.

From the perspective of insurers as employers we're going to have to look at more lean staffing. I promise you that everybody who runs a staff counsel office is seeing how well we can work remotely and thinking, number one, "Do I need an office?" and, number two, "Do I need all these people?" the technology really is changing things right now.

The insurers as investors and capital managers, with all of their reserve money, they're going to find it much harder to find safe investments and predictable investments for the foreseeable future. Interest rates are already almost at zero. It's very difficult to find appropriate investments for those sorts of funds. You're going to see those impacts right away on the insurance industry.

The reason I said earlier that I'm not sure exactly what the impact will be is because it's still early and it depends on things like how long the quarantines will last, how long will there be this frozen flow of money, how long will we have to exercise social distancing, or are people getting hired back. We don't know these things.

I can tell you in my practice I've already been consulted and I've participated in designing new emergency decision-making protocols, putting together teams, and trying to determine how best to run our businesses when we're dealing with an actual existential threat, in some ways, and certainly a health threat to our society.

What we're trying to do is make decisions faster and more efficiently, but of course we want to make the right decisions. That's difficult.

The final thing that you're going to see in the insurance industry and in the outside law firms is a much greater emphasis on the cyber security front, which is one of the things I do.

We're going to be seeing hardening of computer systems, hardening of the other technology systems. They're going to be trying to expand their capability to conduct business remotely.

We're probably going to have increased security on the access, on the front end. The inability to hack into that technology.

You're going to see significant investments in significantly increasing bandwidth. You're seeing that in our firm. That with everybody working remotely it's a little slower for people.

You're going to see more devices being issued to people to work remotely. I also think, as between the insurance companies and the outside counsel, you're going to see even more utilization of technology in terms of transferring information back and forth.

John: Frank, how about the impact on claims and claims litigation?

Frank: It's something I've given a lot of thought to and I've been consulted on already in terms of how I see this playing out. Let's face it, right now if you go out on the road there's hardly any cars. That is certainly going to result in a reduction over time in auto accidents, which is going to reduce claims.

Less mobility in general tends to equal fewer claims, not just in the auto world, but on premises liability claims, accidents on construction sites, homeowners liability claims. You're going to see less of that.

On the other hand, you may see more claims with regard to home fires and those sorts of things, plumbing failures. It's too early to tell.

I do think overall, because of the reduced mobility, there's going to be fewer overall claims. However, I do think those claims that are submitted will be more severe.

There's less people on the road. You're going to see people driving faster. With everything that's going on, people are more distracted. They're going to be higher severity on the claims, lower frequency on the claims.

In terms of how that impacts what I do, which is try these cases, we're going to see an overall reduction in the amount of litigation, John, in the short term. That's for a couple reasons. One, there's going to be fewer overall claims.

Also, the people that are making the claims are now in a much more economically precarious position than they were, say, six months ago, or even a month ago. These people need money, and so they're going to be getting what they can get because they need the money now.

You might see the ability of insurers to get claims settled for lower numbers as a result. As a result of that, there's going to be less litigation in the short term.

The other way this is playing out in my world is I monitor the suit filings in South Florida. I have noticed a significant reduction in the number of lawsuits that have been filed over the last couple of weeks.

There's a bulge in the snake. At some point, when everything opens up, you're going to see those claims filed again, and we might even see more suits in the future, but right now there's lower suit volume.

We're definitely already seeing an impact. Among my colleagues in the defense bar, many people are saying that their suit referrals are down. We're not getting referred as many lawsuits as we did a month ago.

The other point with regard to the impact on claims and claims litigation is the insurance companies on the business side, on the financial side, are going to be looking at their reserves and looking at how much money they can make on the float.

They're going to be starting to say, "Is it really worthwhile for us to be litigating using outside counsel as much as we have been? We've seen the explosion with the use of staff counsel and how economically efficient that is."

This is very unpredictable, John, but if premium revenues are down due to the joblessness, or people are buying less insurance, or otherwise, it stands to reason that the insurers will have to look carefully at reducing outside counsel expenses.

Where I see that ending up is there's going to be impacts on hourly rates. There's probably going to be even more of an emphasis than there already is on alternative billing arrangements, like flat fees, and other aspects of outside counsel attorneys' fees.

To summarize this in a way that makes sense, ultimately this seismic event is going to have a very positive impact on our culture in the insurance business and in the insurance claims litigation world.

You're going to see more efficiencies in the court system. You're going to see more efficiencies in law firms. You're going to see more efficiencies in claims processing. In the long run all those things are coming and they're very good.



I also think that this turbocharging that we're seeing on the trends towards remote working will be a net positive in the long run. I, for one, have enjoyed being at home and not having that one-hour commute bookending my day on each end.

I've been much more efficient working at home and I've enjoyed being around my family. I don't know if they've enjoyed being around me. [laughs] That remains to be seen, being locked in the backyard right now, but I can tell you that this remote working is a net positive in the long run.

Listen, change is not easy, and we're going through it right now. This is going to be a very challenging and very unpredictable work environment for the short term, John. Probably through the end of this year.

John: Frank, thanks so much for joining us today.

Frank: It was a pleasure. Thank you.

John: That was Frank Zacherl from the law office of [Shutts & Bowen](#), with offices throughout Florida. Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

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