



## Resolving Claims in a Socially Distant Environment

Reliance on virtual litigation – used sparingly pre-COVID-19 – has become commonplace. Over the past several months, roughly proportional to the number of backlogged court cases, virtual depositions, mediations and arbitrations have gained favor as the only way to resolve civil disputes that might otherwise linger on court dockets for months or even years.

On January 21, 2021, Wilson Elser partners Mat Ross and Gene Boulé provided the latest thinking on how attorneys can best employ virtual litigation as a viable and effective alternative dispute resolution (ADR) tool. A summary of the presentation is below and [you can watch a playback here](#).

- **Virtual litigation has benefits with respect to cost savings, likelihood of completion and plausible replication of “in-person” confidentiality and reliability.** This is borne out by a poll conducted by Wilson Elser attorneys and further confirmed, if only anecdotally, by other members of the legal community.
- **Be cautious of dispositive motions.** Dispositive motions are being submitted more quickly and, without the benefit of court conferences and other customary proceedings, more erratically. This can change the calculus of seeking summary judgments or motions to dismiss in order to drive opposing counsel to the mediation table.
- **Motivation for Quick Resolution.** Mat and Gene discuss the increased leverage defense counsel enjoys in motivating plaintiffs and plaintiffs’ counsel to pursue quick resolution. That said, it well may be illusory to expect that plaintiffs are “desperate,” willing to settle for cents on the dollar and more likely to decrease settlement amounts with the passage of time. Defense counsel still need to play their cards sensibly. The BATNA (Best Alternative to a Negotiated Agreement) equation, though shifted somewhat in their favor, remains fundamentally intact.
- **Embrace the technology.** Finally, Mat and Gene share the technical aspects of conducting successful online mediations and arbitrations (also covered elsewhere in [Wilson Elser’s Virtual Litigation series](#)). They urge attorneys to embrace the technology by becoming intimately familiar with the platform they choose, looking directly into the camera and liberally using screen-share to introduce evidence into the proceedings – mirroring the conference room or courtroom experience.