

Additional Nelson Mullins Alerts



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Identifying Win-Win Settlement Opportunities in the World of COVID-19

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While we all try to adjust to the rapidly changing litigation environment created by the COVID-19 pandemic, corporate defendants should be aware of some unique opportunities to resolve cases that will be beneficial to both plaintiffs and defendants. We encourage all our corporate clients to review their existing litigation docket for cases that may be in all parties' interest to settle now. There are real chances to settle cases today that did not exist two months ago and will not exist in the future. Below are some examples of situations that may lend themselves to prompt resolution due to the present realities that the virus has created.

- Corporate defendants should identify and consider settling cases where the estimated cost of defense exceeds the amount in controversy. Settlement in these instances is better for the corporation's bottom line and allows for the plaintiff to receive money during a turbulent economic time. If the corporation has been fighting the case to deter future claims, be clear that the settlement is due to the challenging times we are experiencing and is not indicative of the corporation's valuation of future claims.
- It is an unfortunate reality that unemployment is skyrocketing. Many individual plaintiffs are navigating the next few months with either no paycheck or a reduced paycheck. These individuals may appreciate money that can be paid quickly in settlement. Corporations without immediate cash constraints should keep the lines of communication open with plaintiff's counsel for opportunities to arrive at a settlement value that offers the much-needed cash for the plaintiff on an accelerated timeline while providing an economic benefit to the corporation.

- As many businesses feel the impact of the economic downturn, there may be opportunities to resolve commercial disputes that benefit both sides. For example, corporations may be willing to accept lower settlements in order to receive a cash influx. Where a party is vulnerable to bankruptcy, the plaintiff may consider taking a reduced settlement payment instead of risking the uncertainties of trying to recover from a bankrupt entity. Additionally, businesses may be less willing to invest in legal fees and costs under today's economic pressures and therefore may reevaluate their position on settlement.
- As law firms feel the economic crunch in the coming weeks, plaintiffs' counsel may prefer to negotiate immediate settlements rather than waiting for courts to reopen. A quick settlement of a case with a contingency fee may spare a law firm from having to furlough or terminate employees. Corporate defendants should continuously reach out to opposing counsel to gauge interest in early resolution.
- In some litigation, the value of property or damages in dispute may have changed to the point where the parties can now agree on a settlement that is fair to both sides.
- Corporate defendants involved in multiple similar lawsuits, such as toxic tort or asbestos cases, handled by the same plaintiffs' attorneys, should be open to opportunities to settle a large volume of cases right now. If a corporate defendant can pay quickly on a settlement deal involving several cases, then you may be able to settle a large volume of cases at a lower price now than if you were to wait until closer to trial dates.

Corporate defendants who recognize these types of mutually beneficial settlement opportunities may be able to resolve cases at better values while also lowering overall fees and expenses. When reaching out to your opponent to discuss settlement, be sure to deliver the message that you are amicably looking to resolve cases and avoid the appearance that you are taking advantage of the hardships created by a pandemic. Corporations engaged in more hostile litigation should consider retaining outside settlement counsel to evaluate and negotiate cases where current counsel may have a volatile relationship with the other side or may not be able to see the advantage in seeking resolution now.

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