

COVID-driven court backlogs wreak havoc on personal injury caseloads

By: Gina Gallucci-White ☉ June 11, 2021



'The longer (clients) wait, the longer justice is delayed and longer it is denied,' says personal injury attorney David A. Muncy. 'It creates big problems for them.' (Submitted Photo)

Attorney Eric N. Schloss of Saltzberg & Schloss has filing cabinets full of cases that are ready to go to trial. "Everything has been done," he said. "I am just waiting for a trial date."

The COVID-19 pandemic has wreaked havoc on court schedules since March 2020. In many jurisdictions, only emergency cases such as protective and peace orders were being heard for several months during the early stages of the pandemic, which has resulted in a huge back log of cases.

Some courts did open up after initial closures but did not have jury trials due to social distancing restrictions. Once COVID-19 numbers climbed high again in fall 2020, the courts were largely shuttered again.

Now that vaccination efforts are underway, many courts have reopened but face rescheduling more than a year of cases.

"For my entire 26-year (career), I have always worked at high-volume law firms," Schloss said. "Phones ring off the hook all day long. I am used to trying at least one district court auto negligence case a week on average. I went many months with no trials because the courts were closed. ... I can tell you in the last 14 months I may have done on average one a month. Maybe not even that because I had so many months with no trials."

Delays vary by each court and jurisdiction. The biggest delays Schloss is seeing is from the three busiest jurisdictions — Baltimore city, Montgomery and Prince George’s counties — which have filings by mail. The remaining 21 jurisdictions have e-filing, which Schloss notes is going well. “You can file something at the beginning of the day and get a response back from the court literally within an hour,” he said. “The problem is our three largest jurisdictions are still doing everything by regular mail, so that is where the delays are.”

During the early days of the pandemic, with courts largely closed, Schloss focused his efforts on getting existing cases ready. “It was very easy for me to track down my clients because they were all home,” he said. “I answered interrogatories. I mean I did so much discovery in the last year. More than I have ever done any year in my 26 years because it was so easy to track down clients and get their answers to interrogatories.”

He also provided answers to interrogatories to the defense attorneys. “I was working my files and I was getting them in the position to settle, the ones that could and the ones that couldn’t, I demonstrated to defense counsel that I have done my discovery. I am ready to go to trial. All we need is for the courts to reopen, and I am ready to go to court.”

Schloss is one of many personal injury lawyers who are navigating the impact of COVID-19 restrictions and case delays for their clients.

Attorney Wayne M. Willoughby of Gershon Willoughby & Getz also saw his cases affected by the shutdowns. Representing clients across the country, he has seen some of his cases bumped a year.

“It has been very tough on my clients,” he said. “They want to have a speedy resolution of their claims and because of COVID there were not jury trials at least in my cases. Jury trials weren’t available.”

He has spoken to some lawyers in other parts of the country where virtual trials have been mentioned. Willoughby said he would be resistant to a virtual jury trial, citing concerns over whether his client’s case would get the full attention virtually from a juror that it would receive in person.

Attorney David A. Muncy of Plaxen Adler Muncy PA said the delays in cases have been hard on his clients. “In the personal injury world, a lot of cases don’t settle until you have a trial date and that trial date is approaching,” he said. “It creates a situation where people are not able to get their cases resolved. ... The longer they wait, the longer justice is delayed and longer it is denied. It creates big problems for them. Some people have even unfortunately passed away before their case can be heard.”

Since the pandemic began, when Schloss gets settlement offers he reviews them with his clients the same way he would normally. “But instead of me saying, ‘Ms. Jones, this is the offer they have made. As you know we have a trial date coming up next month. You can either settle or we go to trial next month.’ Now I have to do it a little differently. I have to say ‘Because of the pandemic, your trial date is not until many months away or the court still hasn’t given me your trial date.’ That is the only difference.”

A small minority of his clients could not wait on a trial date far in the future so they took a settlement, Schloss said. He noted that the overwhelming majority have decided to wait for their trial dates.

During the early days of the pandemic, many personal injury lawyers saw their calls drastically decrease as many people were not traveling or having elective medical procedures. Some clients were reluctant to seek care because they were afraid of a COVID-19 exposure, while others were unable to get treatment because some procedures were not available.

Now emerging from the pandemic, many practitioners have phones ringing off the hook again.

“We are seeing a return now to what we are normally used to with society reopened,” Muncy said.

