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Happy New Year? Top South Florida Litigators Pinpoint Key Issues for 2021

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Harley S. Tropin of Kozyak Tropin & Throckmorton

Top litigators in South Florida have their eyes on several issues and opportunities, and are wondering if current conditions portend the new normal, as they transition into the New Year.

These range from litigation covering Section 230 of the 1996 Communications Decency Act, the landmark law in the U.S. that shields social media companies from liability for their users' content, to how litigators will bill their clients in a post-coronavirus world.

Here's what several well-known litigators predicted could occupy their time in

2021.

Beth-Ann E. Krinsky, a partner and trial attorney at Greenspoon Marder in Fort Lauderdale specializing in commercial litigation, said when President Donald Trump requested that Congress address Section 230 of the Coronavirus Relief Bill, she had a feeling it could significantly impact businesses, especially in Miami. Krinsky said Miami is trying to attract the new tech market, including publishing and big businesses operating in high tech over the internet who are publishing a lot of content online provided by their viewers, customers, and vendors. And she noted, "All of that could be impacted by any changes to the liability shield." Krinsky explained that the current leadership of the U.S. Department of Justice has made proposed amendments to the law, while President-elect Joe Biden initially indicated he wanted to see Section 230 revoked entirely. "Right now, everybody is focused on the Facebooks of the world who will be required to control content more than they are now," Krinsky said. "People are not thinking about the smaller startups, the smaller web-based publications who now could also be subject to the same liability and I am not sure they will have the legal muscle behind them to sustain themselves."

Jay M. Sakalo, a partner at Bilzin Sumberg in Miami specializing in business finance and restructuring said that litigation always seems to trail behind economic disruption, and that he expects that it will be no different in this case. Sakalo pointed to issues in the areas of financial services, insurance and litigation between business partners getting together or separating amid the coronavirus pandemic economic conditions became more difficult. "People will be looking to enforce what rights they have and many will try to do it outside the commencement of litigation," Sakalo said. "But if they are unable to accomplish that, litigation is another alternative for them to exercise rights that they have."

Harley S. Tropin, a partner at Kozyak Tropin & Throckmorton in Miami who focuses on high-stakes business litigation, said for those in trial firms, conditions will not return to normal anytime soon. Tropin said to return to economic normalcy for lawyers means courts being open for trials and not just in zoom "in a truncated version." Instead, Tropin is looking forward to actual jury trials taking place because that is what it takes to incentivize most defendants to settle cases. "There won't be a return to economic normalcy until that happens, but there will be an explosion of litigation," Tropin said. "In other words, many cases will be filled, but until the cases can progress to trial,

which is probably a year away or a year and a half away, the economics won't return to normal."

Stephen N. Zack is a partner and trial attorney at Boies Schiller Flexner in Miami, and a past president of the American Bar Association. Zack said that due to the coronavirus pandemic and the convenience of Zoom meetings, in the future, clients of litigators will be sensitive to cost issues related to travel once it becomes safe to travel again. For instance, Zack said if you can handle a deposition by Zoom, clients may not want to compensate attorneys for a three-day trip involving traveling from Miami to Chicago to take an hour-long deposition and return home. "Historically, I've been on a plane at least every two weeks. It's been months since that occurred," Zack said. "There are times when you need to travel, but the client is going to be asking whether or not you can reduce your cost by doing it a different way than you used to."