

Corcoran, Lackey and McGowan Examine Virtual Proceedings, Risks Involved in *New York Law Journal*

In the News

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Stinson LLP attorneys [Kieran Corcoran](#), [Paul Lackey](#) and [Bailey McGowan](#) authored an article for the *New York Law Journal*, "Virtual Arbitration Hearings Carry Distinct Risks."

With courts looking to untraditional ways to offload their dockets, there has been a significant rise in conducting virtual arbitration hearings, and courts across the country appear to be pushing litigants toward virtual proceedings. Corcoran, Lackey and McGowan examine the risks involved with virtual proceedings, specific to New York courts and practitioners, and provide insights for New York attorneys as they weigh the pros and cons of virtual arbitration when advising their clients.

"In New York, litigants may believe virtual arbitration offers a viable opportunity to resolve their cases, but the Second Circuit errs on the side of caution when it comes to third parties," the attorneys write.

They note that Section 7 of the Federal Arbitration Act may allow an arbitrator to compel discovery from third parties, but the circuit is split on whether third "must attend before them," with a majority of the circuits operating on the basis that the arbitrator has the power to call witnesses but cannot force a third party to produce documents or appear at a discovery deposition.

"New York litigators should be wary when conducting virtual arbitrations," the attorneys write, while noting that, specific to the Second Circuit, the Circuit does not support the same rights and procedures offered during in-person hearings. "Best practices would be to practice careful drafting and conduct in-person hearings when possible. If the parties think third parties may be involved in the arbitration proceedings, contracts should be drafted in such a manner that requires in-person hearings."

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Corcoran is known for his business and real estate litigation experience involving high-value, CMBS loan foreclosure and guaranty enforcement, EB-5 fraud and financing disputes and complex commercial transactions regarding finance, competition and intellectual property.

Lackey is a complex commercial trial attorney and has decades of litigation experience involving large financial institutions, EB-5, real estate, financial services, bankruptcy, and hospitality-related litigation.

McGowan, a former public defender, focuses on effective and empathetic client representation through all phases of the litigation process in order to obtain a comprehensive and empowering solution for her clients.

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