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BEFORE IN-PERSON TRIALS HALTED, THREE NJL WOMEN LED (AND EARNED) SUCCESSFUL DEFENSE VERDICTS

During the small window when trials briefly went live this fall, three Nilan Johnson Lewis women not only led the few pieces of pandemic litigation, but all three garnered full defense verdicts within three days of each other. This is significant when you consider nearly 97 percent of civil cases are resolved before going to trial in a typical year without a pandemic.

Litigators Amanda Cialkowski and Ellen Brinkman both led in-person trials. What's unique about these trials is that while still in-person, attendees were required to wear masks. Good litigators use facial reactions and expressions to dig deeper and suss out information that may be beneficial to clients. How do you do that when a major cue is obscured? Or how do you keep jurors more engaged?

"Every trial is different, and you prepare for it, but even then, there were 'norms,'" says Amanda Cialkowski, who helped lead a civil jury trial in Polk County, WI—the first in-person civil trial in the county since the pandemic began. Experts generally testify in court, but this is where Amanda found the advantage: use remote backgrounds to tell a story. For example, one particular expert witness testified from his lab via Zoom, adding credibility to what he was saying. It even allowed him to use his laboratory equipment to demonstrate a central issue of the case that, because of its size, would have been difficult to do in a courtroom. Amanda also kept jurors more involved by allowing them to submit their own questions for the witnesses – a strategy she said she'd use again post-COVID.

When representing a Fortune 200 company in one of the first in-person civil jury trials in Hennepin County since the pandemic began, Ellen had to get creative with how she and her team gauged their jury while they were wearing masks. "We really dug in during voir dire to learn about our jurors. We had them fill out detailed questionnaires in advance, and knowing the jury would be masked the entire time, we spent an extended amount of time asking them questions to get them talking and bring out their personalities. We had to be strategic knowing that the masks would be a significant challenge." During the trial, "Rather than relying on facial expressions like we'd normally do, our team used other clues to read jurors, like body language and the timing of note-taking by the jury when certain evidence was presented," said Ellen.

Perhaps the biggest challenge, though, was conducting an arbitration over video. Labor and employment litigator Sandra Jezierski is no stranger to complicated and intense arbitrations, but conducting one over Zoom with multiple parties—and even a translator—"was a bit of a challenge," Sandra joked. "Although some aspects of the virtual arbitration allowed for a faster process, there was a lot of extra coordination involved in terms of scheduling and ensuring all parties had the right technology."

All three credit the nimbleness of their teams who adapted quickly to ever-changing schedules and challenges. "You can't prepare for a pandemic, but because of how we practice at NJL, we were ready to roll with the punches," Amanda notes.

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