

Protecting Investors in a Time of Crisis: A Message from BLB&G on Access to Justice and COVID-19

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Note: An expanded version of this article was published on April 10, 2020 on Harvard Law School's Forum on Corporate Governance blog. It can be accessed [here](#).

On March 23, 2020, a leading defense side firm posted a memo decrying a supposed “flood of filings,” which it characterized as “in support of imagined and plainly non-exigent derivative lawsuits.”⁽¹⁾ The memo asserted that “deadlines created by litigation of this sort” should not be permitted to burden an overtaxed legal system. A day later, the author of the memo told Reuters that it is “implausible,” “impracticable” and even “unethical” for investors to pursue their claims at this time.⁽²⁾ On March 25, the same firm issued a client memo describing activist stockholders as a “menace to American companies.”⁽³⁾

As members of a leading firm fighting to help investors protect their rights, we wholeheartedly recognize that the world is living through difficult times and that discretion must be brought to decisions concerning the need to seek relief from the Courts during the current Covid-19 crisis. However, any suggestion that the judicial system should become closed to genuinely aggrieved investors, even during a time of crisis, strikes us as misplaced, and even dangerous.

We respectfully disagree that the crisis renders investor protection “non-essential.” When fraud and self-interested conduct by corporate fiduciaries takes a holiday (whatever the reason), so too will the need for investor protection.

When the defenders of the status quo anoint themselves as being above compliance with “deadlines created by litigation of this sort,” they put at risk the system that has served to help ensure the integrity of our markets and to encourage effective attention by corporate leaders to their fiduciary responsibilities.

We hope the damage from this crisis is limited and that it is passing. We also believe deeply that access to justice is critical to the functioning of our society. Accordingly, while recognizing that other matters may be more pressing, we will continue to press forward the fight to protect our clients' rights. We will do so in a way that recognizes our shared humanity and with an appropriate degree of empathy when deadlines do need to be adjourned and matters rescheduled.

Most importantly, we commend the Courts for their courage and determination to carry on in troubled times. We will not for a moment, however, indulge the suggestion that there should be a "suspension" of investor protection under law. We sincerely hope that the Courts will agree.

1. Savitt, W., Litigation Priorities and the Crisis, available at www.wlrk.com

2. <https://www.reuters.com/article/us-otc-covid19/business-as-usual-is-implausible-impracticable-and-unethical-now-wachtell-exec-idUSKBN21B32R?=3>

3. Lipton, M., The Crisis and the Activists and Raiders, available at www.wlrk.com