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**Thomas H. Curran** has developed his practice over the past three decades, focusing primarily on bankruptcy and insolvency proceedings. He often represents secured and unsecured creditors, committees of creditors, trustees and equity security holders in bankruptcy and insolvency proceedings as well as financial institutions and other lenders in out-of-court loan restructurings, assignments for the benefit of creditors, foreclosures, repossessions, and the sale of distressed assets and businesses. He also has experience representing business debtors in workout, restructuring and bankruptcy matters.

Thomas has extensive experience in all facets of cross border insolvencies and cross border insolvency litigation. He is regularly engaged by private equity firms, governmental agencies and estate representatives to advise and counsel them on a wide range of cross border insolvency issues.

**Thomas H. Curran Associates LLC** has offices in Austin, Boston and London, and represents a wide variety of individuals, businesses, corporate entities, and governmental agencies in litigation and transactional matters throughout the United States and Western Europe. They have navigated a broad range of commercial litigation cases, including cross border insolvency, institutional creditors' rights, bet the company litigation.

Their corporate group advises entrepreneurs, investment partnerships, private equity funds and venture capital firms on the legal, business and financial issues related to forming, financing, buying and selling, and investing in businesses. They counsel domestic and foreign firms in inward and outbound investments in a range of industries, including sports and entertainment, finance, communications, manufacturing, retail and consumer, and commercial real estate.

QUESTION ONE

**Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?**

The pressures on over-stretched court systems in Massachusetts have led to an increased push for self-help measures and alternative dispute resolution by both federal and state benches.

In the United States District Court for the District of Massachusetts (USDCMA), the Local Rules require counsel for adverse parties to confer and narrow issues in dispute at multiple junctures. For example, Local Rule 7.1(a)(2) also requires counsel to 'certify that they have conferred and have attempted in good faith to resolve or narrow the issue' prior to filing any motion with the court, and Local Rule 37.1(a) imposes more specific conferencing requirements if a discovery dispute is at issue. Additionally, Local Rules 16.1, 16.3 and 16.5 govern the obligations of counsel to confer and prepare joint statements for the court to streamline issues and, undoubtedly, to encourage parties to keep settlement at the forefront of their litigation strategy. Local Rule 16.4, in fact, requires the court to 'encourage the resolution of disputes by settlement or other alternative dispute resolution [(ADR)] programs' and empowers the court to refer appropriate matters to ADR. However, the court cannot mandate the use of ADR over the parties' objections.

In the Massachusetts Superior Court, the state's highest trial court, procedural and local court rules impose similar requirements. Massachusetts Rule of Civil Procedure (MRCP) 16 empowers Massachusetts courts to require opposing parties to conference before the court to, inter alia, streamline triable issues, address scheduling issues and consider the possibility of settlement. Massachusetts Superior Court Rules 9-9E impose further obligations on opposing counsel when it comes to motion practice: under Rule 9A, all civil motions save those excepted at paragraph (d) of the rule must be served by the moving party, who must then allow 10 days for opposing parties to serve opposition papers (except motions for summary judgment, which have a 21-day opposition period). Rather than filing motions and oppositions under separate cover, the moving party then files

the complete package (referred to as the '9A package') with the court pursuant to the guidelines set forth in the rule. Also applicable in civil motion practice in Massachusetts Superior Court is Superior Court Rule 9C, which requires counsel to confer in good faith prior to filing any motion to ensure that areas of disagreement are narrowed to the fullest extent before the dispute is brought before the court. Special considerations under Rule 9C apply to dispositive motions and motions concerning discovery disputes, with heightened requirements for discovery motions taking effect on September 1, 2023.

Both federal and state local rules in Massachusetts reflect a trend toward increasing promotion of self-resolution and streamlining of issues by the parties before imposing on the court's time and resources. In the USDCMA, magistrate judges work alongside district judges to resolve discovery disputes and facilitate early disposition of cases among the parties. Massachusetts state courts also strongly encourage parties to work together to resolve issues among themselves before consuming court resources.

QUESTION TWO

**Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?**

Given the general trend toward promoting ADR, courts are generally enforcing hybrid, multi-tier and carve-out dispute resolution clauses in commercial agreements. These clauses allow the contracting parties to better tailor dispute resolution protocols to their specific needs and can save time and resources down the line in the event a litigable dispute should arise.

When the parties to a transaction trust their chosen jurisdiction to competently and efficiently protect their substantive rights and remedies, carve-out dispute resolution clauses can preserve parties' rights to maintain certain classes of claims or remedies in the court, which may be better able to fashion certain kinds of relief than are available via ADR. For example, where misuse of proprietary information is of concern, an aggrieved party may prefer to bypass a general obligation to arbitrate in order to seek immediately effective protection from the court. Carve-outs in commercial agreements achieve this result by excepting actions for preliminary injunctive relief from an arbitration clause. Massachusetts courts routinely enforce these carve-outs and will hear claims excepted from an arbitration clause by such a mechanism while nevertheless recognising the validity of the overarching agreement to arbitrate. This type of contractual scheme comports with court objectives by reserving for judicial consideration only those disputes that cannot be more efficiently and effectively resolved outside of the court's channels.

QUESTION THREE

**How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?**

Massachusetts litigants are largely self-regulating in accordance with the rules discussed above, and there is a general spirit of willingness to collaborate to better serve the court's purpose in

**TOP TIPS**

**Navigating a dispute in your jurisdiction**

- ✓ **In the USDCMA, ensure obligations under Local Rules 7.1(a)(2) and 37.1(a) are satisfied prior to filing motions with the court.** Local Rule 7.1(a)(2) requires a conference with opposing counsel prior to filing any motion, and Local Rule 37.1(a) imposes more specific requirements where discovery disputes are at issue.
- ✓ **In the Massachusetts Superior Court, keep in mind the procedural requirements set forth in Superior Court Rules 9A and 9C.** Rule 9C similarly requires counsel to confer prior to filing any motion, with heightened requirements for dispositive and discovery motions. Rule 9A requires parties to collaborate in filing motions subject to opposition procedure, with special considerations for summary judgment motions.
- ✓ **Consider the benefits of ADR.** In the USDCMA, magistrate judges are available and proficient in conducting judicial settlement conferences. Similarly, in the Massachusetts Superior Court, parties can request a referral to ADR under Superior Court Rule 20.

seeking to streamline motion practice and pretrial procedure. Technological improvements on the court's part also aid the parties in conserving time and resources – most Massachusetts courts now offer electronic filing options, and the procedural and local rules further provide for stipulation to receipt of service of motion papers and discovery by email, which can save the parties time and hard costs of production, and which further improves access to justice.

While current trends in artificial intelligence (AI) present us with powerful generative tools like ChatGPT, in the context of litigation practice, such tools might create just as many problems as they solve. It's likely too soon to observe any meaningful impact of tools like ChatGPT on litigation practice in Massachusetts, but it should be noted that overreliance on AI has landed attorneys in hot water in other jurisdictions. ChatGPT has been known to fabricate case law, so if not used with caution, these tools run the risk of becoming a hotbed for malpractice. However, when it comes to questions of access to justice, there has been chatter about deploying AI chatbots on Mass.gov to aid pro se litigants in navigating the state court system. In this context, and if properly programmed to pull and present only the most reliable information, tools like ChatGPT have the potential to make the courts more accessible for everyone.