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## COVID-19 Outbreak Leads To Mistrial In EDTX

By **Katie Buehler**

Law360 (November 17, 2020, 5:39 PM EST) -- An Eastern District of Texas judge on Tuesday granted a mistrial in a breach of contract trial that led to 15 participants testing positive for the coronavirus, saying he will schedule a new trial sometime in 2021.

U.S. District Judge Amos L. Mazzant III made the ruling after attorneys for defendant Karya Property Management LLC told him the company wasn't comfortable proceeding with fewer than six jurors, according to court records. Judge Mazzant had previously postponed the trial for two weeks to allow for further testing of participants and a deep cleaning of the courthouse. But during a Monday afternoon teleconference, he told attorneys that three jurors had issues with resuming the trial on Nov. 30.

David O'Toole, clerk for the Eastern District of Texas, told Law360 on Tuesday that the number of trial participants who tested positive for coronavirus had increased from **at least seven** on Friday to 13 confirmed positives Tuesday. On November 19, O'Toole told Law360 that number had increased to 15. The positive cases include two jurors, at least three members of the defense team, a "handful of folks" on the plaintiff's team, and five or six court staffers.

Michael Richardson of Beck Redden LLP, representing Karya, told Judge Mazzant that after "extensive discussions" with his client, they decided not to proceed with a five-person jury, according to a transcript of Tuesday's phone call obtained by Law360.

"It's not an easy one to make, but my clients will not agree to proceed with less than six jurors," Richardson said.

Maria Wyckoff Boyce of Hogan Lovells, representing plaintiff ResMan LLC, told Judge Mazzant her team had offered several alternative solutions to a mistrial, but that an agreement couldn't be reached, according to the transcript.

"We're deeply disappointed, given the investment of the parties' and the court's time, but we — I guess all I can say on behalf of my client is that we remain very eager to try this case and look forward to returning as soon as the court deems it appropriate," Boyce said.

Judge Mazzant said one juror didn't feel comfortable returning to trial at any point, another said they wouldn't feel comfortable unless the trial was postponed for a month, and a third wouldn't be able to return until December because of scheduling issues, according to a transcript of the Monday teleconference obtained by Law360.

The remaining five jurors, Judge Mazzant told attorneys on Tuesday, were "very eager" to get back to the trial.

The case, in which ResMan accuses Karya of giving another company unauthorized access to a property management software platform in violation of a contract, was the first of 20 trials the Eastern District has held since June in which positive virus tests have been reported. Judge Mazzant had held seven trials before this one.

He apologized to the attorneys during Tuesday's call.

"I apologize for all this happening," the judge said. "We've done, again, seven trials without any incident, and the district, I think, has done about 20 trials without any incident, and we had issues this time."

The judge also announced at Tuesday's teleconference that he was pushing all trials scheduled for December to the new year.

"I'm not doing any more jury trials between now and December," he said. "We are planning on resuming, assuming what the numbers look like, in January."

O'Toole told Law360 Tuesday he was relatively sure the number of positive tests from the ResMan-Karya trial will not increase further.

Richardson said that one of the three members of the defense team who tested positive for the coronavirus was diagnosed with pneumonia Monday night, but that it was caught early and shouldn't be an issue, according to Tuesday's transcript. He didn't specify which member of the team it was.

Jury selection was held on Nov. 2 and the trial was scheduled to last for two weeks. Jurors heard testimony every day last week and on Nov. 9, according to court records.

After lunch on Nov. 9, the judge advised the jurors and attorneys that a juror who had recently been excused tested positive for the coronavirus.

The judge then suspended the trial and asked participants to get tested and provide the court with results as soon as they were received. The judge advised participants to consult with their physicians about self-quarantining.

Judges in the Eastern District of Texas have used a **variety of safety measures** during the pandemic. People entering Judge Mazzant's courthouse in Sherman have their temperatures checked daily, physical barriers have been set up in some parts of the courtroom, and mask-wearing and social distancing are required.

The clerk's office in Tyler, Texas, was closed for cleaning after a court staffer tested positive for the coronavirus, O'Toole said. The clerk staff is currently self-quarantining and the person who tested positive will have to test negative for the virus before returning to the office.

The rest of the courthouse is still open, according to the district's website.

Texas is currently experiencing a second spike in COVID-19 cases, reporting more than 59,000 new cases statewide over the past seven days, according to data from the Texas Department of State Health Services. Texas has the second-highest total death count with more than 20,000 COVID-19 deaths. Only New York has more, with over 33,000 deaths.

ResMan is represented by Maria Wyckoff Boyce, Cristina Espinosa Rodriguez, Jillian Beck, Ira Jamshidi, S. Lee Whitesell and Jessica Ellsworth of Hogan Lovells, Michael Jones of Potter Minton PC, Tommy Jacks of Fish & Richardson PC and Daniel Winston and Greta Fails of Choate Hall & Stewart LLP.

Karya is represented by Michael Richardson and Seepan Parseghian of Beck Redden LLP and Mark Stachan, Richard Sayles and Robert Sayles of Bradley Arant Boult Cummings LLP.

The case is ResMan LLC v. Karya Property Management LLC, case number 4:19-cv-00402, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Ryan Davis. Editing by Jay Jackson Jr.

*Update: This story has been updated to include information about the current number of positive coronavirus tests related to the Sherman trial and about the Tyler clerk's office closure. This story was updated Nov. 19 to reflect that two additional court staffers tested positive for coronavirus.*

