

🖨️ [Click to print](#) or Select '**Print**' in your browser menu to print this document.

Page printed from: <https://www.law.com/delbizcourt/2021/10/27/the-hybrid-trial-in-action-implemented-by-the-delaware-chancery-court/>

The Hybrid Trial in Action Implemented by the Delaware Chancery Court

In the case I just tried, a hybrid solution for court proceedings was smartly implemented by the Delaware Court of Chancery where the court suggested using a third-party technology solution provider to handle the logistical and technical complexities of a hybrid trial in a complex litigation matter.

By **Michael Dockterman** | October 27, 2021



Michael Dockterman of Steptoe and Johnson. Courtesy photo

Introduction

Facing renewed challenges from COVID-19 variants after reopening in parts of the country earlier this summer, courts once again must decide whether to try cases without full in-person attendance. In the case I just tried, a hybrid solution for court proceedings was smartly implemented by the Delaware Court of Chancery where the court suggested using a third-party technology solution provider to handle the logistical and technical complexities of a hybrid trial in a complex litigation matter. Based on our recent experience, the hybrid solution is a model for the future of complex trials.

Overview

In New Castle County, Delaware, I was the lead trial lawyer in a one-week complex trial before Vice Chancellor Joseph Slights. Our client, the plaintiff seller, sought specific performance from the defendant buyer who claimed it was excused from buying the seller's assets because the seller breached its representation to conduct the business in the ordinary course of business, which the contract defined as being consistent with past practices, during the first two weeks of the global pandemic. The trial was planned for in-person testimony in the courtroom, but a key witness expressed concern for his health if he had to travel to Delaware. With permission from the Court of Chancery, the trial became a hybrid-type trial where this key witness would testify remotely from New York while the court and authorized team members participated virtually from Delaware during his testimony.

COVID-19 Backdrop

The case was filed just as the pandemic spread across the country and moved quickly through remote discovery. With the trial looming, the Delaware Court of Chancery reopened and we were excited for an in-person trial with social distancing and precautionary limited attendance. The Chancery Court had adopted procedures for conducting remote trials in the pandemic but we really wanted to be back in the courtroom to be able to employ the tools of our trade. Just as we were gathering in Delaware, the Delta variant set in. We wondered if the trial would proceed and what kinds of restrictions on courtroom access we would face. Would the trial shift to being all virtual or would we be able to be in court for some of the work? With the limitations on attendance, how could we assure a "public" trial and how can we make certain that there was balance between witnesses appearing in person and the witness who would testify through video links? The court was willing to be creative and flexible, which put many options on the table. Dealing with the technical issues of a hybrid trial is not something we wanted to face. Lawyers are accustomed to using technology in the courtroom" but this is a step "beyond using technology to create a virtual courtroom and we did not want to divert our attention from the business at hand. At the same time, our client stakeholders were vitally interested in the proceedings and wanted to monitor them in real time even though they could not be in the courtroom. Fortunately for the parties and the witnesses who would testify live, the vice chancellor and court staff recently had implemented virtual access technology for trials through a third-party provider, CourtScribes. That made things easy for our team because we had worked with CourtScribes (and its predecessors) before, knew them to be innovators whose approach would make things easy and intuitive for the lawyers involved, and their track record gave our clients all the confidence they needed to move forward.

Action/Solution

In the Tesla trial that preceded ours before Slights, CourtScribes had provided a hybrid solution where they managed a total of 80 authorized participants who were given access to the proceedings virtually. In addition to providing virtual support over Zoom, CourtScribes had an on-site operator present in the courtroom. Our population was much smaller so we could say, "we'll take one of those," and feel comfortable that things would work for us. The CourtScribes solution allows authorized virtual participants to view the proceedings, communicate with those of us in the courtroom and see the exhibits as they are presented in court. Clients and other interested people are able to view the proceedings and communicate with lawyers and colleagues privately during breaks. When it was time for the witness to testify from New York, the court took the testimony virtually while the lawyers examined from their offices, then we moved immediately back to the courthouse for the next witness. The technology worked exactly as we were told it would and did so seamlessly. Sidebars were protected when necessary. We provided a sealed book of exhibits to the witness in New York which he opened as he took the stand and as copies were given to the court and counsel. When additional exhibits were needed, they were displayed on screens and made available for download (and printing if the witness desired) to keep the examination fair with no delays. The record of the trial in the official transcript was as accurate for the remote testimony as it was for the witnesses who appeared live in court.

Outcome

The hybrid trial went so smoothly that we almost forgot the third-party operator was there to make the hybrid solution possible. There were approximately 23 participants in the courtroom including court staff and an average of 10 viewer locations logged into the Zoom meeting to observe. When the testimony went all virtual, there were an average of 20 viewer locations logged into the trial. The operator continuously monitored the waiting room to admit the approved participants in a timely manner. This was very important for security as well as the smooth flow of trial. As an added security measure, all unidentified participants remained in the waiting room while the operator reached out to counsel for approval to admit them into the courtroom, but we kept no one from observing the proceedings. The press took advantage of their enhanced access, ensuring that the trial remained public. CourtScribes has been assisting courts around the country with technology and support to conduct virtual trials. They connect judges virtually with lawyers and their clients and witnesses by providing operators to provide support, redundancy and security on Zoom video calls, despite the strictures under which we operated. The operator monitored the trial to make sure there were no audio or video disruptions during the proceedings and was on standby to assist with any technical issues had they arose, both in-person and on Zoom. The hybrid model worked for this trial and will work in others. The team at CourtScribes took the time and care to train our personnel well ahead of the trial to avoid any surprises during the proceedings. CourtScribes was also available 24/7 to answer any questions or concerns before the start of trial. The bottom line is that CourtScribes made things go smoothly when things could have been slow, awkward or unfair.

Michael Dockertman is a litigation partner at Steptoe & Johnson in Chicago. He has tried scores of commercial disputes throughout the United States In addition to litigating complex matters in various jurisdictions nationwide, he has led multinational litigation over matters pending simultaneously in courts around the world. The views and opinions expressed in this article are those of Dockterman alone and not of Steptoe & Johnson.