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After the Hurricane and Outside the Cone

Hurricanes are low probability events, but so are trials. Civil litigation results in trial less than three percent of the time. The statistical data is the same across the U.S., from Orlando to Miami and from New York to California. Despite the substantial sums of time and money invested, litigation does not really resolve disputes. Why? Perhaps because the litigation process is not really about the dispute. Like a slow-moving storm, litigation can be demoralizing for the litigants, frustrating, difficult to manage and depressing for the people in its midst. If litigation is like a hurricane, the litigants wonder, how do I get out of this cone?

Medical professionals have explained that, much like threatening storms, litigation is a significant stressor, and the pendency of a claim over time is debilitating for the litigants. What we sometimes fail to realize is that the consequences of a protracted dispute are not limited to the hard costs; they include soft costs, which are often immeasurable. Loss of time, attention, vision, focus, emotional strain on families and business partners—all of these are real costs not usually felt by the lawyer but by the participants in the storm. This is not unlike water rising after a storm has passed, because the water takes time to flow downstream. Lawyers are trained to deal with squalls and changing winds in protracted litigation, but they are largely sheltered from the real impact.

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