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Economy, legislative changes making impact on legal industry

Houston Business Journal

Changes in the types of attorneys in demand during a recession may convince firms to re-train and re-structure. Some areas of law are in high demand while others fall off due to client budget cuts. Houston area lawyers described a wide range of areas where legal industry is adapting to a different economic climate in 2009.

Transactional work particularly affected by the recession

Sylvia Mayer, partner, Weil, Gotshal & Manages LLP:

Law firms around the country are engaged in one or more rounds of reductions in force for both attorneys and staff. Particularly affected are attorneys specializing in transactional work. We have always had economic cycles where transaction work is in high demand, while restructuring work is slow, and the inverse where restructuring work is in high demand, while transaction work is slow. However, the current "trough" for transaction attorneys seems to have a deeper (top to bottom) and wider (numbers of those let go) spread than prior cycles. This process will continue for a few more months. To date, we have only seen minimal effect in Texas, but with lower energy prices, this may change.

Law firms, too, must mold to new economic model

Wayne Risoli, managing shareholder and former chairman of the litigation section, Chamberlain, Hrdlicka, White, Williams & Martin:

It is clear that the current economic conditions have required all companies to reduce their budgets, including their legal budgets. This dynamic has required law firms to reassess their rates and fee structure. Those firms that work with their clients to understand their new budget constraints and conform fees to adhere to that new budget, will be in the best position to weather this economic storm.

Many clients have in prior years looked only to the largest firms for their significant legal issues, perhaps overlooking the fact that in many areas midsize firms have expertise equal to that of the largest firms. Our firm is considered small, but our tax expertise competes favorably with the largest firms in the country.

With the backdrop of budget contraction, many larger clients are now looking to the small and midsize firms to provide certain legal services. As we have seen, clients are relieved to find the services equal to the largest firms but at a much more reasonable cost.

In addition, I would add that this is a very fluid environment. It appears that all companies, including law firms, are at present trying to assess when and for how long our economy will hit bottom. Expectations have now become demands that all professionals fit within the new economic model.

Demand increasing for compliance lawyers

Robert A. Major Jr., founding partner, Major, Lindsey & Africa LLC:

The Bernie Madoff case, coupled with the TARP bank bailout stories — including a report by the Congressional Oversight Panel that the Bush administration “overpaid” on the bank bailout to the tune of \$78 billion — has stirred the public conscience. This is a public already seething with daily stories of woeful economic times.

The public reaction is having an effect. A recent Houston seminar hosted by the Baker & McKenzie law firm on corporate compliance suggests public outcry over Wall Street misdeeds and their financial repercussions has led to a heightened compliance environment — and the increased calls our search firm is getting for senior-level compliance lawyers.

There appears to be an inverse relationship between the economy and government compliance requirements — i.e., the worse the economy, the greater the enforcement activity. Why is this? In a recession, government regulators feel pressure to ensure that laws are applied uniformly and fairly. The public wants villains. Also, people want action from regulators. “Do something!”

In a tough economy, the temptation to cut corners increases. When employees feel pressure to “make their numbers,” they might be tempted to misrepresent sales figures.

Another corner that might be shaved is collusion with competitors, particularly through price-fixing. A related temptation might be to inflate quarterly earnings with the intention of “truing up” the next quarter. It’s the equivalent of a gambler “doubling down,” hoping to reverse prior losses.

As corporate layoffs increase, so do the odds for disgruntled victims to become whistleblowers, alerting authorities to various misdeeds by their ex-employer. A whole “cottage industry” of law firms has already developed that specializes in this type of plaintiffs’ work.

Firms using case assessments to manage litigation costs

Matthew Caligur, Houston partner, Baker and Hostetler LLP:

A well-designed case assessment can help reduce litigation costs by identifying key aspects of a case, helping develop a plan to address them and contributing to effective budgeting and staffing decisions.

After developing an understanding of the relevant law and key facts, a comprehensive case assessment should address other factors that may impact litigation outcomes, such as the parties’ historical relationship, the venue, the judge, the jury pool and opposing counsel. An understanding of these issues can directly influence case staffing and budgeting.

After the preliminary analysis is complete, it is important for all stakeholders to develop a shared understanding of expectations for the outcome of the lawsuit. Is the objective to prevail at any cost? Is the objective to maximize economic recovery (or minimize loss)? Are economic factors secondary to non-economic factors such as goodwill, community relations, or corporate citizenship? Internally, are the expectations of business managers and litigation counsel aligned? Candidly addressing different perspectives and at the early stage of a case is invaluable to strategic planning and lays the groundwork for the preparation of a meaningful and accurate budget.

Once the preliminary analysis has been completed, the case assessment should not simply sit on a shelf. A growing number of companies are requiring inside and outside counsel to regularly monitor the legal spend, and to report significant variances to the appropriate company personnel. Ongoing review of the preliminary analysis can provide a tool to achieve this.

Providing closure to the engagement is an important but often-overlooked aspect of litigation management. Revisiting the case assessment at the end of an engagement not only builds stronger relationships between clients and attorneys, but it also sets the stage for productive future engagements.

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