

Ups and Downs

How the Recession Has Hurt — and Helped — the Legal Industry

By GEORGE O'BRIEN **Attorney Kevin V. Maltby weighs in below**

The Great Recession has impacted virtually every sector of the economy, and the legal profession is certainly no exception. Overall, business is down for many as companies and individuals put off all-but-essential legal matters until the economy improves. But some specialties have actually benefited from the downturn. These include bankruptcy and employment law, but also real estate, which has picked up lately thanks in large part to a spate of refinancing and first-time homebuyers taking advantage of an \$8,000 tax credit.

Bethzaida (Betsy) Vega says she ventured into real estate as a legal specialty because she decided she would rather represent many of those coming to her seeking assistance than refer them to someone else.

"I was sending so much business out the door," said Vega, who is fluent in Spanish and, throughout her career, has been sought out by members of the Hispanic community. Early on, she didn't feel fully competent to handle the closings and other real-estate matters that people would bring to her, so she would send them to other lawyers. "It was my husband who said, 'you should be handling these.'"

And after becoming more proficient in the ins and outs of real estate, she did start handling such matters, to the point where such work soon constituted far more than half of her practice, which also includes criminal defense work. But as the recession started talking its toll on the real-estate market across the board, Vega started to see that percentage fall at first, and then soar as falling interest rates prompted many homeowners to refinance and an \$8,000 tax credit for first-time homebuyers pumped some serious life into that market.

The moral to this story? It's that the Great Recession, which has touched every sector of the economy, has certainly impacted law as well. But while many specialties have suffered during the downturn — everything from real estate (commercial and residential) to business transactions to even routine work such as wills — others have flourished.

Indeed, some bankruptcy lawyers have had trouble keeping up with the business coming to their doors, while employment-law specialists have been busy handling everything from severance agreements to workforce reductions to the discrimination claims that often result when there are layoffs.

"I'm still very busy with a number of employment law matters," said Kevin Maltby, who handles such assignments — and several other types of legal work — for the Springfield-based firm Bacon Wilson. "The initial uptick in layoffs and workforce reductions has occurred, and companies have learned to do more with less. Those types of actions may be behind us, but there are other reasons why the phone is ringing."

Don Holland, a partner with Longmeadow-based Holland & Bonzagni, which handles patent work, trademark and copyright matters, and other types of intellectual-property protection, said this recession has been different from the others he's experienced over a 30-year career.

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"I used to think that we were pretty much recession-proof," he explained, adding that, in downturns past, companies and individuals seemed unaffected when it came to spending on IP matters. "But the downturn this time is different than the last two that I can recall."

Elaborating, he said his firm, which has a client list numbering around 200, won't hear from some of those companies and individuals for years at a time. Others (the names generally change from year to year) will be heard from almost every week or month. With this

recession, the number of companies in that latter category has decreased, from the usual 12 or 15 to perhaps eight or 10, he continued, but they are bringing more work to the firm.

"That's because they're gobbling up other companies, taking advantage of the old buy low, sell high axiom," he explained. "It's a different practice for us, and I'm also finding that people have been more litigious over the past few years because they have to protect their main product."

In this issue, *BusinessWest* looks at how some legal practices have been impacted by the economy, and what the prospects for the near future might be now that the skies are apparently starting to brighten.

Case in Point

Maltby says he sees a few signs of improving economic times. Perhaps the most significant is a sharp drop in the number of calls from MassMutual employees asking him to peruse severance agreements.

The financial-services giant has had several rounds of layoffs over the past year or so, and with each one has come several such inquiries to Maltby's desk.

"They'll say, 'I just got this severance agreement, and I've been told to take it to an attorney for review,'" said Maltby, who told *BusinessWest* that companies like MassMutual are under no obligation to give severance packages, but many do, in part to reward long-time employees and cushion the blow from a layoff, but also to ward off potential claims that come with such workforce reductions; most agreements contain language that the employee in question takes the package with the condition that he or she agrees not to sue the employer.

A pronounced spike in severance-claim work is just part of the story of this recession, said Maltby, noting that there are other kinds of employment work coming to him and others at the firm — everything from the discrimination claims that often result from downturns, many involving age, to work for employers in preparation for a workforce reduction, to explaining new laws and policies that have come as a result of the economic meltdown.

These include something that many are calling "Obama COBRA." As part of the stimulus package authored by the Obama administration this past February, certain qualified

individuals may be eligible for up to a 65% reduction of their premium cost under COBRA, Maltby explained, adding that the measure was designed to provide more-affordable health insurance for those who find themselves out of work.

And while some aspects of employment-law work have declined somewhat as the recession has eased, there is still a marked uptick in overall volume from a few years ago, said Maltby, noting that discrimination claims are still being filed — employees have 300 days to do so, and for many, the clock is still running — and there are other matters to address.

In the meantime, economic downturns like this one have become an appropriate time for many companies to review policies and procedures and get what Maltby calls a “tune-up.”

“We do a once-over of the entire system, including the handbook,” he explained. “We look at everything from Internet-use policy to e-mail policies and ask, ‘what are you doing about this? And what are you doing about that?’” he explained. “When they come to us to talk about layoffs, we can do a health check, or a physical for the company, to make sure all is in order.”

The bounce in employment-law work is an example of how the downturn has certainly benefited lawyers in some specialties. Bankruptcy filings have skyrocketed, for example, and those handling such matters say there has been no slowdown in work. (Consumer bankruptcies totaled 1,046,449 filings through the first nine months of this year, the first time since the 2005 bankruptcy overhaul that filings have surged past the 1 million mark during the first three calendar quarters of a year, according to the American Bankruptcy Institute.)

But overall, the recession has taken a toll on the legal industry, as businesses and individuals continue to put off all but the most necessary legal work until the economic climate improves. This has impacted the volume of work for many lawyers and firms and, in some cases, the nature of the work as well.

House Money

Vega, a sole practitioner who opened her office in 2000, has seen several pendulum

swings, most involving her real-estate work, which she started accepting to take full advantage of an expanding niche market; the Hispanic population continues to grow across the region, and many in that demographic have attained the wherewithal to buy homes.

With relatively few Spanish-speaking attorneys in the Pioneer Valley, Vega put herself in the right specialty at the right time. “It was a little daunting at first, learning a new specialty,” she explained. “But once I learned

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the ropes and the ins and outs, I became comfortable with it, and it became a huge part of my practice.”

The recession has impacted that portion of her portfolio in several ways, she said, noting that early on in the downturn there was a pronounced lull in transaction work. Eventually, things picked up in everything from sales on foreclosed homes to so-called short sales — a sale of real estate in which the proceeds from the transaction fall short of the balance owed on a loan secured by the property sold — to first-timers taking advantage of the \$8,000 tax credit.

“Overall, I don’t think the volume of work is off substantially,” she said, referring specifically to recent months. “But the nature of that work has certainly changed. The \$8,000 tax credit has brought a lot of work back in.”

Holland has noted a similar impact on volume — both with regard to its quantity and nature. He said business is actually up slightly over last year, although the firm is handling work for fewer clients.

There has been a slight uptick in patent work, he said, noting that some individuals who have been laid off or pressed into early

retirement are now scratching some entrepreneurial itches and attempting to bring new products and concepts to the marketplace.

But most of the firm’s recent work has come via a surge in mergers and acquisitions prompted by falling prices and a desire among some business owners, particularly Baby Boomers who have seen their investment portfolios hammered, to sell now rather than try to ride out the downturn.

“We have companies that are buying out other companies, and when that happens, our job is to go in and see what jewels are in the business that can be protected later and increase the value of the company after sale,” he explained. “We also look to see if there are any problems, perhaps with infringement; we look at what they have and at what’s worth protecting ... there’s a lot that goes into this.”

Such reviews are summarized in what are called due-diligence reports, he continued, noting that such a document may take five or six weeks to prepare, and the firm has been handling more this year than it would typically.

“That’s a lot different than doing straight patent work, trademark work, or even copyright work for a company,” he said, noting, again, the somewhat expected turns that have resulted from this economic slide.

Final Arguments

When asked when things might return to normal, the lawyers we spoke with said that word is clearly a relative term, and that ebbs and flows in the economy make ‘normal’ a moving target.

“There’s always work to be done,” said Maltby, referring specifically to employment law. “But the kinds of work will change with the conditions.”

He and others are simply happy to have diverse practices that have enabled them to ride out this storm and, in some cases, see a stronger bottom line. ■

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