

WHO'S WHO LEGAL

COMMERCIAL LITIGATION 2009

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FOR ENTERPRISE
2006

LEGAL MARKETPLACE ANALYSIS: COMMERCIAL LITIGATION

Richard Woolley takes a closer look at current litigation issues

THE INTERNATIONAL WHO'S WHO OF COMMERCIAL LITIGATORS 2009

Most highly regarded individuals - global

DAVID BOIES

*Boies Schiller & Flexner LLP
New York*

MARY JO WHITE

*Debevoise & Plimpton LLP
New York*

PHILIP BECK

*Bartlit Beck Herman Palenchar & Scott
Chicago*

NATHALIE VOSER

*Schellenberg Wittmer
Zurich*

PIERRE BIENVENU

*Ogilvy Renault LLP
Toronto*

SONYA LEYDECKER

*Herbert Smith LLP
London*

STEPHEN SUSMAN

*Susman Godfrey LLP
Houston*

GREGORY JOSEPH

*Gregory P Joseph Law Offices LLC
New York*

SHEILA BLOCK

*Torys LLP
Toronto*

DES WILLIAMS

*Werkmans Attorneys
Johannesburg*

It is widely accepted that in a recession clients are more likely to pursue litigation. Disputes arise as finance is withdrawn, contracts become harder to perform and businesses fold. It has happened before: "During the last recession in the early 2000s people went to the law very quickly," says John Heaps of Eversheds LLP in London, "and the assumption was that the credit crunch would throw up a lot of litigation. But so far it has had less impact than was expected, except in specific areas such as fraud and regulatory work. There are also plenty of requests for advice on long-term contractual commitments."

Unlike previous recessions, the current financial crisis is characterised by a general lack of credit on both sides of a dispute. Lawyers in Europe and North America report that clients with tight budgets are being deterred by the considerable cost of litigation proceedings, and litigation funds aren't providing credit to chase bad debt. "Clients are more likely to settle as a result of the credit crunch," according to Saverio Lembo of Bär & Karrer AG in Geneva. "Some think it's better to get a bad settlement than to pursue long and expensive litigation."

For firms with a heavy dependence on their litigation turnover such a drop-off can have severe consequences. The demise of Heller Ehrman LLP in 2008 can be attributed, at least in part, to the series of potentially lucrative litigation cases that settled in quick succession the previous year.

Litigation practices have lost key litigation partners and large groups of associates due to departmental restructuring and downsizing efforts over the past year or so. Many firms, however, are now bolstering their litigation teams in preparation for an increase in work as market liquidity returns and long-expected "mega-cases"

come to the surface. Rod Phelan at Baker Botts LLP in Texas predicts: "Litigation will continue to pick up as the economy stabilises and companies can turn their attention to the backlog of disputes that have arisen amid the downturn," and adds that the firm has made numerous disputes hires in recent years. Bär & Karrer, Freshfields Bruckhaus Deringer LLP, Berwin Leighton Paisner LLP and McGuire Woods LLP have all made high-profile additions to their litigation benches in the past year.

In some cases, demand for litigation services is already outstripping supply. "I've never had so many cases; I've had to turn work down!" says Fred Bartlit at trial boutique Bartlit Beck Herman Palenchar & Scott LLP in Chicago, whose current caseload encompasses antitrust, securities, product liability and IP disputes. *The American Lawyer* recently reported a 5.4 per cent rise in profits for Gibson Dunn & Crutcher LLP, a large portion of which is also accounted for by IP litigation work. "Bankruptcy activity is extraordinarily high," according to Alan Salpeter of Dewey & LeBoeuf LLP in Chicago, and one of our sources in Italy reports "an increase in contentious insolvency, along with pre-contention remedies".

ACTIVE SECTORS

One of the chief sources of work for litigators will be bankruptcies. The dramatic collapse of Lehman Brothers last year has already lived up to Lord Falconer's prediction, made at *Legal Week's* London Litigation Forum, of a flood of litigation "on a scale we have not seen before". Bloomberg expects Lehman to have paid out nearly \$1 billion to bankers, accountants and lawyers by the end of its bankruptcy. And with recent high-profile insolvencies such as General Motors, Chrysler and Arcandor impacting markets around the world, a trend looks set to emerge.