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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

5 Great-Recession Lessons GCs Must Remember Today

By **Adam Bass** (April 30, 2020, 6:05 PM EDT)

Adam Bass

As the business community continues to navigate the unique challenges presented by the COVID-19 crisis, corporate legal departments should take care not to forget the lessons of history amid the scramble to implement new strategies for weathering this storm.

This is not the first storm we have overcome, and it will not be the last. Many business leaders can gain valuable insights for effectively using outside counsel during a financial downturn by learning from what worked and what did not work in the wake of the 2008 financial crisis.

On April 6, JP Morgan Chase & Co. CEO Jamie Dimon warned in a 23-page letter to shareholders that the economic fallout of the coronavirus pandemic would bring on a recession and a global financial crisis such as what was seen in 2008. "At a minimum, we assume that it will include a bad recession combined with some kind of financial stress similar to the global financial crisis of 2008," Dimon wrote.

That period, which led to banking reform, multibillion-dollar bailouts of the auto industry, banks and other pillars of industry deemed "too big to fail," is now universally known as the Great Recession. For anyone who was a general counsel at the time, the lessons are very specific and have a lot to do with the ripple effects of the recession that threw BigLaw off its axis.

By the time the crisis was over, thousands of lawyers would be looking for work. This created disruption for the clients of those firms, who were then forced to recalibrate their reliance on outside counsel.

Here are five lessons from the Great Recession that general counsel should remember today.

1. Minimize Disruption by Relying on Appropriately Leveraged Law Firms

The Great Recession revealed something very important about law firm leverage models: overleveraged law firms suffer the most disruption during an economic downturn, and they pass that disruption on to their clients.

By the time of the Heller Ehrman LLP, Howrey LLP, and Dewey & Lebeouf bankruptcies, the industry began to see that there are three different categories of large law firms: (1) firms that are built to survive economic downturns with minimal disruption because they were already operating on an appropriately leveraged business model; (2) firms that must lay off hundreds of attorneys in order to survive a financial downturn because they were overleveraged; and (3) firms that implode and disappear because their leverage models were so strained.

During the Great Recession, clients of firms that fell into the second and third categories experienced the greatest disruption. In the midst of a global pandemic and an increasingly grim economic outlook, general counsel have enough problems of their own to worry about and should not have to waste energy addressing problems created by mass attorney layoffs and firm collapses. Though it can be difficult for general counsel to identify which firms are more insulated from these risks, one of the most reliable metrics is a partner-to-associate ratio that is close to 1:1.

In the years that followed 2008, appropriately leveraged law firms were largely insulated from attorney layoffs and firm bankruptcies, and their clients directly benefited from their continuity of operations. Additionally, an appropriately leveraged law firm is more likely to staff matters leanly, which should be a top priority for general counsel during the present economic crisis.

2. Follow the Talent

Recently, a number of prominent law firms announced changes in partner compensation, cancelled distributions, and made other changes that will inevitably lead to lateral movement of partners and even entire practice groups between firms. It happened in 2008 and it will happen again in the coming weeks.

What the industry learned from the Great Recession is that clients can suffer serious consequences as a result of splitting practice groups and defecting attorneys, including disruption in the implementation of case strategies, increased legal expenses to get new teams up to speed on existing matters, and a loss of institutional knowledge at previously reliable firms. Firms that once had a deep bench in your industry may now have only a fraction of the expertise that your organization requires.

As these shakeups play out, it is more important than ever for corporate legal departments to "follow the talent" by reviewing their entire stable of outside firms and examining how the makeup of those firms has changed since they were retained. General counsel should consistently reevaluate which firm is the best fit to solve their problems based on the experience, expertise and rate structure that firm brings to the table.

And your search for talent should not stop there. As Law360 **reported on April 14**, some of the most talented in-house counsel will be subjected to lengthy pay freezes and even pay cuts if their companies accept direct federal loans during the coronavirus pandemic. This means that many in-house counsel will be forced to choose between reentering the job market or accepting sweeping pay freezes and pay cuts that could remain in place until one year after their organization's federal loans are repaid.

Depending on the length and severity of the current economic downturn, this could result in a shake-up of in-house corporate talent that rivals or eclipses the number of lateral moves made by outside counsel during the Great Recession.

3. When You Switch Firms, Ask for a No-Cost Transition

Clients can minimize the effects of disruptions resulting from switching firms midstream by asking outside counsel not to charge them for "getting up to speed" on pending matters.

During the Great Recession, most large law firms were too rigid in their approach to building new client relationships under vastly different economic circumstances. The result was a consistent migration of legal work away from law firms and into corporate legal departments.

The current economic crisis will give firms an opportunity to demonstrate that they have become more flexible and entrepreneurial since the Great Recession. Smart firms will do what it takes to land a new desirable client during these challenging times.

From reviewing files to participating in initial strategy calls, it is entirely reasonable for clients to ask their lawyers not to charge for tasks that would not have been necessary but for the decision to change representation.

4. Take Advantage of Reasonable Rate Structures

During the Great Recession, corporate legal departments learned that the quickest way to reduce their overall legal spend was to reduce the hourly rates they were paying their outside counsel. When the 2008 financial crisis hit, the cost of legal services was at an all-time high as law firms and their clients had been riding on the economic prosperity of the preceding years. For many of those clients, paying the invoices of firms that had average hourly partner rates approaching or exceeding four figures became a primary source of financial stress in the first quarter of the Great Recession.

The present financial crisis is a recipe for the same problem, as hourly rates at the largest law firms are currently at historic highs as we enter this global economic downturn. Some matters require lawyers with four-figure hourly rates, and some matters do not. With mounting economic pressures on every business, now is the time to take a look at the rates you are paying on every matter and determine whether lawyers with more competitive rates could solve your problems.

5. Leverage Technology to Do More With Less

One of the few industries that continued to thrive during the Great Recession was the legal technology industry as pressures mounted on in-house lawyers and outside firms alike to "do more with less." At that time, sophisticated e-discovery solutions were still in their infancy and workflow tracking and collaboration tools had not yet proven their usefulness in the legal industry.

Today, firms that have made the right investments in technology will be better positioned to serve their clients on reduced legal budgets. Look for firms that leverage technology not only to streamline their own legal work but also to increase collaboration with in-house counsel.

Adam Bass is CEO of Buchalter PC.