



Recession tactics: Plaintiffs' attorneys find it's not all bad news

The economic downturn creates some new opportunities, sparks innovation, but also delays settlement from insurers.

BY TAMI KAMIN-MEYER

Unless you've been living under a rock, you've probably heard one or a thousand news reports about a global economic slump. Stories about job layoffs are daily news from Corporate America to Mom and Pop shops, and no business seems immune.

Well, maybe *one*.

Several Northern California plaintiffs' lawyers say business has never been better than the last year or so, but just like with most things dealing with law, caveats prevail.

Chris Dolan, namesake of the Dolan Law firm, with offices in San Francisco, Oakland and Sacramento, says his current caseload has increased noticeably over this time last year. Despite the uptick in business, his firm's monetary intake year-to-date is "down 20 percent."

Pardon?

"Insurance companies are trying to take advantage of people's difficulties and low-balling" settlement offers, says Dolan, president-elect of the Consumer Attorneys of California. He becomes the organization's president this November.



Dolan

So if you're finding yourself buried with work but scrounging for cash, is there something you can do about it? Are plaintiffs' attorneys coping with an increased workload but a decreased paycheck?

Conversely, if you aren't as busy as you'd like to be, is there something you can do about it, despite the harsh economic times?

The answer to all three questions is a resounding, "Yes!" Let's take a look at how you can handle the influx or, if the opposite is your reality, how to improve your firm's outlook.

Solo going, but for how long?

Sacramento lawyer Jonathan G. Stein is an avowed solo practitioner. "I enjoy working for myself and wouldn't want to change that," he says. Stein handles several consumer-related legal matters such as personal injury, debt collection and mortgage defense, and filing suits to enforce the Fair Debt Collections and Practices Act.

Despite being "much busier" at the end of the first quarter of 2009 than he was at the same time last year, Stein has added to his caseload by taking in other plaintiff matters. He says he has also



Stein

found success representing clients in lemon-law cases, so he has added these cases to his repertoire.

He says his caseload has increased at least 25 percent over last year, while his intake is up nearly double that.

While he is not considering hiring an associate or even a paralegal to help him manage his caseload, Stein has conceded he can't do it all alone. This past March, he hired a virtual paralegal who prepares various pleadings such as complaints, interrogatories and responses to defense counsel's interrogatories.

"I needed help because I wanted time to do what attorneys do, like go to court or attend depositions," says Stein, a 2002 graduate of the University of the Pacific's McGeorge School of Law.

And, while he has no plans of taking on an associate, Stein is scouting the area for more spacious digs. "I need a larger waiting room and more space for mediations and depositions," he says.

Mark Millen is also a solo practitioner with an office in Los Gatos. As opposed to Stein, Millen currently has no support staff despite finding himself "much busier" in 2009. Millen says he's so busy, he's even "turning down lots of real estate work to focus on personal injury" matters.

What?! In these harrowing economic times, a plaintiff's attorney is *refusing* business?



JUNE 2009

What's law got to do with it?

Some state bar associations and state supreme courts have responded to the public's increased need for access to the legal system by creating initiatives designed to fill the gap.

Perhaps surprisingly, Ohio's legal community has emerged as the leading jurisdiction responding to the mortgage crisis crippling its citizens. On April 1, 2008, the Supreme Court of Ohio, the Ohio State Bar Association, the Ohio Attorney General's office, and the Ohio State Legal Services announced a partnership aimed at alleviating the state's mortgage crisis. The Supreme Court of Ohio formally requested that Ohio attorneys volunteer their time and services to counsel debtors facing foreclosure.

In return, the lawyers receive continuing legal education courses relating to mortgages and foreclosure, free of charge. Of course, attorneys can also utilize their newly acquired knowledge to represent paying clients in addition to the ones they help through the Save the Dream project.

According to Linda Cook, project manager of Save the Dream for all legal services agencies throughout the Buckeye State, volunteer attorneys can also obtain training and mentoring from lawyers experienced in real estate law.

While she was unable to offer exact numbers, Cook says the Save the Dream hotline has fielded over 27,000 phone calls since the initiative began.

"Ohio is the only state with a comprehensive, coordinated statewide effort to address the foreclosure crisis involving major state partners," says Cook.

On the opposite end of the spectrum, at least according to Jonathan G. Stein, a solo practitioner in Sacramento, is the California State Bar. "The State Bar does not support the plaintiff's bar, and they lack interest in figuring it out," he says.

While he agrees with the overall goal of initiatives like Ohio's, he isn't convinced that asking lawyers to volunteer their time and services is helpful to them. "I think it's harmful because they're trying to get attorneys to volunteer on easier cases. That's bad because those are like the bread and butter cases I used to make my living on," he says.

Still, says Chris Dolan, the principal of the Dolan Law firm with offices in San Francisco, Oakland and Sacramento, and the president-elect of the Consumer Attorneys of California, there is movement within his organization to help Californians facing foreclosure. While the details are not yet finalized, Dolan says his group is plotting strategies for training California attorneys to represent clients on foreclosure matters. — *TKM*

"Yes," affirmed Millen, a 1995 graduate of Gonzaga Law School in Spokane, Washington.

Why they're so busy

Stein attributes his increased workload to several factors, not all related to the depressed economy. Among them are:

- His improved marketing plan;
- The increased number of people seeking legal help;
- The public's willingness to pursue smaller legal matters; and
- The fact that the worsening economy has caused debt collectors to be more aggressive pursuing their client's accounts.

Dolan offers his own perceptions as to why his firm is so much busier. "Defense counsel are milking files because they have less work," he says. Another reason his firm has experienced an uptick in clients is because employers are discharging more employees and sometimes in unlawful ways.

He also noted that some cases that would likely have settled in a different economic climate are "being worked harder and longer by defense attorneys."

It is not just defense counsel who are pursuing their clients' claims more vigorously, but insurers, as well. "They're holding on to their money longer in the hopes the stock market will rise and they will earn additional income on investments," says Dolan.

To counter that strategy, Dolan hatched a plan of his own. "I ordered my office to file all cases rather than engaging in pre-litigation negotiations. I wanted that clock ticking," states Dolan.

Dolan describes this aggressive approach as a "response to defense counsel's stalling tactics."

Other coping strategies

Because of his firm's increased workload, Dolan recently hired two additional full-time lawyers, bringing the total number of attorneys to 11, including him. He also added two para-professional staff

members, and all within the last few months.

This is all well and good for plaintiff's firms that are deluged with work, but if your caseload is far lighter than you'd like, there are steps you can take to change that.

For example, both Stein and Dolan increased their case volume by expanding their practice to additional areas. Instead, Millen took a different approach. Rather than pursuing new areas of the law, he has streamlined the scope of his law practice.

"I am narrowing the focus of my practice on fewer clients with higher returns," he says. It also helps that lucrative personal injury clients are contacting him sooner following an injury rather than later, he says.

Eric Ratinoff, a name partner at Kershaw, Cutter & Ratinoff, a plaintiff's firm in Sacramento, agrees with Millen's approach. "We are being highly selective in this environment regarding the cases we choose to pursue," he says.



JUNE 2009



Ratinoff

He encourages solo practitioners to be aggressive in pursuing more work because, he says, “there’s a lot of business.” He concedes his increased workload has translated into working longer hours and necessitated a move into a larger office, but those are sacrifices he is willing to make.

However, unlike Stein, Millen is uncertain how much longer he wants to remain a solo practitioner. If his business continues to grow as it has, soon he won’t have the luxury of choice.

The thought of hiring an associate took root late last year when Millen had two “major trials” in December. Fortunately, both cases settled, so he decided to take some time off from work. However, he quickly discovered a mountain of

files demanding his attention, so he was unable to take a break until mid-March. When he returned to the office nearly a month later, it was to “a stack of work.”

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