

LITIGATION

How Litigators Can Help Prevent and Solve Legal Problems in a Down Economy

An interview with Kurt Stitcher, Chair of Levenfeld Pearlstein's Litigation Practice Group



Our current recessionary climate presents many serious issues for businesses large and small. Credit has shrunk, consumers aren't spending, and businesses are taking drastic steps to survive the downturn. As a result, many businesses are reluctant to address potential legal problems, or to assert their legal rights in a business dispute, because they fear the cost and uncertainty involved. There are, however, many ways in which attorneys can help resolve a client's business disputes and achieve its business goals. We spoke with Kurt Stitcher, Chair of LP's Litigation Practice Group, to understand how businesses might best address their legal problems, while respecting today's significant budgetary constraints.

Edge: Even in good times, most businesses are a bit leery of litigation. How do you see litigators helping business during this recession?

Kurt: We can help clients achieve their business goals in a cost-effective manner and provide real options for cash-strapped businesses through non-litigation, pre-litigation, and litigation means.

Edge: Let's start with non-litigation; that sounds counter-intuitive for a litigator.

Kurt: Not at all. LP litigators are skilled in the type of **counseling and risk management** that can help clients protect their assets (people, property, and reputation) proactively. For example, in **litigation audits**, we examine existing business policies and procedures in order to assess, and correct, any weaknesses that may negatively affect the client's ability to prosecute or to defend litigation down the road, including in areas such as **insurance coverage, document management, and contract language**.

In a **compliance audit**, we evaluate the laws and regulations applicable to the client's business; identify areas where it may be vulnerable to violations of those laws and regulations; and assess its policies and procedures for managing the risk of non-compliance. We can then draft a **compliance program**, tailored to the specific risks clients face in their business. If needed, we can also conduct **internal investigations**, in which we interview witnesses and review documents in order to understand the potential legal problem, assess any criminal or civil exposure, and take steps to mitigate any damage.



Finally, through **legislative and regulatory monitoring**, we track and analyze developments in the laws and regulations applicable to the client's business so that the client is always prepared for the next set of requirements our elected officials decide to impose. Much of this we can do at no cost to the client.

Edge: Tell me about pre-litigation.

Kurt: Whenever the client faces a specific problem that may lead to litigation, or where litigation seems imminent, we can help protect the client's assets and prepare the client for any ensuing litigation in a number of ways. First, with due regard for the client's financial constraints, we develop **strategic litigation options** for the client's review.

Second, as litigation appears imminent, we help clients prepare to prosecute or to defend the action by providing **pre-litigation counseling** in a number of areas, including: **preservation of privilege; insurance coverage; preservation of evidence; and litigation intelligence.** Many times this preliminary workup may be provided at no cost to the client.

Edge: And then there is litigation, right? I assume that is where cost containment ends.

Kurt: Actually, we employ litigation strategically in order to attain the client's business goals in the shortest time, and at the lowest cost, possible. For example, we examine possible **alternative dispute resolution** mechanisms. LP has extensive experience

in mediation and arbitration, which are typically far less costly forms of dispute resolution. And even where ADR is not fully successful on its own, it may help narrow issues for trial (or for motion practice), which saves the client significant litigation costs.

In addition, rather than launching a full-scale suit at law, we can assess the utility of various **equitable actions**, such as a declaratory judgment action; a suit for an accounting; a suit to impose a constructive trust over disputed assets; and a request for injunctive relief. All of these mechanisms are relatively inexpensive and "quick-hit," yet they can put significant pressure on an adversary to settle the dispute in a manner acceptable to the client.

Finally, we employ a strategy known as "**litigation**," which is the use of litigation as a negotiating strategy to achieve a business goal. Whether through a suit in equity or one at law, we can use various "inflection points" in the litigation to apply pressure to our adversary. For example, a revealing background investigation on our adversary, a well-crafted and damning complaint, or a powerful motion could put our opponent on its heels and force a quick settlement. At every stage of the litigation, we focus on those tasks that directly advance the client's interests and bring the most pressure to bear on our adversary.

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