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**Yes, This Recession Is Severe –
But We’ve Been Through Much of It Before.
The Question Is: “Will We Learn from Experience?”**

During a prior legal recession we prepared, in March 1994, a Situation Analysis which became the basis for several talks and articles at the time. For those of you who may not recall those Words of Wisdom (!) – or had not yet entered the profession – these were some of the high points:

- ∞ There was over-capacity in law firms but it would gradually correct itself as some firms retrenched or dissolved, new laws were passed and new practice areas emerged.
- ∞ Despite this over-capacity, certain practice areas and the firms that focused on them would grow. The growth areas included: Intellectual Property, Health Care, Employment Law, Technology, Financial Institutions and Litigation.
- ∞ Certain other practice areas were becoming commodities where price was the only factor.
- ∞ Pressure from clients would lead to alternate fee structures.
- ∞ The growing role of technology was giving the competitive edge to large firms that could afford the investment. However, the cost would soon come down. Then even small firms could afford to expand their technology and compete.
- ∞ The public image of lawyers was increasingly negative.
- ∞ There was low morale among lawyers due to:
 - The increasingly negative image
 - Reduced or flat income as the result of lower profits per partner
 - Pressure to work long hours
 - Pressure to develop new business
 - Growing job insecurity – even for partners
- ∞ Merger was becoming a major strategy for firms that wanted to grow or for firms that could not survive on their own.
- ∞ There was a growing movement of lawyers among firms – like free agents in professional football and baseball – with a resulting lack of loyalty to their firms.
- ∞ There was ambivalence regarding the need for non-lawyer executives in firms but these roles and their importance should grow as it had in other professions – public accounting, architecture and medicine.
- ∞ Conclusions:
 - In addition to the above, there would be other changes which we could not predict at that time.
 - There would be slow growth in the profession for a few years. However, the recession would end and there would then be dramatic growth.
 - Meanwhile, there would be considerable uncertainty and turmoil but opportunities existed for firms that were flexible, innovative and adapted to the market.

That was written 15 years ago. With few changes, it could be written today. But we tend to forget history.

Recessions come in cycles and are a natural part of our economy. The same is true in the legal profession. And cycles are usually followed by change. What has changed in the profession since 1994 – and what hasn’t? And what have we learned?

What hasn't changed

There is once again over-capacity although it is more extreme this time. As a result, there have been more layoffs and more firms have dissolved. Furthermore, it is likely that a greater number of lawyers, particularly associates and younger partners, will leave the profession. At the same time, however, some practice areas (notably the ones mentioned above) have grown and many firms that have focused on them – mostly smaller and mid-size – are not only surviving but are doing well (as discussed in our March *Legal Communique*). In addition, firms with more profitable practice areas continue to drop commodity practices, leaving such areas as Workers Compensation to firms with low cost structures.

Client pressure for more value and alternative fee structures has increased but the billable hour – in one form or another – still dominates. Why? Because negotiating alternative arrangements is difficult since many clients can't define what they mean by "value".

While profits per equity partner are down substantially in many firms, particularly the large ones, most are improving (or is it "inflating"?) these figures by reducing the number of equity partners, either by "de-equitizing" them or having them leave the firm. "Free Agency" continues – in fact, it's stronger than ever. And mergers continue, most of them by large firms acquiring smaller ones. There are few "mergers of equals".

What has changed?

The pressure to work longer hours continues in most "Big Law" firms. However, others are adapting to the demands of younger lawyers for a better quality of life by adopting new approaches such as lower required hours, part-time or contract lawyers, flexible work arrangements, telecommuting and encouraging *pro bono* work. Interestingly, a greater number of firms have removed billable hour requirements in their compensation systems for associates as well as partners.

Although some firms have recently reduced the size of their marketing departments, the roles and responsibilities of the non-lawyer executives or managers have, for the most part, increased substantially with the hiring of Chief Operating Officers, Chief Marketing Officers, Chief Information Officers and Chief Technology Officers.

In addition to these changes, there are also some major new trends that have developed since the last recession. Some of the most significant ones this time around are:

- ∞ The rise of global law firms with offices around the world
- ∞ The globalization of the practice, not only in global firms but in others through "strategic alliances" and networks.
- ∞ Client demands for diversity in the firms they work with
- ∞ Outsourcing certain functions to firms and companies within the United States and also around the world.

Yes, this is more severe than previous recessions – there have been far more layoffs and a greater number of firms have dissolved. And yes, there are some new factors and trends this time around which may ultimately lead to improvement in the way law firms practice and manage themselves. But we have been through much of this before. This time, however, perhaps we can learn from experience.

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