

Economy To Cause Increase in Litigation in 2010

By Larry Bodine, Esq., a business development advisor based in Glen Ellyn, IL. He has helped law firms nationwide earn millions of dollars using strategy, business development training and individual attorney coaching. He can be reached at 630.942.0977 and www.larrybodine.com.

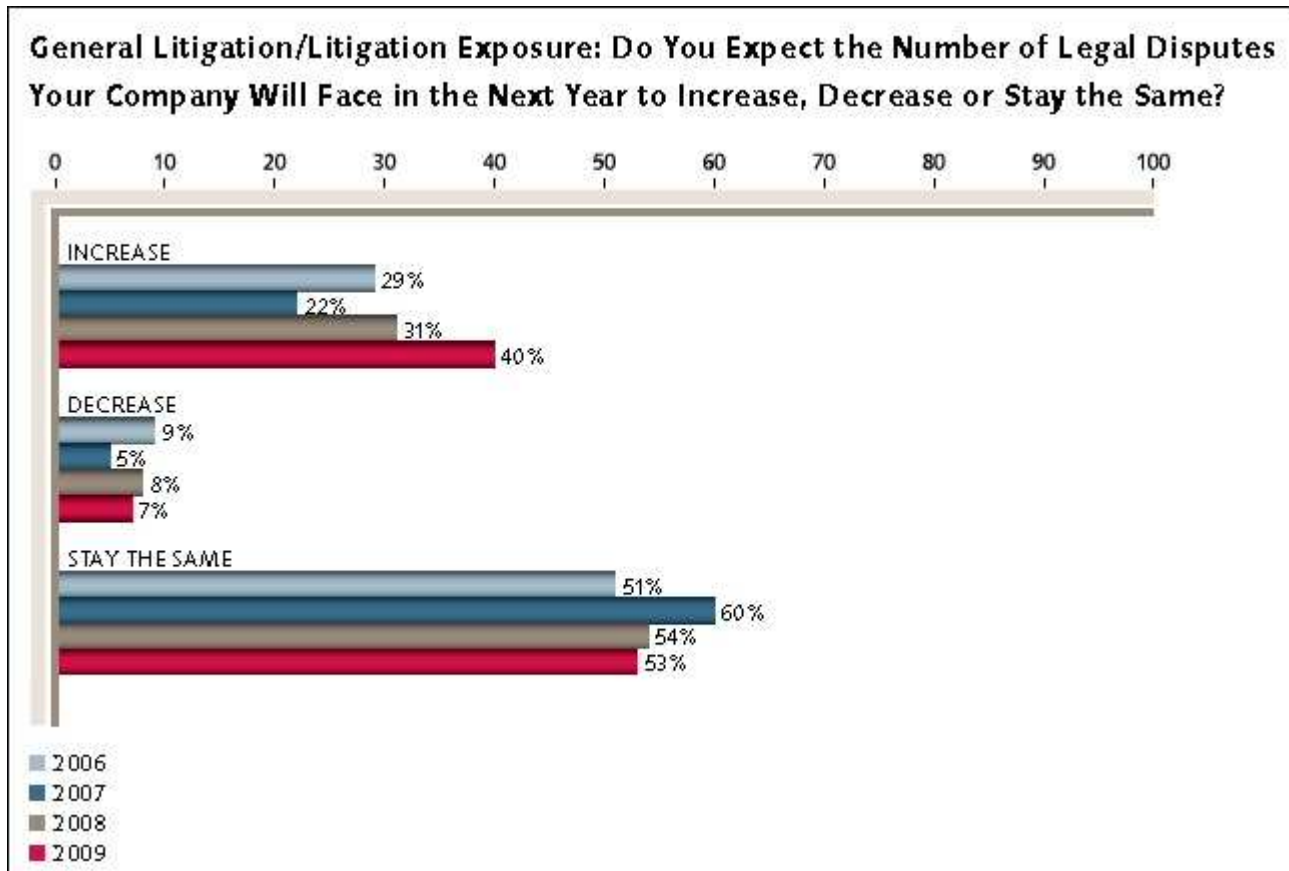


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Because of the economic crisis, law firms will see an increase in legal disputes and litigation in 2010, according to Fulbright & Jaworski's 6th annual Litigation Trends Survey Report. Highlights include:

- For the third year in a row, more corporations expect **more legal disputes** over the next 12 months, which confirms an earlier report by BTI Consulting.
- The increase in litigation caseloads was **blamed on the worldwide economic crisis**, particularly for increases in litigation in bankruptcy, labor/employment, IP and patents and regulatory investigations.
- **A majority of the largest companies surveyed expect an increase (52%) in legal disputes**, compared with 43% last year and just over a third the previous two years., according to the survey.
- **Bankruptcy, class actions and regulatory actions** have all increased this year. The financial services sector, as you would expect, had a jump in regulatory actions.
- More than a third of respondents have **increased their use of alternative fee arrangements** because of the economic downturn.
- Almost a quarter of companies with \$1 billion or more in revenues expect more **internal investigations** over the next 12 months.
- The incidence of companies reporting **corruption/bribery investigations** has nearly doubled over the last 12 months.
- About four in 10 corporations have seen **increases in wage and hour, multi-plaintiff labor and employment cases** over the past year.

You can download the F&J report at <http://www.fulbright.com/litigationtrends19>. Fulbright is one of the largest law firms in the United States with nearly 1,000 lawyers and more than 60 practice areas. There are 16 Fulbright locations world-wide, with international locations in Beijing, London, Munich, Hong Kong, Dubai and Riyadh.



To generate data for the report, the firm surveyed 408 in-house counsel, including the general counsel and heads of litigation in the US and UK in the education, energy, engineering, construction, financial services, health care, communications, manufacturing, real estate, retail, wholesale and insurance industries.

Increase in legal disputes

For the second consecutive year, expectations of an increase in legal disputes across the entire survey sample have risen, from 22% in 2007, to 31% in 2008 and 40% this year. (See chart above.)

- A majority of the largest companies surveyed expected an increase (52%), compared with 43% last year, and about 33% the previous two years.
- A dramatic rise in litigation is expected by smaller companies -- from just 5% in 2007 to 22% last year to 30% this year.
- About a third of mid-sized companies expect more disputes, a slight increase over the last year.

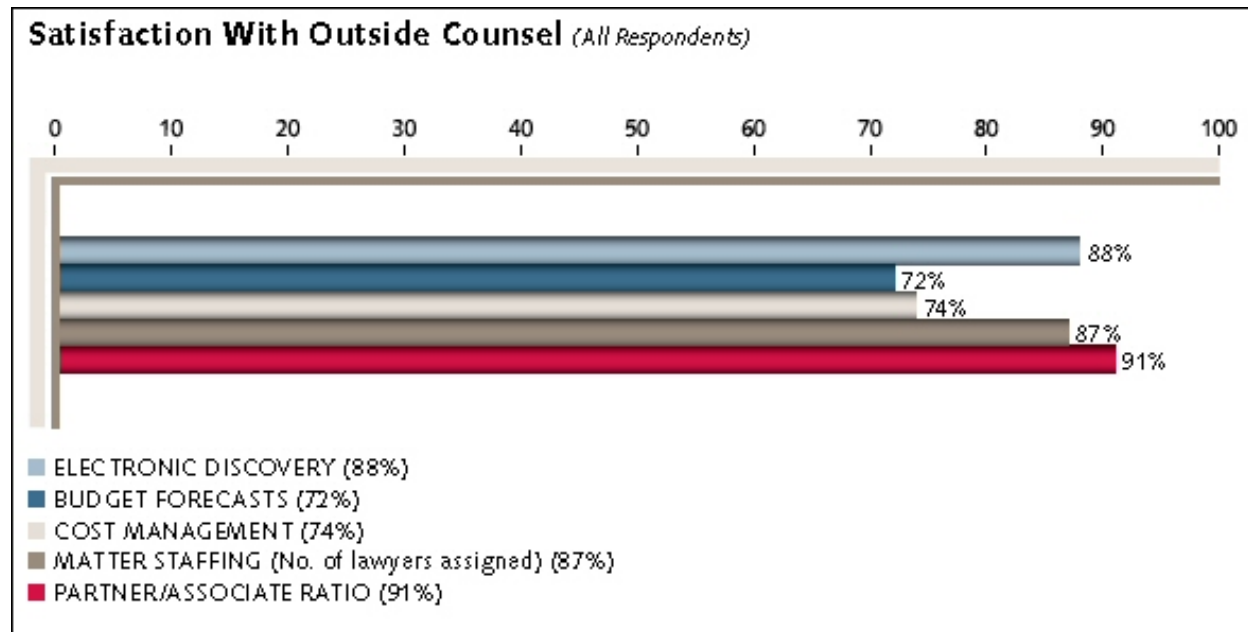
Repercussions from the economic downturn are chief among the reasons given for expecting more litigation: (verbatim comments):

- "It's the economy--more issues with suppliers, dealers and customers." UK manufacturer respondent.

- "Primarily driven by the poor economy. Causing the insured to push issues that would otherwise not have been claims or been more easily resolved." US insurance respondent.
- "Increased insolvency claims." US manufacturer respondent.
- "HR downsizing." US retail/wholesale respondent.
- "Looking at the financial landscape globally, I anticipate an increase in litigation because companies and people are more protective of their assets." UK financial services respondent.

The three leading areas of disputes were contracts, labor and employment, and personal injury.

- Regulatory actions against financial services companies are up sharply from 18% last year to 31% this year, according to the survey.
- Noticeable increases across the total sample are bankruptcy and reorganization, up 5% last year to 9% this year.



Respondents reported high levels of satisfaction with how well outside counsel met their litigation needs in five areas. This information conflicts directly with earlier BTI Consulting reports that most corporations are *dissatisfied* with their outside law firms.

See [Nearly 70% of clients dissatisfied at](http://www.lawmarketing.com/pages/articles.asp?Action=Article&ArticleID=495)

<http://www.lawmarketing.com/pages/articles.asp?Action=Article&ArticleID=495>

Until now, litigation has decreased

The Fulbright survey found that lawsuits commenced *against* companies in the current year showed a slight decline from 2008. However, US companies with at least one lawsuit commenced against them show a slight uptick from last year.

Among companies with \$1 billion or more in revenues, 36% this year have more than 20 cases commenced against them -- particularly in the health care sector.

Jumbo lawsuits -- with more than \$20 million at issue -- "show a surprising uptick," the report states, with increase at large (\$1 billion in annual revenues) and mid-cap companies (\$100 million or less in revenue), and especially in the insurance sector.

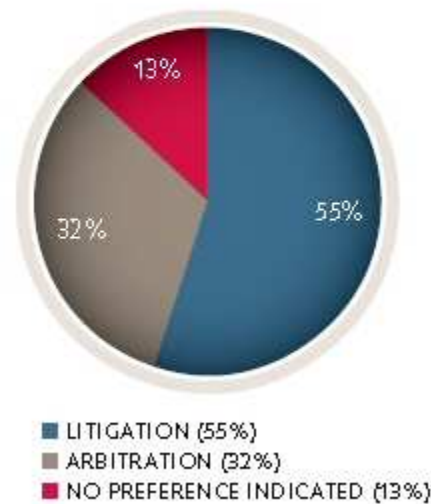
Arbitrations not favored

Interestingly arbitrations of all sizes have declined this year, with 43% US companies having had at least one arbitration. Given a choice in purely domestic disputes, US companies **strongly prefer litigation** -- especially in the health care and engineering/construction sectors. Surprisingly, lower cost was by far the most frequent reason respondents gave.

Verbatim reasons respondents gave for favoring litigation:

- "Arbitration is too limiting, and regardless of what AAA says, its system is not cheaper, not faster and arbitrators still seem to have a need to split decisions." US engineering/construction respondent.
- "Arbitration does not have sufficient safeguards--very little room to correct mistakes--no appeal." UK industry respondent.
- "Prefer choice of jury rather than an arbitrator." US health care respondent.

In disputes that are not international in nature, and when given a choice, does your company choose litigation or arbitration?



Alternative fees

In the US, roughly half (48%) of companies use alternative fee arrangements. Those that do use alternative fees said the most frequently used arrangements were:

- Blended rate
- Capped fee
- Contingent fee
- Fixed fee
- Performance/reward based fee

The 64-page report also covered a detailed analysis of government and regulatory matters, patent infringement, labor and employment, class actions and electronic discovery.