

## **2010 Q1 Litigation Report**

If demand for expert witnesses and litigation support professionals is a fair barometer, then the first quarter of 2010 brought a continued – if gradual – increase in litigation activity throughout the United States.

Experts in several fields who serve as consultants or witnesses in litigation said they had seen demand for their services pick up in 2009 and continue to rise so far this year. Their reports mirror those of lawyers, litigation-support professionals and other sources.

"I see an uptick this year for my practice," said Simon Z. Wu, managing director of FTI Consulting in Washington, D.C., where he focuses on securities litigation. "I also saw an uptick in 2009 compared to 2008."

"I saw an increase in my work in the last half of 2009 which has continued into this year," echoed Steven I. Butler, an expert in financial institutions and the principal of ButlerBank Consulting in Avondale, Penn.

Of course, both Wu – with his focus on securities – and Butler – with expertise in banking – consult in fields in which demand is likely to pick up as the economy slows down. Both readily acknowledge that fact.

"My area of expertise is usually tied to the economy and securities cases tend to pick up at the end of a recession or shortly after that," noted Wu. "My guess is that economic turmoil does help securities litigation; however, it won't trickle down to the consulting world until a year or two after it started and may stay that way for a few years."

### **Other Experts See Upswings**

Experts in other fields of specialization also report upswings in their caseloads. Andrew Barile, an insurance and reinsurance consultant based in Rancho Santa Fe, Calif., says he has seen increased demand for his services coming from law firms all across the country.

"Insurance industry litigation increases during a recession as policyholders need insurance recoveries and insurance companies need to manage their claims – especially the amount of the claim," Barile says. "Insurance coverage litigation also increases."

For Aris Silzars, an electrical engineer who specializes in electronic display technology, the uptick started in 2009 and has held steady ever since. At the same time, much of his current caseload is carry-over from last year so he is not yet ready to predict how 2010 will turn out.

A variation of this trend was reported by several experts. These experts had not seen a significant increase in numbers of cases. What they had seen, however, was an increase in the intensity of the work in the cases for which they were retained. One expert

attributed this to attorneys becoming more selective about cases and about the caliber of experts they use for those cases.

That is not to say that the increase in demand is consistent across all industries and sectors. Several expert witnesses in fields such as product design, manufacturing and materials management said that demand for their services had slowed in 2009 and had not picked up since.

### **Surveys Say: Litigation Up**

Those experts who see an uptick in litigation reflect reports coming from elsewhere in the litigation field. As we reported in [an article here](#) last November, an October 2009 survey of litigation trends found that 42 percent of U.S. companies anticipated that 2010 would bring an increase in the number of legal disputes they would face.

More recently, a survey released April 15 showed significant increases in caseloads among litigation-support professionals for the first quarter of the year. The survey, conducted by The Cowen Group, found that hours and workloads are on the rise at both law firms and corporate legal departments.

Law firms reported increases in their new-case workloads of 65 percent, in their existing-case workloads of 47 percent, and in their overall hours of 61 percent. Sixty percent of law firms plan to add litigation support staff within the next three months, the survey said.

Another survey, of federal court filings for the first quarter of 2010, found an overall increase of 3 percent over the same period last year. The survey, conducted by the Web-based publication Law360, found that the number of new patent lawsuits was up 10.3 percent and cases brought under the Americans with Disabilities Act were up 30.12 percent.

New filings were down over last year in insurance, antitrust and securities cases, Law360 found.

### **Renewed Economy Brings New Cases**

To the extent there is an upward trend in litigation activity, it is at least partly attributable to the economic downturn of recent years, lawyers acknowledge. As Stephen C. Dillard, head of Fulbright & Jaworski's global litigation practice, said when his firm released its litigation trends survey, "Generally, litigation rises in an economic downturn as regulators tend to step up enforcement, laid-off workers head to court and companies need to file more suits in order to collect on money owed."

At the same time, lawyers say the increase in new case filings also signals the economy's emergence from the recession of recent years.

As an example of this trend, intellectual property lawyer Joseph C. Gioconda points to a copyright and trade-dress lawsuit he recently filed on behalf of a high-end New York City fashion designer against a California clothing manufacturer. His lawsuit accuses the manufacturer of knocking off his client's designs and misappropriating her name.

"During the recession, many companies cut legal budgets and did not aggressively pursue infringers or counterfeiters," Gioconda said. "Consequently, during that time, infringers dramatically escalated their activities to capitalize on brand owners' inaction." Now, these companies are more aggressively seeking to protect their brands and regain market share, he said.

Perhaps the most concise explanation for the recent uptick in litigation came from Mary Mack, corporate technology counsel for e-discovery company Fios Inc. Saying that she, too, had seen this rise in cases, she offer this analysis: "Downsizing has decreased, the deadlines have been pushed to the limit and litigation has been restarted."

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