

THE LAWYER COMMODITY INDEX

By Gordon L. Gerson, Managing Principal, GERSON LAW FIRM APC

America has morphed from a society that produces goods as commodities, to a service worker economy led by lawyers.

From law school deans to corporate counsel consultants, “the future of lawyers” is a topic discussed with different themes. Most prevalent is whether there will be a historic reverse gear effect in which lawyers work product will be (or perhaps has been rapidly becoming) simply a commodity. Can the billable unit of time be replaced by fixed cost for delivered product? Whether or not a traditional law firm business and commercial practices such as commercial loan closings, business formations or lease preparation, among others, can be commoditized requires careful scrutiny.

Among reasons why the welcome mat is out for treating lawyers as commodities are the following:

- We unquestionably have an era of improved smart technology. The billable hour was based on the economics of a lawyers practice; rent, staff and equipment costs. Communication technology makes possible for Wall Street firms (if still headquartered on Wall Street) to use lawyers located anywhere in America, not to mention the growing population of virtual law firms or lawyers who eschew bricks and mortar offices to congregate, and instead simply wire between home offices. Add to the mix the robotization of documents, pleadings and correspondence.
- Soybean economics today govern law firm economics. Supply and demand for lawyers simply translates to fee fights. Another way to look at it is that lawyers foraging for work reduce fees. Colleagues let fees float on fee quotes. Ask any lawyer outside the largest national firms today if he or she is billing the same price today as yesteryear, or adjusted for inflation, and the answer will likely be no.
- In house solutions reduce the need for hiring outside counsel in matters that were formally the domain of only outside counsel. A paralegal who handles the same type transaction for years and years under the guidance of in house counsel may create cost efficiency. Companies may also consider simply the cost benefit of a deal being lawyer blessed as opposed to the likelihood of something going awry and the resulting loss to the bottom line. Be assured, lots of businesses have taken this leap of faith.
- Prodding through business strategies sometimes results in breaking down

transactions to deal components. Parts of the deal may be done in different places and at different small law firms or sole practitioners. Leaving a zip file on a server in India for documents reviewed is not where we are headed, but where we have already gone. Once the deal component approach is mastered, the lawyers are simply staffing different positions on the production line.

- Everyone hates lawyers. A cliché? Yes. True? Yes. A rationale for driving down fees? Yes. Moreover, there is a sense of empowerment when anyone, CEO or mid level business manager, reduces legal expenses.

Among reasons even Nostradamus would weigh heavily against a broad brush prediction of lawyers as commodities are rebuttals to each of the above arguments. Consider the following:

- The Scarecrow in The Wizard of Oz spiritedly sang “if I only had a brain.” No matter the technology or desire to believe that robotic magnetism has changed and will continue to change the way we think about lawyers, getting it right in business requires retaining lawyers who have the best brains. Poets write in verse and novelists in prose by pulling words from the crevices of their brains. Similarly, good lawyering requires use of words and concepts in communications and documents that are only found among particles of memory and understanding of the smart human brain. One word in a document slightly modified may tilt a document favorable to one party; and similarly, failure to correctly edit or correctly conform a document to a term sheet, letter of intent or memorandum of understanding, may result in agonizing consequences; or more simply stated – a disaster.

- Can lawyers fees be indexed as other commodities, and if so, the question becomes indexed to what? The proper index would be legal fees indexed to a companies’ profitability. Was a better margin reached by hiring non-traditional lawyers or law firms? How good was the legal experience? Was better service received? Bottom line economics – though a tired combination of words – are important and directly tied to that cliché’ in business that you get what you pay for.

- Clients have core competence, and in house legal departments have core competence as well. Legal departments are entrusted by management to assure the correct legal solutions. In carrying out this responsibility, some in house legal departments are managers of outsourced legal services. They need law firms to support their company, and in effect, assure their own success with the company. The culture of success necessarily requires in house legal counsel to work with law firms who have achieved years of successful results.

- Deals are not widgets. No matter how simplified a transaction, mistakes may be made without the review of lawyers with knowledge and understanding. Techno-type assemblage of documents on virtual connections staffed by non

lawyers (or even good lawyers not being called upon to be broadly engaged in a transaction) works some of the time, but not all of the time. What does not “all of the time” mean to you?

- While everyone hates lawyers, there is a similar distaste for broccoli. But we accept what is required for a good diet, and we generally accept what it takes to get good business done.

We cannot determine with certainty to what degree there will be with respect to commoditization of legal services in the immediate future. However, we know with certainty that lawyers will not go away. It is only a question of which way.

Gordon L. Gerson is managing principal of GERSON LAW FIRM APC, represents clients in all matters related to real estate and business, both transactional and litigation. GLF is nationally recognized for its representation of some of the nation's largest lenders on loan closings, special servicing, and enforcement proceedings throughout the United States. For more information on GERSON LAW FIRM APC, call (858) 452-5400 or visit www.gersonlaw.com.