

Consolidations, M&A Create Modest Boom for Lawyers

By Thom Senzee

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Staff

Corporate transactions and restructurings are creating a modest boom in the business of law.

“We’ve seen a pretty brisk movement in transactions in the professional services industry,” said Ron Camhi, partner at Michelman & Robinson, LLP in Encino.



Cynthia Elkins

Matt Crowley

Ron Camhi

He has been working on a lot of media and advertising deals of late, much of it in consolidation of the advertising industry.

But a more nuts-and-bolts aspect of the ad business has Camhi’s office in high gear. As in many other industries, liability for debt follows a “supply chain” as a media buy moves from an ad agency to media outlets.

“If I’m representing an ad or media agency, I’m making sure they are not obligated to the sequential liability,” Camhi said. “That has become extremely important, meaning the advertiser is first solely liable until they pay the media buyer then the media buyer becomes solely liable.”

Camhi points to the abrupt end of Circuit City stores as a case-in-point.

“Who’s going to get stuck with the Circuit City media campaign liability?”

Another way in which the firm’s advertising clientele is generating more business for Michelman & Robinson’s transactions portfolio is an increase in bartering, as more advertisers want to pay for ad campaigns with goods and services.

Barter exchanges such as Icon International provide a forum where companies can trade cars for commercials, commercial real estate for virtual real estate on a cable television network, or widgets for magazine write-ups.

“Say you get five million in media credits, we work with your liquidator on the stipulations of the barter agreement,” Camhi said. “Often it centers on exclusivity. They don’t want multiple people selling the same assets or the same ad spots.”

On the mergers and acquisitions side of the coin, the firm has been finishing “the last vestiges” of private-equity deals begun months ago, as well as some commercial insurance mergers.

But real estate transactions have all but dried up for Michelman & Robinson, with only counseling of landlords with tenants who want to renegotiate or terminate their leases getting any traction.

Nevertheless, with his firm’s media-related business up 20 percent, Camhi predicts a second year of 15 percent growth at his firm.

“We’re excited about 2009,” he said.

Simultaneously, the field of employment law (not to be confused with labor law, which is orbited by labor unions and union employers) is in a state of enormous flux.

Attorney Cynthia Elkins of the Law Offices of Cynthia Elkins worries that employers may be acting rashly—not by cutting jobs—but by doing so haphazardly and to the potential detriment of their long-term health. She points to the case of a client with whom she spent a recent morning on the phone.

“They advised me they wanted to lay off at least four people in a department of 27—as of tomorrow,” Elkins said.

Like any attorney, Elkins welcomes the business, but she said there are consequences to kneejerk layoffs.

“...Companies are finding they need to lay off,” she said. “...But they may be reacting too quickly.”

At issue, said Elkins, isn’t whether downsizing make sense for a company, but the dangers inherent in a one-day, or one-week, lead-time for implementation of layoffs. Discrimination suits cost a lot of money, she said.

“Especially age and/or one of the other protected classifications, if the layoff results in a disparate impact on a particular group,” Elkins said. “They’re going to come back and say, I was discriminated against.”

“After going through a company’s departments, I kind of chart it out, employee by employee...and make sure there’s no disproportion (in deciding whom to layoff),” Elkin said.

Whereas before the recession, most of her business was in doing trainings at corporate headquarters, counseling employers on proper hiring, firing and employee relations, as well as counseling on updating employee handbooks, today that work is nonexistent.

On another front mergers, once the glamour child of the transactions business, have become decidedly moodier.

“Deals are getting done but they’re really getting done more slowly; people are really grinding each other,” said Matt Crowley, of Encino-based Crowley Corporate Legal Strategy. According to him, cash is king in the M&A world of 2009—even for buyers.

“Usually an acquirer would rather use cash because they think their stock is undervalued,” Crowley said.

When stock is used in an acquisition, more often than not it is used with “earn-outs”—agreements stipulating a lower-value for the buyer’s stock at the outset of a deal, but applying added value if the stock reaches a certain price threshold within a specified period.

Another change is in the types of players on the merger field.

“You’re not seeing a super-high increase in volume overall,” he said. “(But) at the lower-middle market you’re seeing more activity, maybe even a little bottom feeding.”

One surprise, Crowley said, is that the recession has some self-examination taking place among top brass at companies.

“I’m also seeing lower and middle-market companies focusing a lot more on their management,” he said.

Crowley believes questions that are being asked in board rooms today may mean business for firms like his in the future.

“People are arguing about whether they should bust up, or if there is a partner they should throw out,” he said. “When times are good people are willing to put up with the lazy guy in the corner office.”