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Transactional lawyers find ways to stay busy despite economy

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As the economic downturn continues to threaten mergers, acquisitions and other corporate deals, transactional lawyers are finding new or different ways to get their jobs done.

Roger T. Stelle, a partner at Meltzer, Purtill & Stelle LLC, practices in M&A, corporate and business law and real estate. Until the recession, Stelle said, the firm completed more than 50 transactions each year. He said he represented sellers in nearly 80 to 85 percent of those transactions.

This year, Stelle said, the firm expects to complete only half as many — the bulk of them purchases as clients seek to buy weaker companies.

“We’re starting to see some activity in buying, and some financing of deals,” Stelle said. “It’s not great, but it’s a lot better than it was this time last year.”

Stelle said he now spends a third of his time finding money for clients.

“Being a transactional lawyer, you have to be part-mortgage broker, part-investment banker, and wear all of these hats to get the deal done,” Stelle said. “All deals aren’t going to mean a thing if there’s nothing to finance them.”

Financing becomes easier as companies seek to purchase assets for less than market value, Stelle said, but he still expects further credit scarcity. He said banks will stop becoming co-venturers with borrowers as companies become more cautious with capital.

Jennifer L. Keating, a partner at Mayer, Brown LLP who works on M&A, agreed that the economy impacted the volume of deals, as well as clients’ attitudes.

Keating said more clients insist on alternative fee arrangements instead of hourly billing for services. They also request more partner-led deals, she said.

“They’re under a lot of pressure to reduce costs on external legal services, which encourages us to get creative in the types of arrangements we can offer them,” Keating said. “The whole industry has been focused on hourly billing, which particularly in M&A is difficult, because it’s so unpredictable.”

Transactional lawyers in banking, real estate and intellectual property also report practice changes due to the recession.

James I. Kaplan, a partner of DLA Piper,

said that before the recession, banking lawyers assisted in M&A, usually helping larger, healthy institutions acquire smaller, weaker banks. He also helped large banks purchase investment management companies, brokerage firms and other financial companies, but that activity eventually “slowed to a crawl.”

Kaplan said banks now suffer heavily from problem loans, a portion of which are real-estate loans taken during foreclosures.

Since late 2008, he said, most transactional activity in the banking practice directly relates to the recession. Lawyers largely represent clients who purchase distressed assets from banks.

“[Distressed assets] are still on their balance sheets, and as long as they are there, they represent a real focus of activity,” Kaplan said. “Banks aren’t going to be thinking about expansion.”

Kaplan said some in the industry predict growth in the bank M&A market by later this year. But like Stelle, Kaplan doesn’t expect a business boom.

“I don’t think anybody’s looking for a return to the heyday of this thing, where it seemed like a merger of a public company every business day, and on the private side, a ton of private equity,” he said.

Brian Meltzer, a partner at Meltzer, Purtill & Stelle LLC, has practiced in real estate law for 40 years, primarily representing land developers and homebuilders.

“Many of my clients that were building homes or doing condos, especially the privately held companies, are either not in business or aren’t doing much of anything right now,” he said.

Before the recession, Meltzer’s firm represented banks and other financial institutions that made construction loans to homebuilders. That practice has also stopped, he said, and instead, the small firm of 24 lawyers shifted its focus to bank workouts, foreclosures and bankruptcies. In the past year, the firm hired two new bankruptcy attorneys.

“Our workouts and bankruptcy work has obviously grown in the past couple of years,” Meltzer said, “between representing banks in foreclosures and debtors in bankruptcy, so we’ve been able to keep portions of our firm busy.”

Meltzer’s firm also represents national homebuilders who built up reserves and want to buy stalled or foreclosed housing and

condominium developments at discount prices. Many of these large developments contain complicated contracts and plans, Meltzer said.

“For years, no one was paying attention to how complicated these projects are, but now, we’re starting to see banks, builders and buyers looking at these projects and wanting to understand the issues,” he said. “We’re getting busier with that kind of work.”

David J. Davis, a partner at Baker & McKenzie, counsels clients on managing intellectual property in M&A and other corporate transactions.

The role of IP in transactions changed, Davis said, as cash-strapped companies trend toward financing and lending with IP as security or collateral for loans.

In the late 1990s, in one of the first cases of securitization, Davis said, performer David Bowie issued bonds against his first 25 recorded albums and raised \$55 million based on royalties that flowed from albums over the next 10 years.

Davis explains that collateralization is a newer means of raising capital. In collateralization, clients borrow credit based on the current value of their IP assets.

Davis said his work has increased in the past couple of years. While there might be fewer new projects or trademark filings in the pipeline, he said, companies are always maintaining, expanding or enforcing their intellectual property.

“If you feel your brand is being infringed, you have to take action,” he said. “It’s well insulated from big spikes in the economy.”

While the economy curbs larger deals, one attorney said her practice remains stable due to health-care reform.

E. Lynn Gordon, a partner at Ungaretti & Harris LLP in corporate health care law, said the transactions she handles involve buying, selling, merging or joint venturing anything related to health-care services.

“They keep changing laws, so even though we’re not doing new deals, we have to restructure old deals,” she said.

Gordon focuses much of her practice on hospital-physician joint ventures, which, she said, continue to see heavy regulation under federal law.

“As physicians and hospitals work more closely together, it moves into the transactional world, because we have to structure those relationships,” she said.