

ORANGE COUNTY BUSINESS JOURNAL

Choosing the Right Law Firm: Results and Value

by Edward Susolik, Partner, Callahan & Blaine

Dinosaurs ruled the Earth for over 160 Million years. At the end of the Cretaceous period, however, dinosaurs became extinct. While numerous theories abound regarding the demise of the dinosaurs, it is foundational that dinosaurs failed to adapt to the changed environment of the Earth. Ultimately, smaller, smarter and more efficient animals – mammals – evolved and flourished and are now the dominant species on Earth.

Just as dinosaurs that once ruled the earth disappeared, we are witnessing a revolution in the manner in which legal services are delivered to corporations. For decades, legal services have traditionally been delivered to corporations via mega law firms. Built like a pyramid, mega firms have partners at the top and young associates at their foundation. The results, especially for litigation matters, are legal bills that total in the millions or even tens of millions of dollars. In fact, one recent case involving a battle over dolls featured attorneys' fees of approximately \$100 million for each side.

Whatever may be the charms of a 2,000 attorney law firm with 25 offices worldwide, we are witnessing a sweeping change in the delivery of legal services to corporate America. This metamorphosis is the huge increase in the use of boutique litigation law firms by companies large and small. Boutique litigation firms are smaller, faster, more efficient and more experienced. They get better results at greater value. High quality. Low price. Corporate America is in love with this new paradigm of law.

The Great Recession and the Rise of the Boutique Litigation Firm

The reality is that the big firm model has forced serious challenges in recent years. As a threshold matter, a significant number of mega firms, such as the Brobeck firm, have simply imploded from their inertia and vanished. Without question, however, the Great Recession of 2009 has exponentially accelerated this process of change.

The economic cataclysm of the Great Recession has caused every business in America to examine and re-conceptualize every aspect of its operations with a microscope. It goes without saying that the budgets of legal departments faced some of the greatest scrutiny and criticism. General counsel have received the mandate from shareholders and management that legal budgets must be radically cut. By far the most critical area to cut was for outside counsel.

As companies begin to migrate to the boutique litigation firm model, they have found that the savings of legal costs frequently reaches into the millions. This realization has caused a revolution in the legal industry. No longer will companies tolerate the staffing of litigation cases with 10 attorneys. No longer will lawyers with little or no courtroom experience handle complex litigation matters. No longer will law firms be able to train their young associates just out of law school on the backs of corporate America.

This revolution in the delivery of legal services and the expectations of corporate clients has caused huge repercussions worldwide. Law firms have engaged in massive layoffs of hundreds of attorneys and staff. Firms have been forced to stop hiring new attorneys as the clients have demanded that only experienced and efficient attorneys work on their matters.

More importantly, boutique litigation firms have become a fundamental source for litigation legal services for corporations worldwide. Give the realities of the world-wide Great Recession (which is still not over), corporate America understands that boutique litigation firms can save those companies millions of dollars in legal fees and get better results in doing so.

Top Reasons for Choosing a Boutique Litigation Firm

There are many different reasons and factors involved in the choosing of the right law firm. Virtually all of those reasons point to choosing a mid-size, boutique litigation firm.

• Attorneys have more experience

One of the hallmarks of the boutique litigation firm is the extensive experience of its attorneys. A successful boutique litigation firm will provide its clients with only highly experienced trial attorneys and litigators. For example, my law firm, Callahan & Blaine, has 25 highly experienced trial lawyers and senior litigators. Our most junior attorney has seven years experience, and the large majority of our attorneys have 15 or more years of experience in successfully handling complex litigation matters. Callahan & Blaine has no junior lawyers just out of law school who are learning to practice law on the client's nickel.

Conversely, the very business model of the large mega firm requires a huge number of junior and mid-level associates who are billed at high hourly rates and who are tasked with the majority of the litigation work on a client's cases. This concept is called leverage. If one partner can put five or 10 associates to work, that partner and his law firm are considered to be highly leveraged; e.g., highly profitable (for the firm, not the client).

The fundamental problem with this business model, however, is that junior and mid-level associates are inexperienced in handling complex litigation matters. Thus, not only are they very inefficient in getting the work done, as they frequently have to do extensive research to learn how to handle a litigation matter, but their lack of experience also means that the work product does not compare the work product of an attorney who has been practicing law for 25 years, who has conducted 15 or 20 trials, taken hundreds of depositions and handled hundreds of complex litigation matters.

Any lawyer who has been a junior associate at a large mega firm can attest to this experience. It cannot be reasonably disputed that the first several years of practice are an extremely steep learning curve, including even such mundane matters as learning where the courthouse is. The reality is that for virtually every junior lawyer, the first several years

of practice are basically continuing education and training. While American corporations have subsidized this training process for decades at the mega-firms, the economic realities of the Great Recession have caused companies and clients to take a serious critical eye at this process and, for many, to put an end to it.

• Lower hourly rates

Another huge benefit of using boutique litigation firms is that the hourly rates at such boutiques are significantly lower than the hourly rates of the mega firms. While many large law firms have been increasing their hourly rates during the last decade to high levels, some approaching or even cresting the \$1,000 per hour level, boutique litigation firms provide a sharp contrast. Many mid-sized boutique litigation firms will provide excellent, high quality litigation services in the range of \$300-\$500 per hour, a discount of upwards to 50% from the large mega firms.

One of the ironies in this contrasting hourly rate structure is that many attorneys who work at mid-sized boutique litigation firms formerly worked at the large mega firm. Some lawyers will even lateral from the large firm to a smaller firm, take their client base with them and cut the effective hourly rate by upwards of 50% for providing the identical legal services.

While hourly rates are not the sole determining factor of the value of legal services, they are a critical benchmark to corporations. This is especially true in today's economic climate, where corporate managers are looking critically at each and every expenditure of a company's money.

• Lawyers with extensive trial experience

One of the key questions to ask when hiring a litigator is whether that lawyer or law firm has a track record of conducting actual trials in front of a jury? A litigator who has never conducted a trial cannot be an effective advocate in the pre-trial and discovery phases, much less the actual handling of a trial. Ultimately, every lawsuit that is litigated must have as its ultimate goal how the facts and legal issues will be decided before a jury and judge. If the litigator is not an experienced trial attorney, the entire discovery, law and motion, deposition and pre-trial phase will be handled in an unpersuasive manner.

Moreover, the opponent on the other side will feel no intimidation or pressure to settle with a legal adversary that has no track record of trials. Settlement is a powerful weapon in the arsenal of the "litigator/trial lawyer." It is one of the true ironies of litigation that the best settlements come from the lawyer who is an expert at trials and has prepared his case for trial. The trial lawyer who prepares his case for trial is the lawyer who gets the best settlements.

Boutique litigation firms frequently have extensive trial experience. For example, the managing partner of Callahan & Blaine is Daniel J. Callahan, one of the most respected trial attorneys in the United States. The National Law Journal named Mr. Callahan one of the Top Ten Trial Attorneys in the United States. Likewise, Mr. Callahan has obtained the largest jury verdict in the history of Orange County, a \$934 Million jury verdict on behalf of a large corporation after three months of trial in a complex business litigation case.

There is a huge difference in the level of advocacy between a real trial attorney and a lawyer who has never been to trial or has only done so once or twice. That type of courtroom experience is invaluable to understanding the litigation process and winning cases.

• Boutique litigation firms provide both plaintiff and defense perspectives on litigation

One of the significant advantages of mid-sized boutique litigation firms is that such firms frequently have extensive experience from both plaintiff and defense perspectives. By

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Edward Susolik, Callahan & Blaine

Edward Susolik is a partner at Callahan & Blaine, a boutique litigation firm with 25 attorneys. Callahan & Blaine specializes in complex litigation of all types, both plaintiff and defense. Callahan & Blaine's successes include a \$934 Million jury verdict in a complex business litigation case, a \$38 Million employment law settlement and a \$50 Million personal injury settlement, which is the largest personal injury settlement in United States history. Callahan & Blaine celebrated its 25th anniversary earlier this year.

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contrast, for a variety of reasons, most large mega firms are virtually always only on the defense.

The major benefit of hiring attorneys who handle both plaintiff and defense cases is that the law firm and its lawyers gain invaluable experience and perspective into the plaintiff's point of view when litigating a plaintiff case. The lawyer and the law firm can then put this extensive experience of knowing the plaintiff's side to considerable benefit when acting as defense counsel. Moreover, using the adage that "the best defense is a good offense," many times a strong cross-complaint can be a highly effective defensive strategy.

It is analogous to playing both offense and defense on a football team. The knowledge and perspective that a player learns from being on the defensive side of the ball is invaluable when the player is quarterback on the offense. It is the same in law. Whether it be law and motion, depositions, discovery, or trial, it is a huge benefit for defense counsel to have extensive experience from the Plaintiff's perspective. Many lawyers at boutique litigation firms have such experience. Mega firm lawyers do not.

By way of example, my firm, Callahan & Blaine, represents defendants in the majority of the hundreds of complex litigation matters that we handle every year. However, Callahan & Blaine also has extensive experience from the plaintiff's side. While acting as plaintiff's counsel, for example, Callahan & Blaine obtained the highest plaintiff's jury verdict in the history of Orange County, a \$934 million jury verdict that was procured on behalf of corporate client Beckman Coulter after a three month trial in a complex business litigation matter. Likewise, by applying its complex litigation skills in the area of municipal liability, Callahan & Blaine obtained a \$50 million settlement in a pedestrian accident that has been certified as the largest personal injury settlement in the history of the United States.

Thus, whenever Callahan & Blaine defends corporations in complex litigation matters, Callahan & Blaine is able to utilize its extensive experience from the Plaintiff's perspective in many different and positive ways.

Attorney numbers are deceptive: size doesn't matter

Another huge benefit of boutique litigation firms is the size of the firm itself. From the perspective of litigation results and cost savings, using a 25 attorney boutique litigation firm in complex litigation matters is much more effective and efficient than a sprawling, world-wide mega firm.

As a threshold matter, having your entire litigation team and firm in one location significantly enhances communication, efficiency and litigation prowess. For example, instead of trying to coordinate communication and litigation activities among lawyers in multiple offices

around the globe, a boutique firm can efficiently and effectively render legal services from one location, with all litigators able to effectively communicate and coordinate from one centralized office.

One major example of this type of effectiveness and efficiency was Callahan & Blaine's recent \$42 million class action settlement in the Freedom Communications case. While the Plaintiff class was represented solely by Callahan & Blaine in one office, Defendant Freedom Communications was represented by five different law firms, with attorneys located all over the United States. For example, one law firm alone had over 25 attorneys working on the matter out of five different offices. As a result, the Defendants were hampered by the lack of a true leader of the litigation team and were highly inefficient and ineffective as a result. Conversely, the Callahan & Blaine litigation team, led by managing partner Daniel J. Callahan, efficiently and effectively went through a two month trial and ended up obtaining a \$42 million settlement, which is the largest class action settlement in the history of Orange County.

Along similar lines, the advertised size of the mega firm is irrelevant when it comes down to real performance. For example, even though a law firm may have 2,000 attorneys worldwide, a significant majority of those attorneys are not even in the litigation department. Whether a mega firm has 400 lawyers in its corporate department is irrelevant to an Orange County business that has a litigation matter in Southern California.

Further, while a mega-firm may have hundreds of litigation attorneys worldwide, it is irrelevant for a client's litigation matter in Southern California whether the law firm has hundreds of litigators in New York, London, Beijing or otherwise. What really matters to the client is the strength and quality of the litigation team that is actually handling that client's case. The entire law firm cannot march into the courtroom at one time.

Finally, a further factor when comparing the number of litigators at the mega law firm to the boutique firm is experience. While there may be hundreds of lawyers in a mega firm's litigation department, a significant number of those are junior lawyers with less than five years' legal experience. From a client's perspective, it is always preferable to have a highly experienced, 20 year litigator working on your case as opposed to a second or third year associate just out of law school. The senior litigator will have more experience, will have more knowledge, will do the work more efficiently, more effectively, and will ultimately produce a better result than a lawyer who is a few years out of law school, no matter the pedigree of the law firm or the name of the law school.

Conclusion

At the end of the day, the two most important factors in choosing the right lawyer are quality and results. All these factors, and the reasons behind them, point to the selection of the boutique litigation firm.