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Going Down with the Ship? Thinking Past Metaphors in an Uncertain Economy

By Carey Bertolet

When a firm lays off associates, it's usually big news. In New York several prominent firms have laid off associates, or offered buyouts, or some combination of the two. These events usually create animated watercooler talk in law firms throughout the city and nationwide, and the focus is rightly on those lawyers who are immediately affected. What are the severance packages? Were the layoffs performance related? Where will they go?



The effects of a layoff extend beyond those lawyers who are forced to look for new jobs. Sometimes it can be difficult to be spared from a wave of layoffs. Even a "safe" lawyer tends to wonder about his or her future at the firm.

There are justifiable concerns about the fiscal health of one's employer, whether there will be bonuses, work flow, and whether the most recent departure is the beginning or the end of this difficult time. Deciding whether to stay with a law firm that has laid off some of its lawyers is difficult. To be clear, there are no easy answers, which is one of the reasons that we hate to see it happen at all.

There are two extreme reactions to the news that one's employer is laying off employees. On one side of the spectrum are those who are concerned only with their immediate fate. The survivalist is happy to learn that his or her name is not on a pink slip, deems himself or herself safe, and returns to the day's tasks. On the polar opposite the employee deems the entire organization a sinking ship and vows to be the first to leave the Titanic. As is often the case with extremes, these two responses to news of downsizing are far too facile to adequately guide you to the right decision for your career. As with any difficult situation, the right answer lies in the gray area in between these two polar opposites.

In the years that I practiced and have been recruiting, the frequency with which people use maritime metaphors in a receding economy borders on the comical. I've already referenced the Titanic, and we're just getting started. No one wants to go down with the ship; associates wonder whether it's the tip of the iceberg or when the next wave of bad news might come. It's easy to get caught up in the imagery — but it's not necessarily productive or a good mindset to make a career-altering decision.

There are several questions that you have to ask to decide whether staying at your firm and riding through the difficulties is more prudent than seeking opportunities elsewhere. The short-term flagging morale that often accompanies news of layoffs should never (in and of itself) outweigh other long-term considerations. A measured decision must take a number of factors into account. Here are the salient questions every attorney concerned about layoffs should be posing:

1. Is My Practice Area Being Affected?

This is an easy question to answer today, but the issue will likely become cloudier as we move through 2008. As we sit here today, many of the practices doing the laying off have been practices linked to the housing market. The subprime credit crunch took its toll on those law firms that have securitization practices focused on the sale of mortgage-backed securities.

Not only has the credit crunch not appeared to affect, say, patent litigation, but it also seems to have not bled into other transactional practices — at least not yet. International structured finance groups continue to do well. For the moment, attorneys with practices outside of structured finance are not at high risk. Attorneys at firms with diverse practices who are not principally dependent on the domestic real estate market should feel better. One struggling group does not a sinking ship make.

Real estate and real estate finance lawyers may want to think about how they can recession-proof their resumes. Maybe you'll want to consider retooling into other structured finance practices that are not linked to the residential mortgage market. Are there opportunities to join a litigation practice that will be focusing on the lawsuits that are sure to follow the industry?

Layoffs force us to focus on the economic health of our firms. The securitization market made a lot of money for a lot of



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lawyers over a relatively short amount of time. The market correction (albeit severe) didn't come as a shock to every lawyer.

Specific areas within the practice of law at large (whether mergers and acquisitions or real estate or litigation) do tend to wax and wane. Fiscally sound firms usually stay that way by anticipating the ebb and flow of various groups within the firm. As an associate, it's always appropriate to sit down with a partner, preferably one who is involved in the management of the firm, and ask about the business philosophy of the firm. Believe me, the partners have already been talking about it. Don't guess what your firm's long-term fiscal plan is. Ask.

2. Am I Busy?

In my opinion, one of the single best reasons for leaving a firm is a lack of work. While some days are busier than others, sitting at your desk with absolutely nothing to do should concern you. It can mean any number of things. It may mean that your firm, in your practice area, lacks work. It may mean that the partners do not want to give you work to do. No matter the reason, a lawyer who isn't lawyering isn't learning anything. This bears repeating. If you aren't working on anything, you are learning nothing about the practice of law.

If you aren't busy and the lawyers around you aren't busy, I believe that this weighs in favor of reaching out to the market for something new. You don't want to stunt your professional growth by waiting too long to see what will happen. For this reason I also recommend volunteering to take on work in any practice area at your firm so you keep your hours up and so you are projecting an enthusiastic and cooperative spirit. You might learn some new things in the meantime.

Nonetheless, if you haven't been busy for an extended period of time and you aren't capturing meaningful work from any other group, then look around. Waiting too long to do so causes a different concern, which is...

3. Am I Marketable?

The legal marketplace is generally less forgiving of a downsized employee than other industries. Some law firms don't want to consider a candidate who was previously laid off from a firm, in the event that there were any performance issues whatsoever. While I believe that firms are far too unforgiving about layoffs, it is a reality for the job seeker. Thus, if you have not been laid off, but other lawyers at your firm have, you must overcome the assumption that you are looking because you've lost your job. So, to the extent that

your marketability is affected, you may want to consider how you time your job search.

Having said that, we have found that there are employers who are quite interested in considering candidates from downsizing firms. We've found that smaller legal markets in other parts of the country offer great opportunities for New York lawyers who are concerned about their long-term security.

4. Am I Going to Choose Wisely?

Sinking ship, sinking ship, sinking ship — it's an evocative but overplayed analogy for those looking to leave their firms. Again, it's always smart to evaluate the health of your firm, and being the last lawyer to read the writing on the walls can put you in an unenviable position. But racing to leave means racing to another firm — and racing anywhere in an industry where stability and loyalty are highly valued is not always a great idea.

Regardless of whether you agree with the criteria, the number of firms you've worked for is frequently given a great deal of weight in the lateral marketplace. Although it's a larger topic for a different article, you have to be ready to explain why you have left the firms you've left and joined those that you've joined.

Make sure that when you are adding a new firm to your list, you can explain why you went to a new firm, not just why you left the old one. Taking a job solely because it means leaving your current position isn't a decision made from a position of strength. It's okay to want to jump ship — just be careful that you aren't in an inordinate rush and that it's not clouding your evaluation of what you're jumping into.

Keep in mind that no one in the lateral marketplace is going to judge you for trying to do what's best for your career. However, lawyers value stability and loyalty. Are you someone who carefully decided to look for a new position after weighing all the factors and after it was clear that you weren't going to be able to maintain a steady flow of sophisticated work? Or did you leave at the first sign of distress? It may seem like semantics, but it's a distinction that is very important to how you are perceived.

Strike the Right Balance

No one enjoys layoffs. Even the most elegant downsizing brings some bad publicity, and the realities of a changing economy do little to console someone who receives the bad news. Even so, lawyers in law firms should treat layoffs with



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more gravitas than just “business as usual”; less shrieking that “the sky is falling!”

The truth is that layoffs do happen, and they happen at good firms that will often continue to thrive long after they’ve weathered the storm. As distasteful as layoffs are, a firm may emerge leaner, more profitable, and wiser in the ways of navigating through the inevitable ups and downs of our economy.

While no one can guarantee that you will make the right decision by staying or by moving on, the calculus should be measured and deliberate. Thinking through all of the implications of leaving a struggling firm, and not resorting to cliché in your internal dialogue, will give you the best platform to make your next move.

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