

Legal Departments Are Ramping Up Revenue Searches

Law360, New York (February 24, 2015, 12:07 PM ET) --

Companies today operate under intense cost and competitive pressures. That reality is driving many legal departments to not only defend cases, but to also get involved in recovering money owed to the company through legal action. And as they do so, they are likely to keep casting a wider net.

Traditionally, such recovery activities have been left to the business side of the organization — the job of the legal department, conventional thinking said, was to reduce cost and liability. But in a tighter economic environment, there is pressure for in-house counsel to do more to help increase revenues and profits. Recovering funds that are legally due the company is a logical channel for doing this. And so a number of legal departments are assuming the role as plaintiff, as well as the traditional role of defendant, and going after the money.



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Such activities represent new territory for the traditional legal department, and many are now taking steps to sharpen their focus on recovery. This usually means designating individuals or teams to specialize in recovery, and to track recovery metrics, coordinating efforts with outside counsel, and proactively looking at the company's activities and agreements to find areas where they might recover funds. Companies such as Hewlett-Packard, AT&T, DuPont and Bridgestone have all devoted significant and specialized resources to recovery activities.

Recovery initiatives can be well worth the effort. Recovered amounts vary widely, but often there are tens of millions of dollars, or even hundreds of millions, at stake. As companies embrace recovery programs — and strengthen their ability to pursue these sizable settlements — there is a growing expectation that the legal department can be not only a risk-reduction function, but a profit center as well.

In-House Recovery's Growth Areas

Much of the recovery activity to date has been in the intellectual property and antitrust arenas. With IP, recovery is often focused on violations of licensing agreements or infringement of patents — cases typically driven by companies' efforts to systematically assess and leverage their IP assets. With

antitrust, recovery opportunities often stem from cases where the U.S. Department of Justice or the European Commission (EC) have found illegal cartel behavior, which prompts civil class action litigation. As purchasers of price-fixed products, corporations are often members of these classes and thus have significant claims.

With the large potential for significant returns, there are several potential “growth areas” that are likely to see more recovery efforts. One of these is supplier contracts. More legal departments are reviewing contractual agreements with vendors, licensors or even business partners that have failed. Often, these reviews can turn up significant opportunities for recovery.

Health care is another of these growth areas. With the changes that have been taking place in health care laws, many companies have assumed a more active role in managing and funding their health care plans. This opens the door to recovery efforts targeting overspending due to manufacturers’ inflated pricing of pharmaceuticals or medical supplies through anti-competitive behavior, or higher medical expenses due to defective medical devices or fraudulent billing.

Finally, the trade arena is likely to be targeted by more companies’ recovery activities. The globalization of business means that many companies have customs duties and other costs built into their supply chain. It’s not unusual to find that importers and manufacturers are paying unnecessary duties on imported merchandise, either directly or as part of their cost of procured materials. Here, recoveries generally take the form of refunds for past overpayments, or future duty and penalty avoidance.

Companies are not always aware of the opportunities in this area. For example, every year, companies pay millions of euros in customs and anti-dumping duties imposed by the European Union. However, few companies understand that there are established procedures that allow European importers to request repayment of these duties where the importer purchases goods at prices above “dumping” levels or where the dumping margin has been reduced.

To be effective, recovery efforts require a fair amount of sophistication, and legal departments need to be able to weigh a number of options when approaching cases. In antitrust cases, for example, companies may want to be part of a class action, or they may want to opt out to pursue individual litigation. But negotiation or arbitration may also offer an appropriate, less aggressive way to recover funds without damaging important relationships with suppliers, customers, business partners or government agencies. With a focused recovery capability, legal departments can develop a balanced and tailored approach to maximizing recovery in each specific situation.

The pressure on legal departments to show that they are adding value to the business is not going to abate any time soon. In addition, some companies are developing a solid track record of results with their recovery efforts — and their success is not lost on others. As a result, we can expect to see more legal departments putting more resources into this area, and continuing to institutionalize their recovery activities — and thereby help grow the business’s bottom line.

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This article was also published in the Crowell & Moring Litigation Forecast 2015.

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