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How Companies Can
Weather a Host of
Key Legal Areas



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“WE MAKE
IT OUR
BUSINESS
TO KNOW
YOUR
BUSINESS.”

From Left:
Joseph “Trey” Wood, III,
T. Wade Welch,
Richard Olsen

JESSE HORNBUCKLE



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“**M**ake it happen.” Since its inception in 1994, that has been the motto of T. Wade Welch & Associates. For the fifth year in a row, DISH Network has named T. Wade Welch & Associates as a Go-To Law Firm® for Litigation and now Labor & Employment. That’s because, says owner of the firm T. Wade Welch, “We thrive on trying cases nationwide. From New York to Los Angeles, we are prepared to fight for our clients in any legal setting.”

For the attorneys at T. Wade Welch & Associates, who represent businesses in complex commercial litigation and employment and labor law issues, matters such as geography are just happenstance—the only thing that concerns them is solving the legal problems of their clients in a cost-effective manner. No matter the stage at which the firm is called in, it quickly assesses the situation and comes up with an innovative strategy that achieves a solution while conserving the client’s time and resources.

The firm retains an intimate familiarity with the industry of each of its clients, strongly believing that this institutional knowledge leads to better and more consistent results nationwide. T. Wade Welch & Associates already knows what its clients do and what they expect, so it can immediately focus on a solution while the clients focus on their business with as little interruption as possible.

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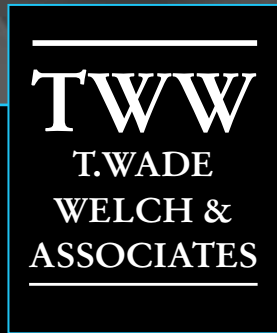
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Which law firms do the world's leading companies rely on to handle their most significant legal matters? The publishers of Corporate Counsel magazine surveyed each company's general counsel. That information along with research in key databases such as ALM Legal Intelligence, LitigationMonitor™, Westlaw®, and others form the basis for each firm's selection as a Go-To Law Firm®.

The surveys and research identified each company's primary outside law firms in the following practice



areas: litigation, corporate transactions/mergers & acquisitions, labor & employment, intellectual property, securities, Canada, and international.

No law firm can pay to be named. Each firm featured in these pages is here because it was named as a Go-To Law Firm.

Choosing outside counsel is an important decision. Use this as a resource to enhance your selection process, benchmark current and prospective law firms, and better understand a firm's particular practice expertise.



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In these difficult economic times, when so much is at stake for the business community, choosing the right law firm is critical. For almost four decades, Fortune 500 companies and smaller businesses alike have turned to litigation boutique Flemming Zulack Williamson Zauderer LLP (FZWZ) to represent them in the kind of complex commercial disputes that often threaten their very survival. These clients have become FZWZ clients for life.



Seated From Left: John F. Zulack, Cathi A. Hession, Richard A. Williamson, Lissa C. Gipson, Mark C. Zauderer. Standing From Left: M. Bradford Stein, Gerald G. Paul, Dean R. Nicyper, Linda M. Marino, Jonathan D. Lupkin, Elizabeth A. O'Connor, Robert Polifka, Cynthia B. Rubin

STATIA GROSSMAN

The loyalty of FZWZ's clients, and their willingness to entrust FZWZ with matters so important to their businesses, is easy to explain. With its approximately 35 attorneys—all of whom come to FZWZ after attending the nation's top law schools and/or practicing in the country's leading law firms—FZWZ is able to provide its clients with the high quality legal representation that is expected from a large law firm, but with the personalized attention and greater efficiency of a small firm that concentrates in litigation.

Mark C. Zauderer, who is featured on the cover of this year's issue and is pictured here along with other FZWZ partners, joined the firm in 2005. His prominence in the New York legal community, combined with the resources and superb talent at FZWZ, has brought the firm into many major litigation matters in New York and throughout the country. He has guided clients through difficult jury trials and appeals and has counseled them in significant matters involving Federal and New York regulatory and investigatory authorities.

Over nearly four decades of practice, Mr. Zauderer has made it a priority to represent companies in disputes wherever they arise. "For many years, I have kept a suit bag in my office to meet the needs of client emergencies on short notice." His journeys for clients have taken him from a courtroom in rural

Texas to proceedings in Western Europe, Eastern Europe, and Russia. His cases have encompassed complex securities matters, business partnership disputes, real estate matters, and complex financial litigation. While Mr. Zauderer's practice involves many high profile cases and representations of major businesses, he is frequently called upon by law firms to represent them in a range of sensitive matters.

Mr. Zauderer is actively involved in monitoring the court systems in New York, having served as a member of the Chief Judge's task force that established the Commercial Division of the New York Supreme Court in 1995. He is the immediate past-President of the Federal Bar Council and has taken on many high profile responsibilities in the public arena, including service as Chair of New York's Commission on the Jury and as Chair of the Commercial and Federal Litigation Section of the New York State Bar Association.

Clients of FZWZ can rest assured that Mr. Zauderer and FZWZ are well-equipped to tackle their most significant business litigation matters.



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PLAN OF ATTACK

By addressing challenges early, companies can weather a host of key legal danger areas in a turbulent economic climate.

The economy might be recovering, but the business climate is anything but calm for corporate executives as companies face an array of new legal challenges. As both legislators and the public examine executive compensation more closely, in response to government bailouts of the banking and auto industry, many firms must enact new policies that respond to this tighter scrutiny. At the same time, shareholders' expectations of greater accountability from corporate boards have led to a series of key changes in how they are elected. "Together they constitute a 'perfect storm,'" says Guhan Subramanian, a professor at both Harvard Business School and Harvard Law School.



abreast of SEC regulations adopted in February. These new guidelines require firms to disclose in their proxy statements any compensation policies or practices that are "reasonably likely" to have an adverse effect on the company, says attorney Frederick Lipman, a partner with Blank Rome in Philadelphia and author of *Executive Compensation Best Practices* (John Wiley & Sons, 2008). "You have to determine whether there is a risk arising from your compensation policies or practices," Lipman says.

"While the cost of litigating a case through trial in arbitration may typically be a third of what it costs to litigate a case in court, the savings can be illusory."

—MARK C. ZAUDERER

BOARD GAMES: SHIFTING STRATEGIES
As shareholders have demanded greater accountability, it has gotten harder for corporations to elect


and hold on to their boards of directors. Several key trends are at work here, and companies should make sure their legal and compliance teams are in step with the myriad changes. First, many companies are voluntarily phasing out a practice in which shareholders elect boards of directors on a staggered schedule. The old, staggered approach was designed to make it harder for hedge funds and other entities to execute hostile takeovers. But shareholders now want the freedom to remove board members quickly, and many have persuaded their companies to create annual elections for all board members, says Lipman.

SHEDDING LIGHT ON EXECUTIVE COMPENSATION

The government's big-company bailouts didn't just affect the companies that received TARP money. The 1,336-page Restoring American Financial Stability Act of 2010, just introduced by Senate Banking Committee Chairman Chris Dodd (D-Conn.), proposes changes that, if passed, will have an impact on many corporations, and will require companies to do plenty of legal work to keep up. For instance, corporations that must now provide compensation disclosure on their proxy statements will be required to give shareholders an annual, nonbinding vote on executive compensation.

Meanwhile, public companies' legal teams need to stay

To give shareholders more say in board elections, many companies are also voluntarily adopting "majority vote"



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provisions, rather than simply requiring that directors receive a plurality of votes.

A third important development concerns an SEC rule created last July that prevents brokers from voting shares registered for individuals under the brokerage's name in uncontested elections.

"The brokers would typically vote for the management proposals, including the directors," explains Lipman. Now the brokerages can't use those votes, so companies must make more effort to get other shareholders to cast their ballots, he says.

DISPUTE RESOLUTION: BEWARE THE HIDDEN COSTS

With tighter corporate budgets, C-suite executives need cost-effective resolutions to disputes, which can mean avoiding both litigation and arbitration wherever possible. In the annual Fulbright Jaworski Litigation Trends Survey, 48% of respondents reported that they had lawsuits in 2009, down from 55% in 2008, and 61% in 2007. Just 22% said they had initiated arbitration, down from 25% in 2008, and 29% in 2007.

Bringing a case to arbitration may seem cheaper than litigating it, but this isn't always true—so companies need to do a careful analysis before deciding how to resolve a dispute. "While the cost of litigating a case through trial in arbitration may typically be a third of what it costs to litigate a case in court, the savings can be illusory," says Mark C. Zauderer, a partner at Flemming Zulack Williamson Zauderer LLP, who has almost 40 years of experience in business litigation.

Zauderer says that arbitration can work well in venues that won't provide favorable bench or jury trials, or in cases requiring that the decision-maker have expertise in the company's industry. Yet a company may ultimately reap smaller financial wins. "Arbitration is more likely to result in a 'split the baby' award, in which the outcome is somewhat of a compromise," says Zauderer. And with arbitration, there are virtually no appeals.

Mediation, in which both companies in a dispute appoint an impartial party to help them resolve their differences before or during litigation or arbitration, can often help speed the resolution of cases—resulting in lower costs overall. "Mediation is very cost-justified," says Zauderer. It doesn't usually work well, however, in emotionally charged cases such as employment disputes, and in business disputes in which one party will not be satisfied with anything less than a complete victory, he says.



“A cursory review of an employee’s job description may not be sufficient.”

—T. WADE WELCH

DODGING THE DISCRIMINATION MINEFIELD

Given today's high unemployment, many workers aren't taking it lightly if they get laid off. The U.S. Equal Employment Opportunity Commission (EEOC) received the second-highest number of workplace discrimination charges ever during fiscal year 2009 (93,277 complaints). And in the Fulbright Jaworski survey, corporate attorneys reported that they faced more employment and contractual suits than any other kind last year.

To avoid suits, corporations need to pay close attention to their policies and procedures to make sure they are fair. Companies that must carry out layoffs should create a formal plan detailing the qualifications of employees they seek to retain, making sure that company actions don't have a disparaging effect on protected classes, such as workers over 40. "During a good economy,

if someone gets fired, they can go across the street to a competitor," explains attorney Joseph "Trey" L. Wood III, chair of the employment section at T. Wade Welch & Associates in Houston. "When the economy is bad, people start to say, 'Is it really the economy that was the reason for my being laid off, or some other motive?'"

Accommodating workers with disabilities should also be high on the priority list, Wood says. Of the total EEOC discrimination charges received in 2009, 21,451 were filed under the Americans with Disabilities Act of 1990 (ADA). The Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which took effect on Jan. 1, 2009, has broadened the definition of what constitutes a disability, making it harder for employers to fight discrimination claims. "Your company must engage in the interactive accommodation process much more diligently than in the past," Wood says. That means you must provide better training—from your attorneys or HR experts—to workplace supervisors.

As you look to keep labor costs down, it is also important to get legal advice so you don't improperly classify employees as independent contractors, says T. Wade Welch, principal of T. Wade Welch & Associates. "A cursory review of an employee's job description may not be sufficient," he says. Some workers have been filing class action suits, saying that misclassification unfairly prevented them from getting benefits, he notes.

For employment issues, as with these other key trends, nothing beats a proactive approach when it comes to avoiding costly legal problems this year.

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From Left: David Brown, Daniel Ferguson, Ryan Filson

DANIEL ALEXANDER

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