

The Texas Lawbook

Free Speech, Due Process and Trial by Jury

Legal Departments: Doing More with Less

FEBRUARY 1, 2021 | BY KEVIN LEWIS & BART BIGGERS

For any industry, what goes up must come down. We see this in the airline industry on a minute-by-minute basis as planes take off and land as scheduled. Some industries are more susceptible to external forces than others, which causes even greater ups and downs. In 2020, all businesses experienced radical and immediate changes brought on by COVID-19.

As we think back to the dark days of March 2020, we remember the world as we knew it being turned on its head. But while COVID-19 wreaked havoc on almost all businesses, the effect of the pandemic on the airline industry has been the worst ever encountered during its 100 year history. Virtually overnight, U.S. airlines saw their passenger numbers drop by 97% as compared to 2019.

Any good business knows that it must adjust to market changes in order to survive and then again succeed. Airlines have a well-versed playbook for these scenarios for normal crises. Executives know that if you pull this lever and tweak this dial, they should be able to level out to a cruising altitude and survive.

While that usually works, it became very evident early on during the pandemic that this was not an ordinary headwind. As revenue dried up, every airline began to calculate its available cash, how much it could raise and how quickly it could reduce expenses, and to balance the costs and benefits of these actions against its own guesstimate of when the pandemic would release its stranglehold on the industry.

So the word went out to every airline legal department – reduce costs and do so quickly. Meanwhile, airline legal teams were hit with multiple challenges: confront the legal challenges of a pandemic the likes of which no one had ever seen; do so under the emotional stress that COVID-19 brought to all of us; move to a remote workforce and face new challenges and anxieties in balancing familial and professional duties; and last but not least, do so with shrinking budgets as the airlines tried to conserve cash.

To reduce costs, legal departments generally have three levers to pull:

- reduce in-house staff compensation,
- reduce in-house staffing, and/or
- reduce outside counsel spend.

Sometimes, as is usually the case with airlines, the reduction of in-house staff is part of a larger

program to reduce staffing across the company including unionized forces. In this case, some in-house counsel were furloughed, others found voluntary packages enticing and left their companies with the remaining lawyers getting paid for reduced work weeks.

This created a delicate balance for legal departments – to reduce in-house staff while also reducing outside spending as companies tried to regain their footing in an unsettled environment.

To exacerbate the situation, in-house counsel reported that their workloads actually increased with previously unforeseen issues for which they had little or no practical experience. In fact, legal needs increased in many areas, which resulted in companies trying to meet these needs with fewer staff and smaller budgets.

What is the answer to solving this problem in the most cost-effective way? Very simply put, good companies adjust. Just as the world made adjustments that in early 2020 could have never been foreseen, the companies that will come out of the pandemic in the best position have changed their ways of doing things. No longer can “but we have always done it that way” be the answer to our problems. Thinking outside the box became the new norm in 2020 and will be for the foreseeable future.

How do companies adapt when their needs are going up while their resources have been reduced? While the first inclination may be to hire outside counsel who have lower rates than others, this may actually cost more in the long run due to such lawyers not having the needed expertise, which results in more hours and higher costs. Many clients have gone in the opposite direction, working more with multidisciplinary firms that have both a deep understanding of a company’s business and many areas of specialized expertise. These lawyers create a team with in-house counsel that provides clients with efficiency, value and practicality.

This is especially important during this time when in-house departments may have lost critical institutional and legal knowledge as they reduced their staff to save money. Lawyers with a great deal of experience with a client’s business can not only spot apparent risks exposed by COVID-19, but also bring to the table the knowledge of latent risks, old and new, that may require mitigation in a more urgent manner due to the pandemic.

The Texas Lawbook

Lawyers who truly understand a client's business may have the ability to address risk in the most efficient manner. Lawyers with a track record in an industry are more likely to have an intuitive understanding of the client's situation and an ability to balance practical risks, thus providing the company with a balanced approach. And, finally, lawyers with deep experience with a client's business may be able to provide all of this help quickly, an aspect of professional service the importance of which is magnified in a crisis like the one precipitated by the pandemic.

We all faced many surprises, unknowns and unpredictable issues in 2020. Legal departments, especially those in industries such as airlines, were not spared. Successful legal departments have and are continuing to adapt by doing more with less during the age of COVID-19, and many are renewing their reliance on experienced teams to guide them through the abyss.

When everyone working to solve a problem has a common view of the geography and an overlapping sense of a company's history and circumstances, the team is more likely to agree on a flight plan and to execute it well, bringing everyone in for a soft landing. To do this, legal department leaders must find a team of in-house and outside lawyers who can work together for a common goal – arriving at the other side of the pandemic with a company built for post-pandemic success.

Kevin Lewis is co-managing partner of Sidley Austin's Houston office and co-leader of the firm's aviation practice. He represents airlines of all sizes and other aviation businesses, as well as boards of directors, audit committees, special committees and public companies in a variety of industries.

Bart Biggers is a partner in Sidley Austin's Dallas office and serves as co-leader of the firm's aviation practice. As part of his extensive transportation law experience, Bart counsels major international and domestic airlines on a wide array of transactions for virtually all functions of the aviation and airline business.