

FOCUS

On Being “Mid-Sized” and the Future of Law Practice

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Over three decades ago, the pundits who commented on the practice of law were suggesting that the “mid-sized law firm” was dead – that there was no future in that type of organization. The idea at that time was “bigger is better,” and that offering greater depth in all areas of expertise and experience along with a wider geographic spread was of value to *everyone*. The other extreme, they argued, was that law firms could be successful only if they were very small.

Since then “Big Law” has gotten bigger; many small and mid-size firms have been swallowed up and become parts of these large national and international firms. We heard the stories of the successes of these very large firms, and this growth appeared to be very good for them. But was it good for the clients and for the people who work in these firms? We’re not so sure.

For many years Burns & Levinson has been a mid-size, regional law firm. While growth in the industry has swirled around us, we have stayed true to our initial premise – we need to be large enough to take care of our clients effectively, offering the depth of expertise of the larger firms with the personal touches and attention offered by the smaller firms. Individuals and businesses select Burns & Levinson because of the relationships they build with our attorneys. They know they will get the best legal services and the most attention available anywhere.

In 2004 I was interviewed by the *Boston Business Journal* for an article entitled, “Despite predictions, midsize firms survive, even thrive.” The article began, “Five years ago, experts predicted the end of the midsize firm. Here’s why they were wrong.” I was quoted as saying that Burns & Levinson is “very comfortable marketing itself as a regional firm whose rates are considerably less than the city’s largest firms.” This continues to be true, as most of the city’s largest firms have now expanded nationally, and other national and international firms have opened offices in Boston. The value we offer today stands out even more than it did back in 2004!

We are very proud of all of our accomplishments in 2013. Our business lawyers are doing regional and national transactions that are the envy of many of the largest national firms. Our intellectual property lawyers are working with scientists, institutions and business enterprises to protect and commercialize intellectual property rights across several disciplines. Our litigators brought about continued success with several favorable decisions on cases ranging from large commercial litigation matters to employment discrimination claims. Our Private Client Services Group continued to impress on high-level estate litigation and family matters, and the Real Estate Group advised individuals and businesses in a variety of transactions contributing to the economic growth of our region.

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Amazing Clients[®]

Pumping Up Promising Treatments for Heart Disease Patients

Christopher H. Colecchi, Managing Director of Broadview Ventures, Inc.



In a small office at the corner of Pearl and High Streets in downtown Boston, a handful of employees at Broadview Ventures are working with a transatlantic network of scientists, researchers, inventors, and doctors to disarm the number-one killer in the world – heart disease.

Founded in 2008, Broadview Ventures can already point to 18 promising new drugs, devices, diagnostic tools and treatments that it has advanced through strategic funding in order to win the war against cardiovascular disease. Furthermore, some of these treatments are already showing promise in clinical trials at the Phase I (safety testing) or Phase II (efficacy testing) stages.

“We are a bit different from typical venture funds,” says Chris Colecchi, Managing Director of Broadview Ventures, which he describes as a “philanthropic, for-profit, venture firm.”

Broadview is philanthropic because its funding for investments comes from The Leducq Family Trust, which is dedicated to improving human health through international efforts to combat cardiovascular and neurovascular disease. But Broadview is for-profit in nature because it seeks out financial returns from its investments in order to reinvest in additional promising treatments.

“We operate for profit, but we’re an evergreen fund that plows much of its profits back into new opportunities that support our mission,” Colecchi says, adding that the firm’s mission – “to accelerate the development of promising technologies for treatment of cardiovascular disease through direct investment” – extends that of its benefactor.

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Low-Cost Borrowing Opportunities for Nonprofits

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Many of us have leadership roles in nonprofit organizations, such as schools, colleges, hospitals, museums and social service organizations. All of these from time to time have needs for buildings, equipment and other major capital projects. Tax-exempt bonds may be an excellent financing source.

Tax-exempt bonds provide very substantial interest savings. Currently the interest payable is at least 1.5% below the rate for comparable conventional loans. For a \$10 million bond, this translates to a total savings of \$150,000 per year.

Naturally, the organization must be creditworthy, with a strong balance sheet and cash flow that is sufficient to pay principal and interest after meeting the organization's normal cash requirements. Tax-exempt bonds can only be used for the purchase or refinancing of capital purchases, such as buildings or equipment. Bonds cannot be used to provide working capital.

The process of obtaining bond financing starts with discussions with a bank and experienced legal counsel. In Massachusetts, the bonds are issued by the Massachusetts Development Finance Agency (MDFA). MDFA is particularly user-friendly and will be of great help as you start to identify a bond program that fits the organization's needs, to assist in the application process and to identify banks that have been active in bond financing.

A law firm with expertise in tax-exempt financing needs to be brought in as part of the team. Many organizations engage a financial adviser, which is an outside firm that assists in the process and in obtaining the most favorable terms for the bond issuance.

Unless the bond issue is especially large, the organization and its bank will arrange for the bank to purchase the bonds in a structure called a "Direct Purchase." The bank will hold the bonds in its portfolio just as it might do with a conventional loan. The time involved at the MDFA level until closing is usually about 90 days, but internal credit approval from the bank may add to this expected timing.

Interest rates can be fixed or floating, or even a combination of both. The actual rate depends on the financial markets, the financial standing of the organization, the length of term of the bonds, and collateral. Collateral may include real estate, equipment or various receivables, but some bonds are unsecured.

Tax-exempt bonds do carry restrictions. Some capital projects are not eligible for bond financing. Also, the bond's maximum term is measured by a formula that uses the useful life of the assets financed, and institutions must spend bond proceeds promptly and not invest them for profit. There are special post-closing reporting obligations to the IRS, and the use of the project by other businesses could cause the tax exemption to be lost.

Special costs of a bond include the MDFA fee, which starts at about \$15,000 for a \$3 million bond and is higher for larger bonds. Bond counsel fees often are in the range of \$25,000 but vary considerably. There also would be the normal costs of bank counsel and the organization's counsel, but these added costs are normally quickly recovered through the interest savings.

Burns & Levinson is experienced in all aspects of tax-exempt financing for nonprofit organizations and would be pleased to assist in this process. ■■■

Protecting the Intellectual Property You Didn't Know You Had

BRUCE D.
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Intellectual property ("IP") protection mechanisms, such as patents, trademarks, copyrights and trade secrets, can help a business maintain a competitive advantage by preventing other entities or former employees from exploiting assets developed by the business. No longer predominantly the domain of universities, high-tech industries and manufacturing-based industries, almost every business has or generates IP assets and may benefit from the available IP protection mechanisms. A basic understanding of IP protection mechanisms can assist with timely identification of potentially protectable assets.

One of the most powerful IP protection mechanisms is the patent. A patent is a grant of a limited monopoly from the government to

the patent owner and protects the idea, separate and apart from the exact embodiment of the idea. The patent owner can prevent others from making, using or selling any apparatus, manufactured article, composition of matter, or practicing a method that embodies the patented idea. In the US, this limited monopoly may exist for up to 20 years from the patent application filing date, making patents the preferred IP protection mechanism for businesses or industries heavily involved in research and development. Recently, the US implemented a "first to file" patent system, meaning whoever gets to the patent office with their application first may potentially be awarded the patent, assuming all other requirements are met (previously, the US followed a "first to invent" system). Also, certain activities, such as extended delay with application filing, public disclosure of the inventive idea, or sale of a product embodying the inventive idea, can potentially cause loss of patent rights. As such, it's important to talk to a patent attorney as soon as possible after conception of an idea to not only prevent inadvertent loss of potential patent rights, but to also ensure that protection is timely sought.

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Amazing Clients®

Pumping Up Promising Treatments for Heart Disease Patients

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Broadview is also different from other venture firms because it fills an important niche that the venture capital community often does not. "We step in to provide very early-stage funding of roughly \$1 million on average for prototype development and proof of concept," says Colecchi, noting that other venture firms generally prefer to avoid the risk of such early-stage investments.

"Cardiovascular disease is a daunting foe. It presents multifaceted problems that require long-term collaborative solutions. We can afford to take the long-term perspective, so we look to de-risk outstanding opportunities and move them forward using our international network of collaborators," he explains. Colecchi is not worried about quarterly results or short-term return on investment for shareholders, but most importantly is concerned with accomplishing Broadview's mission. "We strive to commercialize the products our portfolio companies develop, but our main goal is to improve patient care and outcomes through better therapeutics, diagnostics and devices for cardiovascular patients," he says.

Colecchi is especially optimistic about the investment his firm has made in CardiAQ Valve Technologies, Inc., which is pioneering a device for minimally invasive mitral valve replacement through a catheter.

"This is our poster child for success. We found a surgeon working in his spare time to build a percutaneous mitral valve implantation device that could eliminate the complexities and risks associated with mitral valve surgery, and we provided funding to develop a prototype, and then helped to attract angel investors," Colecchi explains.

Since that initial investment, the company has used the device successfully in pigs, and then conducted a human trial, attracting more than \$30 million in additional capital from subsequent investors. This technology now holds the potential for facilitating life-saving mitral valve replacement procedures at lower costs with better outcomes, and it could potentially prove invaluable to elderly and sick patients who would otherwise not be good candidates for traditional surgery.

Broadview also helped Los Angeles-based Capricor, Inc. develop powerful cardiac stem cell treatments that deliver adult cardiac stem cells to the site of a heart attack, helping to heal and regenerate tissue that would otherwise be scarred and permanently damaged. As a result of Broadview's nurturing of the company, the stem cell treatments have now passed Phase I and are in Phase II clinical testing, paving the way for commercialization.

Successes at CardiAQ Valve Technologies, Capricor, and other companies have attracted further capital investments in Broadview's family of fledglings, and Colecchi notes that the firm's \$20 million in proof-of-concept investments have led to roughly \$124 million in additional investments.

"One advantage we have is our unique access to a network of cardiovascular thought leaders around the globe, which was developed by the Leducq Family Trust and *Fondation Leducq*. Our greatest challenge is to bring together the best and brightest

minds to work on the most promising of technologies," Colecchi says, noting that the late Jean Leducq, a highly successful French businessman afflicted with heart ailments, created the family trust to fight heart diseases.

Colecchi, who spent 20 years at Partners HealthCare managing intellectual property and technology transfer while launching a venture fund for Partners, says he marvels at the people he can call upon to solve any problem, thanks to *Fondation Leducq* and the team's network across the scientific and investment communities. That includes three of Broadview's own experts on staff, Drs. Maria Berkman, Jessica Harrington, and Christopher de Souza. Berkman has both a medical degree and master's degree in business administration, plus years of experience as a biotech management consultant. Harrington is also an MD/MBA with many years of experience running a primary care practice. And de Souza has a Ph.D. in physiology, an MBA, and 20 years of experience in pharmaceutical research and business development.

It is the collaboration of these in-house and outside experts that has enabled Broadview to comb through 568 potential opportunities to develop 18 early-stage companies with promising technological advancements for treatment, cure or repair of:

- Atrial fibrillation
- Myocardial infarction
- Heart failure
- Coronary artery disease
- Hypertension
- Valvular disease
- Vascular disease
- Preeclampsia
- Metabolic issues related to cardiovascular disease

Colecchi also credits this record of early successes to the work of other professionals, including the Broadview Ventures team of outside lawyers and a stellar Scientific Advisor Board that includes giants in the medical and investment fields – Drs. Eugene Braunwald, Joe Loscalzo, Kim Fox, Eric Rose, Jerry Karabelas and Tom Hughes.

"Broadview has been very fortunate to work with Burns & Levinson's Andrew Merken and Michael Brodowski under Mark Schonfeld's direction. Their combined expertise in the execution of complex deals and evaluation of intellectual properties has supported several Broadview investments," Colecchi explains.

Together, Broadview's team of scientific, medical and legal experts is focused on taming the monster of heart disease by discovering and funding one early-stage breakthrough after another. ■■■

- John O. Cunningham, freelance writer/editor

Protecting the Intellectual Property You Didn't Know You Had

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Another powerful IP protection mechanism, the trademark, serves as an identifier of the source of a product or service and the goodwill associated with such source. Trademarks, or "marks," are not limited to just words or phrases, but can take the form of a logo, sound, color or even a product shape. Common law trademark rights begin to accrue with the use of the mark, and federal trademark rights arise from use of a trademark in interstate commerce, e.g., sales of a product across state lines. However, it is possible to seek protection of a mark even before use has occurred with an application based on an intent to use the mark. As such, many businesses begin the processes of clearing and protecting multiple candidate names or marks well in advance of the actual product or service launch.

With the increased proliferation of digital content, including movies, games, music, software, etc., the importance of copyright as an IP protection mechanism is on the rise. A copyright protects the expression of an idea, but not the underlying idea itself, and is preferred by creative individuals such as authors, photographers, artists, musicians, computer programmers, etc., who wish to protect their works from unauthorized use by others. Copyright protection exists the instant an idea is expressed/fixed in a medium. A system of copyright registration is available in the US, thereby providing the copyright owner with exclusive rights to control modification, replication and distribution of the original work, as well as predefined damages as an infringement remedy. Most foreign countries provide the same copyright protection in their own country as provided in the author's home country, providing US copyright holders with protection throughout most of the world. Given the current ease with which a work may be digitally duplicated and distributed on a large scale across the Internet, many businesses are choosing to register their work product, including, for example, marketing collateral materials, websites, sales and training manuals, and proprietary software code.

Another important IP protection mechanism, the trade secret, protects any confidential information that provides a competitive advantage to a business, e.g., employee information, client lists, formulas, computer source code, etc. Once information has been publicly disclosed, its value as a trade secret is destroyed. Limiting access to and treating information as confidential are essential for maintaining the trade secret status of information. Contractual provisions in employment agreements, such as non-compete and confidentiality clauses, can also provide disincentives for trade secret theft by former employees. Trade secret issues often arise with former employees and must be handled carefully to avoid the loss of trade secret status as well as any potential issues of misappropriation or contract breach. Conversely, new employees may present the risk of inadvertent use of a prior employer's trade secrets.

In addition to protecting its own intellectual property assets using one or more of these IP protection mechanisms, it's equally important that a business not utilize the protected intellectual property of another entity. When launching a new product, using a new name or trademark, hiring a new employee, or utilizing previously created works from other entities, it is important to not only determine what may be protectable but what may also likely be previously protected. If in doubt, it's better to seek the advice of an attorney before an issue erupts or valuable rights are lost. ■■■

On Being "Mid-Sized" and the Future of Law Practice

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Throughout all of these matters, and across each of our practice areas, the theme remains the same. We provide each of our clients, no matter how big or small, with the same respect, priority service and results-driven advice that has differentiated us from other law firms for more than 60 years – we are relationship focused, not hourly rate driven.

As we look toward the future of the legal industry we cannot lose sight of the fact that this is, in fact, a service industry. Our goal is to help our clients; it's not about us, it's about you. That's what makes the difference. A client recently sent a thank-you note to one of our attorneys. He wrote, *"I am writing this to formally thank you for representing me. Mostly I want to thank you for your understanding of my situation, your interest in me, and your belief that I was worth being your client. Thanks for your patience and your taking the time, to both listen to me and to explain to me what I had not previously fully understood."* The attorney appropriately said, "This is what makes it all worthwhile."

So as we said several years ago, the mid-size law firm is far from dead. Its values are now once again being recognized by lawyers in all size firms as the way of the future, and our clients understand that this is what has helped us be a special place. We are optimistic about the future for our clients and look forward to working with them. Thank you for your ongoing trust and support.

Sincerely,



David P. Rosenblatt, Managing Partner



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