

December, 2012

WHAT'S HOT AND WHAT'S NOT IN THE LEGAL PROFESSION

This is our 24th annual report on what's going on in the legal profession, not only in the United States but also in other parts of the world. Like all our previous reports, it is based on information we compile throughout the year, not just from clients but also from many other sources including discussions with firms' management and other leaders in the profession.

As always, some of our findings are obvious. Others are not but we feel they may be significant. What is most important to recognize is that, more than ever before, the outlook for each firm will vary depending on its size, practice areas, strategic focus and geographic market(s). The resulting picture is a montage of a profession that is in a state of flux and will continue to be so, not just in 2013 but for years to come.

PRACTICE AREAS

Red Hot

- **Energy.** At many firms throughout the U.S. but particularly in Texas, Ohio, West Virginia and Western Pennsylvania. Oil & gas are the main drivers while air and water quality continue to be environmental issues.
- **Health Care.** Most of the Affordable Care Act ("Obamacare") goes into effect 1/1/14 but there are still questions about certain issues. A major one for employers, their advisors, most states and even the federal government is setting up the exchanges and whether or not some employers will drop insurance altogether.
- **Sports Law.** As discussed in Steve Taylor's excellent lead article in November *Of Counsel*, it's not really a separate area because it involves various practice areas such as M&A, Labor & Employment, Intellectual Property and Advertising.

Hot

- **Intellectual Property.** Patent applications have now increased since the America Invents Act (AIA), passed last year, converted the patent system from a "first to invent" to a "first inventor to file" system.
- **Patent Litigation.** There has been substantial increase in the formation of non-practicing entities (NPEs), often referred to as "patent trolls", which buy portfolios of patents and then bring suits against companies that appear to be infringing on them. As a result of the AIA, the courts now play the primary role in determining damages. Furthermore, the Justice Department has just started examining whether NPEs may be disrupting competition in high-tech markets.
- **Banking.** The Dodd-Frank Act impacts all banks, whether or not they are large enough to require examination by the Consumer Financial Protection Bureau. Furthermore, most of the laws needed to implement the Act have still not yet been implemented.
- **Regulatory.** Federal as well as state. Will impact many industries besides banking.
- **Labor & Employment.** Wage & Hour and whistleblower suits continue to increase and collective bargaining continues to be a hot issue. In addition, the NLRB has begun enforcing areas that also affect non-union employees. This includes issuing new guidelines on social media policies.

Getting Hot

- **Online Gaming.** There is a growing movement at the federal level and in some states such as New Jersey toward legalizing Internet gambling, the high-growth sector of the gaming industry.

Cool

- **Litigation.** In BigLaw firms it has probably had the most decline of any major practice area this year. However, it is still hot in most litigation firms and also in MidLaw and SmallLaw firms because of their lower rates.
- **Financial Services.** In most areas other than Banking. IPOs are cold.
- **Bankruptcy.** But this could heat up if the economy doesn't show more strength.
- **Mergers & Acquisitions.** But this could heat up if the economy does show more strength.
- **Real Estate.** But this may get warm because the still-low prices on distressed commercial properties are attracting investors. The residential market may already be warm since home prices have been inching up and sales increases in many states are in the double digits.

GEOGRAPHIC MARKETS

- **Shanghai.** Covington & Burling and Kilpatrick Townsend & Stockton are two of the U.S. firms that have opened offices there this year.
- **Seoul.** The result of the U.S.-South Korea trade agreement, effective last March.
- **Germany.** For U.S. and Magic Circle firms too. It has the largest population and strongest economy in the EU but there are many strong German firms so competition is fierce.
- **Houston.** High oil prices and a boom in drilling continue to attract firms from elsewhere.
- **Ohio, West Virginia & Western Pennsylvania.** Because of the shale boom.
- **Nashville.** It may be the fastest growing business center in the South.

MARKETING & BUSINESS DEVELOPMENT

- **Client BD Teams.** Benesch, Friedlander, Coplan & Aronoff continues to innovate. COO/CFO John Banks teams up with a member of the BD department in meetings with clients to discuss budgets, predictability and other client issues.

OTHER TRENDS & ISSUES

- **Non-lawyer Investment in U.S. Firms.** This will become a Red Hot issue! It is generating more debate as Jacoby & Myers files an even broader challenge against New York's rule prohibiting it and the ABA considers presenting an option for consideration by its House of Delegates next year – at the earliest! For background, as well as the pros and cons of this issue, see Bob Denney's page one article in the December *Law Firm Partnership & Benefits Report*.
- **Capital.** Last summer Greenberg Traurig issued a call for additional capital from equity partners, its first in over 10 years. CEO Richard Rosenbaum stated the action was taken to add to the firm's "equity cushion" due to the "current uncertainty in U.S. and global markets." However, most law firms are under-capitalized. If they are going to survive and achieve their growth objectives, some may need outside investors.
- **Bigger Role for In-House Lawyers.** Responsibilities are expanding and pay is increasing for GCs as they become part of top management, particularly in big companies in highly regulated industries. They also continue to keep more work in-house and are building up their compliance teams to identify corruption and other issues before regulators do.
- **Back-Office Cost Cutting.** Big firms continue to learn from their large corporate clients by either outsourcing certain functions or moving billing, human resources and other support functions to less expensive locations such as Lexington, Ky. and Rochester, N.Y.
- **Shrinking Partner Offices.** Ten years ago the average partner's office was 600 square feet. Now, according to Studley Inc., the average is down to 225.
- **Partner Compensation.** The spread from highest-to-lowest has increased dramatically and is now up to 20:1 or even more in some BigLaw firms. One of the drivers is the bonuses and guaranteed compensation being given to lateral entries. However, this is causing, not only dissatisfaction among the "homegrown" partners, but also financial problems for some firms. Haven't they heard about Dewey LeBoeuf?
- **Law School Class Sizes.** Due to the continuing poor job market for graduates, more than 60 of 202 accredited law schools cut the size of their 2012 entering class.

- **Law School Applications.** They were estimated to drop at least 14% this fall. And Law School Admission Tests (LSAT) administered in October were at the lowest level since 1999.
- **Law School Curricula.** Schools continue to cut some traditional courses and introduce more practical skills such as, at the University of Houston, a course on corporate compliance. And Boston College of Law has created a position, faculty director of experiential learning.
- **Legal Education.** The ABA has announced a task force to address the weak legal job market, the high cost of a legal education and the delivery of legal services. The task force is expected to conclude its work some time in 2014.

- **Courthouses closing.** Los Angeles just became the latest – and largest – city to announce it is closing some courthouses because of funding shortfalls.
- **“Deus ex Machina”** A steadily increasing number of state courts are utilizing digital technology to replace court reporters.
- **Billable Rates.** Despite client pressure to reduce fees, according to a survey of 550 firms by Valeo Partners, in the last year billable rates rose 3.4% for partners and 7.5% for associates. Now two other surveys have just reported that many firms will raise them again in 2013. Even if they intend to then discount these increases, a smarter move by these firms would be to announce they aren’t raising their rates next year.
- **Associate Starting Salaries.** According to NALP, the median starting salary for law grads in the class of 2011 dropped 5% from 2010 and 17% from 2009. However, in BigLaw firms it remained at \$160,000 while it ranged from \$40,000 to \$65,000 for new hires elsewhere.

- **Apprenticeships.** An article in the January, 2012 issue of *The Wall Street Journal* suggested that states ask graduates to serve one-year apprenticeships before they become eligible for admission to the bar. This deserves serious consideration. A graduate of medical school becomes a doctor but, in most states, must complete an internship or residency before he or she can receive a license to practice. Why shouldn’t the legal profession have the same requirement?
- **International Mergers and Alliances.** They are Red Hot! Australian firms are particularly active. Freehills merged with U.K. firm Herbert Smith and Mallesons Stephen Jaques announced it is merging with Beijing-based King & Wood, Now Middletons is in “advanced” merger talks with K&L Gates. Meanwhile France-based Salans is merging with SNR Denton. U.S. firms are also active. Fulbright & Jaworski is merging with U.K. firm Norton Rose and Reed Smith has formalized a strategic alliance with Athens-based Papapolitis & Papapolitis.

- **Online Legal Services.** California startup firm LawZam is the newest online firm to enter this growing market by offering consumers free video access to lawyers throughout the U.S.
- **E-Discovery Vendors.** In recent years a few firms have formed an e-discovery practice group. Now Drinker Biddle & Reath has become one of the first to form an e-discovery subsidiary to process data for clients.
- **Pricing Director.** Although it’s a new position, more than 50 have been hired by BigLaw firms in the last 20 months, Toby Brown, Akin Gump’s first director of strategic pricing & analytics, describes them as “the hot new hires of 2012”. According to Susan Hackett, CEO of Legal Executive Leadership, their role is to help their firms determine the cost and then the best price lawyers should quote clients for the profitable performance of their services.

- **Law Firm Bankruptcies.** Austin firm Bertolino has become the second known firm to file for bankruptcy, following mega firm Dewey LeBoeuf earlier this year. Several legal pundits say there will be more. Paul Lippe predicts at least 10 more AmLaw 250 firms will fail by the end of 2013. Bruce MacEwen says this will also happen in the middle market.
- **More Shared Leadership.** DLA Piper has named co-managing partners and co-chairmen of the firm’s U.S. operation, This continues a trend we first reported several years ago.
- **Project Management.** At its annual Futures Conference, the College of Law Practice Management recognized Little Mendelson and Seyfarth Shaw for their service delivery programs. However, on the whole, there appears to be far more talk about PM – by both firms and consultants – than action. It may be another case of “Full of sound and fury . . .”

- **Associate Hiring.** The cut-back in hiring first-years continues. This will eventually create a generation gap which will affect future management and client responsibility succession.
- **Lateral Partners.** Various surveys and reports indicate that firms will continue to recruit them because the number one strategy is to generate revenue and the quickest way to do that is to recruit partners with a substantial book of business. But we repeat the question we asked above: “Haven’t these firms heard about Dewey LeBoeuf?”
- **Integrating Laterals.** Despite the continuing trend to hire laterals, few firms have organized programs to integrate them. This is true even in MidLaw and SmallLaw firms that do not hire first- or second-year associates but recruit third- and fourth-years.

- **Staff & Contract Attorneys.** BigLaw and MidLaw firms continue to increase their percentage of staff and contract attorneys. In a few firms, some contract attorneys are even considered for equity partnership if they are in major, higher-revenue practice areas.
- **Mandatory Retirement.** Because some senior partners want to – or need to – continue practicing, and also because of the NLRB’s suit several years ago, a number of firms have either dropped or are not enforcing their mandatory retirement policies. This is reducing the “generational turnover” needed for both management and client responsibility succession. In view of this, some firms are offering retirement incentives or asking the more senior partners to submit a personal business plan that addresses both retirement and succession.
- **Gender Gap.** It continues. According to the National Association of Women Lawyers, women still account for only 15% of equity partners, 26% of non-equity partners and 46% of associates. However, they do account for 30% of active federal district judges.

- **Non-equity partnership.** The number of firms offering NEP may have declined a little. One reason could be the substantial retirement incentives a few of them have offered.
- **Pro Bono.** New York recently became the first state to require law school graduates to perform 50 hours of pro bono work before they can be admitted to the bar. This benefits both the lawyers and their eventual employers as well as the entire legal profession.
- **Backlash on Charges.** In addition to their backlash on fees, clients are now objecting to firms’ charges for such items as legal research, photocopying, faxes and lawyer meals. They regard these as normal overhead and part of a firm’s cost of doing business.
- **Non-lawyer Managers.** For years, larger firms have had practice group administrators. Now a number of firms are hiring non-lawyers with business background to manage the practice group so the lawyers can focus on client work and relationships.
- **Emergency/Disaster Plans.** As we discussed in our November *Legal Communique*, Hurricane Sandy confirmed that law firms need to have disaster plans. Unfortunately some did not and others found their plans were inadequate.

- **Pfizer Legal Alliance.** It was initiated three years ago. Will it become a model? See Susan Saltonstall Duncan’s informative article in the November/December *Law Practice*.
- **Shrinking Market?** Although MidLaw and SmallLaw firms are generally doing well, many BigLaw firms are confronted with flat or lower revenues, declines in partner billable hours and, despite cost-cutting initiatives, rising expenses. Gretta Rusanow, a senior client advisor with Citi Private Bank’s law firm group, recently stated “There is a shrinking market for legal services.”
- **Our Perspective.** Yes, many large clients will be keeping more legal work in-house and both the number and type of alternative legal service providers will continue to increase. However, our “take” on the total legal market is that it will grow but will also become even more segmented with some of the less-innovative firms falling by the wayside.

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