

June, 2010

MIDYEAR UPDATE

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

In our 2009 year-end report, we said 2010 “will be a year of continued challenge and change.” It is proving to be so although the challenges may be greater than the changes. We cannot cover all the developments in this Update. These are the ones we believe are the most significant – or interesting.

PRACTICE AREAS

Hot

- **Health Care.** Of course, involving many areas: regulatory, transactional, employment, et all.
- **Bankruptcy.** Still. Pre-packaged bankruptcies are raising the temperature even more.
- **Trusts & Estates.** The temporary lifting of the “death tax” is raising the temperature here too.
- **Regulatory.** In many industries, not just health care, banking and finance.
- **Commercial Litigation.** Particularly “bet the company” cases, patents and labor.
- **Employment Law.** That’s why major L&E firms are opening new offices.
- **Emerging Companies.** It is surprising but the number of former big company executives starting new businesses hit a four-year high in 2009 and continues to increase.

Will Get Hot

- **White Collar Crime.** Fraud just one reason why this will eventually be Red Hot.
- **M&A.** Consolidation of health care providers is expected to heat this area up even more.
- **Energy and Environmental.** They’re related in many ways.
- **Nuclear Energy.** The Energy Act of 2005 began a “nuclear renaissance”.
- **Anti-Trust.** The Justice Department has been slow to ramp up for this but it’s ready now.
- **Labor Litigation.** Due to discrimination suits by laid-off employees and also employers monitoring employees use of social media at work.
- **Islamic Finance.** But deals must be Shari’ah compliant and adhere to Islamic law.

Cool

- **IPOs.** One third of the companies that had announced them postponed or cancelled in May.
- **International Arbitration.** Too expensive because it takes too long.
- **Real Estate.** Except distressed deals and tax assessment appeals due to lower property values.

GEOGRAPHIC MARKETS

- **Brazil.** BigLaw firms continue to open or expand in San Paolo.
- **Ireland.** As we reported last December. Dechert to open office in Dublin.
- **Pennsylvania!** Several firms are now focusing here because they see growth opportunities in health care, pharmaceutical, financial, energy and education industries.

MARKETING & BUSINESS DEVELOPMENT

- **Legal directories.** Many lawyers strive to be listed in them despite continued reports that few GCs refer to them in selecting outside counsel. U.S. News and World Report will join the fray this fall when, in collaboration with Best Lawyers, it will publish lawyer rankings.
- **Social media.** Continues to grow but some lawyers realize it can’t replace face-to-face contact.
- **Client teams.** Continue to prove their value for the firms that form them. The challenge is how to devise a compensation system that rewards teams for their successes.
- **Internal marketing.** In the April/May issue of *Strategies: the Journal of Legal Marketing*, consultant Bill Lowell says focus on your staff before your clients. Marriott Corporation’s credo has always been: “Take care of your employees and they will take care of your customers.”

OTHER TRENDS & ISSUES

- **Co-Managing Partners.** Foley Hoag one of the most recent to follow this trend which we first reported in 2006.
- **Alternate Fee Arrangements (AFA).** Much is written and discussed about them but, according to Lexis Nexis's recently completed research, 60% of legal fees are still by the billable hour. When clients say they want more "value", do most of them really mean just lower fees?
- **Uniform Bar Examination.** Once seen as a radical idea, Erica Moeser, President of the National Conference of Bar Examiners, says six-to-ten states will use it this year.
- **Associate salaries.** Creeping back up at BigLaw firms.
- **Non-Lawyer CEO.** Stafford Rosenbaum is the first firm we know of to name a non-lawyer, non-partner CEO.
- **Mergers.** Other than international (see below), they continue to decline but are expected to increase later this year although behind the pace of several years ago. One reason may be that many small and mid-size firms have been doing well and aren't seeking a safe harbor any longer.
- **Conflicts.** BigLaw firms are facing more of them because of suits against banks. SmallLaw and MidLaw firms are benefiting from the growing demand for conflict-free lawyers.
- **Cloud Computing.** Interest is increasing in this remote storage of client data and work product on the Internet. However, ethics and confidentiality issues are arising because it is outside the direct control of the law firm.
- **Mandatory Retirement.** Three years ago both the New York State Bar and the ABA recommended the profession drop retirement policies. A few BigLaw firms did so and Sidley Austin settled an age discrimination suit brought by the EEOC. Now the Commission has sued Kelley Drye & Warren over its policy of de-equitizing partners who turn 70 and has made it clear it intends to continue its assault on such policies. But most BigLaw firms are keeping them to maintain profits per partner and to force senior partners to turn clients over to younger lawyers.
- **Management Transition.** A number of firms are announcing new leaders a year in advance to provide time for an orderly and seamless transition. Very smart.
- **Downsizing.** Now it's office space. SmallLaw as well as BigLaw firms are taking advantage of the weak leasing market to move to less expensive space, reconfiguring it from 900 sq. ft. per lawyer to 600. And in some BigLaw firms, offices are now "transparent" i.e., with glass walls.
- **International mergers.** A few more have been announced since the merger of UK firm Lovells with Hogan & Hartson this year. The SuperLaw category is growing.
- **Revenue/lawyer (R/L).** Although profits/partner increased in many firms last year, American Lawyer says more than half of the top 100 U.S. firms had a decrease in R/L, which it regards as a far better indicator of a firm's financial health than P/P.
- **Outsourcing.** UK top 20 firm CMS Cameron McKenna expects to outsource its entire support staff function at year-end, thereby cutting expenses 10%-15%. The firm said the agreement includes development of a shared service model that could be made available to other law firms.
- **Professional development.** More firms are dropping lockstep compensation for associates for a "performance model" which requires increasing professional development programs. Yet most PD directors report their budgets have been cut. Doesn't make sense.
- **Law school clinics.** They are providing legal representation for people who can't afford an attorney as well as an opportunity for law students to gain courtroom experience.
- **Law school applications.** They're on the rise at some law schools despite the bleak hiring picture. Some observers feel a law degree is replacing an MBA as the advanced degree of choice for a career in business.
- **Billing summer associates.** Citigroup is the latest company that has announced it won't accept billing for summer associates' time.
- **Women partners.** According to the Project for Attorney Retention, women comprised 34% of the 2010 new partner classes, up from 28% in 2009. However, women still make up only 20% of firm partnerships and probably even a lower percentage of equity partners.
- **Looking ahead.** Most pundits have stated that the historic law firm model – whatever that means – huge associate salaries, billing-by-the-hour and leverage are all dead. We don't agree.

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