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The Market for Lateral Law Firm Partners in 2011

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Earlier, this week, Law360 ran an interesting, well researched and extremely well written piece (subscription required) regarding the relatively anemic results in lateral law firm partner movement in 2010. Law 360's research staff thoroughly analyzed information regarding lateral partner movement based on press releases and other public data and concluded that some 2,000 partners moved laterally in 2010, which some might suggest indicates a robust lateral market.

In looking at some of the raw numbers compiled by Law360's staff, while I have no quarrel with the accuracy of the report, my first reaction was to recall Mark Twain's comment that there are liars, damned liars and statisticians. The issues of lateral partner movement in this market are extremely complex and assessing the lateral market based on the limited reported data is presented very much like trying to provide a detailed physiological assessment of an elephant, based on the dissection of one of its tusks. But, here is where we see things.

2010 has been an extremely challenging and tumultuous year for lateral movement. 2011 will doubtless be a reprise. Lateral movement in 2010 was actually reduced by approximately 35% from what we saw in 2008. We expect little change in 2011. What we will certainly see as we did last year, is a spate of lateral movements in the first quarter of 2011 (as we did in 2010), after lengthy year end negotiations, and then a pause as these laterals are integrated and then somewhat of a lull in the second quarter. Partners, who were either dissatisfied with their compensation packages or otherwise nudged out the door, will begin hunting for new homes in the first quarter and will largely not land until the third quarter. This is precisely the pattern we anticipated early last year, as reported in the press and this was pretty much what we actually saw in 2010.

The indisputable facts on the ground were too frequently clouded last year by recruiting agencies, pundits and partner recruiter wannabes who issued announcements and press releases speaking about upticks in the lateral market, which are almost always factually unsupportable. Don't get me wrong; there is a robust, albeit challenging, lateral market for law firm partners, but it is a different, more challenging and far more complex market than we have ever seen. A significant number of partners did make extremely successful lateral moves, voluntarily or otherwise, and the ***demand for good lateral law firm partners far outstrips supply.*** **Indeed, at our firm, we have many more leading law firm clients urgently seeking *qualified* laterals than are available.**

The current lateral law firm partner market is one in which detailed due diligence and analysis has become more of a focus than ever. More about these issues in a subsequent post.

Some important observations regarding the current reported results from last year must be considered at the outset:

- The Law 360 reported data (indeed, all of the public data) does not reflect the number of partners de-equitized nor does it reflect the number of partners that left large law firm perches less than voluntarily to join much smaller firms or, after partners who were shown the door and could not even find an alternative home. Hence, the spate of press releases we saw last year that read, something like this: "John Smith, after practicing for 30 years at BigLaw Firm X announced that he was starting his own boutique practice. Said Mr. Jones 'After 30 years with X, I found that I had become too removed from dealing with clients on a daily basis and too bogged down with administrative duties. At this point in my career, I thought it important to get back to basics and work more intimately with my clients on a day to day to basis providing them with the hands on experienced counsel that is so hard to accomplish at a large firm.'" Translation: Smith was quietly shown the door and couldn't find another job. (We previously discussed the fact that law firm partners are largely no more and no less than employees at will). You will see a lot more of this type of movement in 2011. In addition, I would suspect that any analysis of press releases did not capture releases by smaller firms, below many radar screens, in which a BigLaw partner was brought on board. The analogue is a corporate executive under some scrutiny suddenly announcing his departure to "spend some quality time with his family." Yes, many partners moved because they were laid off.

- Basic human inertia (the devil you know is better than the devil you don't know) is compounded by the fact that lawyers don't like to move unless they are at the "top of their games." And, very few are at the top of their games right now. Moreover, law firms are exceedingly risk averse and are extremely reluctant to make an investment in a lateral, and thus, the filtering and due diligence process has become extremely refined and time consuming. As noted above, I will be posting a separate article on the subject presently.

- For those lawyers who are actually thriving in this economy and are now at the top of their games, they will largely be recognized as such by their current firms which will take all reasonable means to keep them happy where they are.

- In years past, partners most often moved for better opportunities. Today, many do so, often involuntarily, for self survival.

- Partners are seeking lateral positions to meet client demands for lower legal fees, which are difficult and sometimes impossible to meet at AmLaw 200 firms, as I recently discussed.

- As I wrote a short time ago in a guest column for Law 360, the law firm of the Twenty-first century is an entirely new business model. New norms apply and lawyers and law firms have barely begun to get their arms around the new model. A longer version of the piece appears here. . The concept of "downsourcing" which I address in the article, will certainly lead a significant number of BigLaw partners to move to smaller firms this year (as many did in 2010) and this becomes a challenging process, as smaller firms are even more risk averse; while there has been an enormous amount of success for both law firm and lateral partner in moving downstream, there have been BigLaw refugees flounder and not deliver as promised.

Now, down to some cases:

First, let me turn to the labor and employment area, which experienced robust growth and attracted as an n industry segment, the largest number of lateral partners. The simple fact is that this practice area has become largely a commoditized, high volume, price sensitive low margin practice. In previous years, periods of economic distress during which corporations engaged in large reductions in force, L&E practices experienced booomlets, as corporations sought out their counsel in conducting an RIF and then defending the inevitable flow of discrimination claims that followed. However a number of firms, led by Lewis Jackson and Littler Mendelson, among others, offered counsel on these areas at rates at which large firms could not compete, largely resulting in large firms simply jettisoning these practices. Labor and employment counsel is now largely a commodity procured by corporations and acquired on an RFP basis, with little difference from a corporation's acquisition of other routine goods and services. From the corporate point of view, this area of legal service is largely removed from corporate general counsel purview and instead is an HR function. Thus, HR departments acquire these services with the assistance of their procurement staffs. It is not mainstream legal work, offers virtually no opportunity for outside counsel to segue L&E representation to mainstream high margin legal work, nor do corporate in house counsel expect their outside general legal counsel to have L&E capacity to service routine labor issues.

We will be seeing in the months and years ahead, increasing commoditization of practice areas, in such areas as patent and trademark prosecution, financing, leasing, securities compliance, regulatory compliance, to name but a few. These practice areas will be likely downsourced and will increasingly be dominated by smaller firms. In 2011, we will see practitioners in these areas moving away from BigLaw to smaller lower priced platforms.

Looking through Law 360's top ten net gainers, the perhaps somewhat interesting observation is how little flight to quality there is. Let's take a couple of examples.

First, Jones Day. While the firm may not yield robust seven digit plus profits per partner, it has had an extremely good and consistent run. It also received a spate of steady kudos from corporate counsel regarding the quality of its services. It has a broad practice and geographic footprint. One would expect that, based on historical precedent, it would increase its partner ranks by lateral acquisitions in the 5 to 10 % range. Yet, with 800 partners, it is reported to have taken on only 24 lateral partners. Second, Allen and Overy is a world class high quality law firm with consistent high seven figure PPP. With 1,000 partners, it only brought on 16 partners.

Some other major Am Law 100 firms identified in the report (including others not making the cut to the top ten net gainer list), have extremely active lateral partner recruiting programs. At least a dozen or more of these firms have a partner who devotes the bulk of his or her time in recruiting lateral partners. Office leaders frequently report spending more than one-half of their time recruiting laterals; indeed, many of these law firms enhance the compensation of office leaders for their recruiting successes.

With this enhanced demand, why the relatively lackluster results? The short answer is that the intake sieve has become substantially finer and law firms are correctly more risk averse and have recognized that growth for growth's sake alone is the sole province of the cancer cell, having no place in the growth of a vibrant law firm, pursuing a well thought through business plan. However, the vibrancy of a viable business plan must also mandate the allowance for consideration of opportunities not foursquare within the plan but one which would enhance existing practices and areas targeted for growth. In short, the well thought through business plan for any law firm should also provide a measure of agility.

In many measures, 2010 was a year that witnessed the ascendancy of mid-size, middle market and midsize law firms. Again, we expect this trend to continue in 2011. Regional law firms benefitted dramatically from the opening of New York City offices. Based on inquiries we have already received, this trend will doubtless continue. Based on inquiries we have already received, this trend will doubtless continue; both regional firms now lacking New York City offices are ramping up their search for branches in the Big Apple and New York boutiques have been in increasingly regular contact with us about affiliating with a larger regional or national law firm.

As for the net losers, the story is quite different. Many of these firms generally share a single trait: Management at these firms are generally ruthlessly slashing away at partner ranks, laid off partner and otherwise eliminated partners they deem not to be sufficiently productive. Surely, not all managing partners approach these tasks with cold-heartedness; I have spent many hours listening to managing partners articulate genuine remorse that market realities and the law firm's continued health have forced their hands in these matters. Yet, sadly too many of these firms generally share a single trait and that is focusing on short term profitability and target partners who are not contributing to this short term profitability for the firing squads. Steve Harper, a former Kirkland partner and now a professor at Northwestern very recently had an interesting post on the subject.

This environment obviously creates an atmosphere of fear, paranoia, uncertainty and mistrust in an environment of secret cabals and instinctive self survival. Symptomatic of this, just two weeks ago, I introduced an outstanding small IP group from an AmLaw 100 firm to management at one of the firms on the Law360 net loss list. Management was extremely impressed and asked the firm's IP group to take the lead in recruiting this group. Meetings were held, due diligence conducted and an offer extended. Our group of candidates expressed some unease as they met with their new colleagues practicing in the same area. "There was too much use of the personal pronoun," she said, "it wasn't about 'us' and 'our clients;' it was too much 'me' and 'my clients'". Firm management pressed hard for an acceptance of the offer. But, the candidates had some level of discomfort because, among other things, the number of departures. The candidates asked for some time to do some of their own due diligence. And, while doing so, the bulk of the firm's existing IP group announced they were leaving.

The downsourcing model should not give potential laterals the eebie jeebies. There is ample room in firms that are beneficiaries of downsourcing for handsome compensation and for enhancing client bases. Again, while purely anecdotal, but, I believe not uncommon, we moved an entire high profile specialty department from an AmLaw100 behemoth to a 150 lawyer three office firm. While management at the AmLaw 100 firm were unhappy about the loss of these high profile lawyers, they also recognized that the move was likely inevitable Accordingly, management at the AmLaw 100 firm issued a firm wide email announcing the departure of these lawyers describing them as superlative lawyers. Management then went on to note that the departure was most cordial and encouraged all of the firm's 400-odd partners to refer business to these lawyers in their practice areas, while assuring the partnership that their former colleagues would doubtless be referring business back in areas that the smaller firm could not handle. The departure was indeed cordial and professional and the after-wake yielded the result anticipated by management at the AmLaw 100 firm, to the benefit of all.

Nonetheless there are ample opportunities for both law firms of every size and potential laterals in the months ahead. The market is continuing to make seismic shifts and the tectonic plates need to be closely observed and comprehended as partners move and as firms begin to better see where they should find better footing as the ground continues to shift.