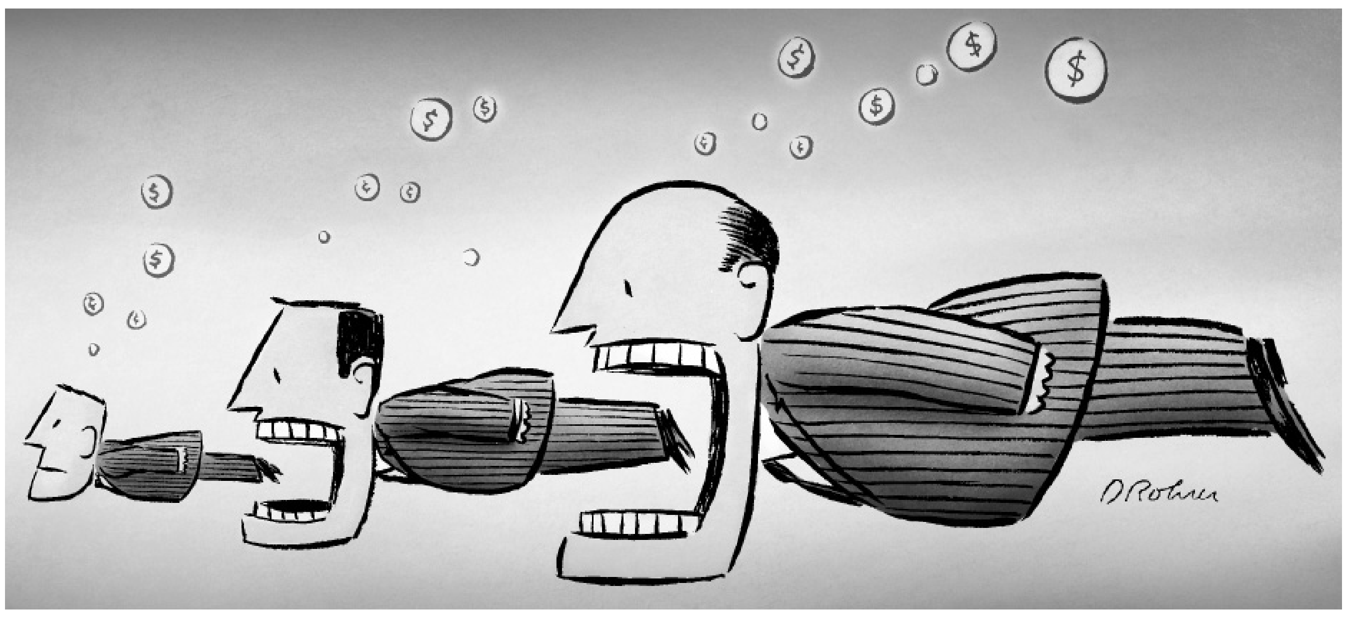
FIRM GUIDANCE

Partners: They're What's for Dinner



By Edwin Reeser

Cost cutting is not enough to resolve the operating model problem of BigLaw, as demonstrated by the partners at Clifford Chance voting to throw at least 10 percent of their own on the dinner table.

The situation as communicated by leadership was dire enough that more than the required two-thirds partners saw it in their urgent self interest to forcibly eject so many comrades from the firm. The precedent of a U.K. "Magic Circle" firm adopting such extraordinary measures deserves some attention. How such a measure could be presented in a way for partners in a U.S. BigLaw firm to be encouraged to vote for the demise of many of their friends and comrades, and with some assurance that they themselves were not on the menu, is going to be on the agenda for many firms over the next six months.

One could confidently conclude that most of those in the bottom 10 percent would have voted against the measure, and that a healthy majority in the top two-thirds would vote for the measure. At least if you were a leader in the firm, you would start with that as a baseline assumption.

That theoretically leaves a pool of about 23 percent of the partners to vote either way. Leadership needs to gather a significant number of additional supporting votes from among those 23 percent. There will probably be a statistically significant number of partners in secure positions (above the 90 percent line) who will vote against the measure. Some partners not in the lower 10 percent, but sufficiently close to the "at least" 10 percent part of this measure, would obviously feel severely at risk and vote against the plan. How does the leadership of a BigLaw firm get those partners in the "pool" to embrace the plan and vote for it in sufficient numbers, to carry the plan?

The process mandates that *if* it is brought to vote it *must* pass. This requires certainty as to who gets eaten and who gets to eat. There must be recognition clearly communicated that the consequences of not passing the measure are tantamount to demise of the firm, and identification of who stays and who goes is crystal clear to each individual partner on a purportedly pure, objective performance basis. Otherwise, those in a hazily defined potential zone of danger would vote against the plan, and it would be unable to muster the supermajority.

> Would you as a partner follow leaders who direct you down this path? Would you as a client be comfortable to hire lawyers who "eat" one another?

One possible method would be to publish a list of names of the condemned, and a zone just above them of those "at risk." While that is possible, and such a list almost certainly exists at the management level (practice group leaders and office managing partners, and the executive committee), it is unlikely to be overtly presented this way.

Instead, to get the supermajority vote, one may expect a set of performance parameters that each partner is given to review, setting forth the expected standards of a partner in the firm, practice group and office. These would include hours, billings, collections and probably other criteria that have often been communicated to the partners. Every office managing partner and practice group leader would be given these standards, and a chart or graph showing where every partner would be plotted as against them. Each individual partner would be given their personal statistics, and each partner would be able to measure them against the standards for expected performance of a partner in the firm, and the posted standard for survival. Indeed, the firm should probably chart those standards to show each partner whether they have been above or below the performance standard in past years as well as the present. Those partners whose performance would be above the standards required to stay in the firm should also be given a financial comparison of what it means to them personally if the measure is passed.

The setting of the "standards" at the firm's leadership level would be pushed and pulled to ultimately get at the financial returns level the leadership wants to achieve. Additional internal reallocations of the net operating income projected to be available based on the resized firm will also be made.

Those in the "pool" of performance that is above the minimum required to retain partnership status, but not above the standard "expected of a partner" should be given a "hope certificate." — a set of criteria or standards to meet and a period of time to meet them. Since this is much better than being eaten now, such a feature will incentivize a large number of partners in this pool to vote for the program. An affirmative vote by a supermajority of the partners is almost assured, absent a counterbalance of a strong culture in which the partners do what partners used to do, which is to gather together to ride out the economic storm and take the reduction in income on their shoulders.

Do note, however, that it is not a solution to the inefficiencies of the BigLaw operating model. Rather, it is a resetting of the ratios of income and expense to bring them back into line with what used to work. It preserves income for the upper tiers of the partnership. This is just moving pieces around the game board, but playing the same old game.

Is this a bad thing? Not necessarily. While not exactly starting with a clean sheet of paper, and building a new model, but doing something that in the short term will save the institution by following a simple line of action and reasoning, it is a course that can be accomplished. Thus, it buys time to build a new business model, if subsequently there is a collective will among the partners to do that. But once having escaped being on the menu, and returning to an "acceptable" level of compensation, whether that type of will to engage change exists among the partners, and more specifically its leadership, remains to be seen.

The firm will have characterized itself, formally and publicly, as being composed of members whose self governance is nothing more enlightened than "the ends is justified by any means." Cannibalism by those who made it to the lifeboat. The ramifications, to the reputation of their firm, to individual partners and participants, and ultimately to the profession, will be addressed after they make it through the recession. This also creates a need to think carefully about the leadership of law firms that would counsel their own partners through this type of action. Would you as a partner follow leaders who direct you down this path? Would you as a client be comfortable to hire lawyers who "eat" one another? Or does it not matter to either class? History suggests that nobody outside the firm will take particular notice or interest, or that it will influence client relationships with the firm as long as work is done timely and proper. But while it gains the firm and those partners who remain additional time, at a horrendous cost to the many who have been consumed, it will do nothing to address the current market demand for more efficient delivery of legal services and products at lower costs. And therefore, the underlying problem remains. While now adding a new revelation to partners, associates and law students that begs the question: Is this something that you want to put your career at risk for, or that you wish to be a part of? Those who decide otherwise will become the developers of new business models that will give the clients what they want, and the lawyers a quality of life that is worth living. The erstwhile "solution" does, however, somewhat redefine the concept of what is a "consumer of legal services."

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