

June, 2011

## MIDYEAR UPDATE - CORRECTED

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

One of the summer diversions for kids in certain parts of the United States is trying to capture lightning bugs in a bottle. Compiling this Update has been a lot like that – trying to capture in a few pages everything that's going on in the legal profession right now. We don't claim to have succeeded. But here are what we consider the most significant – or interesting – developments.

#### **PRACTICE AREAS**

##### Red Hot

- **Health Care.** Includes many areas and all type of providers.
- **Energy.** In addition to oil and gas, there are increasing issues in nuclear and now coal.
- **Financial Services.** Institutions are trying to understand the scope of Dodd Frank in many areas including consumer protection. Some firms have formed multidisciplinary teams to guide clients in dealing with the new regulations, some of which are not yet defined.

##### Hot

- **Regulatory.** Both federal and state, especially in health care, energy, financial services and possibly environmental.
- **White Collar Crime.** And getting hotter.
- **Labor & Employment.** There are continued reports that wage-and-hour laws have been widely violated.
- **Intellectual Property.** Congress may pass patent reform legislation any day now. As one CMO said, "This should create an interesting world for a while."

##### Hot & Cold

- **Commercial Litigation.** Varied picture depending on the firm. But the number of new cases has been increasing and various surveys report GCs expect this to continue.

##### Cool

- **Bankruptcy.** Will stay Cool unless there is a double dip in the recession.
- **M&A.** Some major deals are going through but many more are on hold. Will be Hot again soon.

#### **GEOGRAPHIC MARKETS**

- **Middle East.** This may seem surprising but UK firms are merging with firms in Iraq, Jordan, Saudi Arabia and Dubai.
- **Venezuela.** Last Fall Littler Mendelson opened in Caracas, joining at least four other firms that have offices or do business there. Other firms are exploring the possibility.
- **Brussels.** Cadwalader is opening there, joining several Magic Circle firms that have been there.
- **China.** Quarles & Brady has opened its first foreign office in Shanghai. More firms to come.

#### **MARKETING & BUSINESS DEVELOPMENT**

- **Video.** Marketing guru Larry Bodine reports online video advertising is projected to grow 34% in each of the next two years. And Steve Taylor reports in *Of Counsel* on the innovative video produced by LA firm Allen Matkins Leck Gamble Mallory & Natsis.
- **Competitive Intelligence.** Gradually being recognized as critical.
- **General Counsel Group.** Formed by Reed Smith with four former GCs to provide value added service, not only to clients but also non-clients.
- **Online Marketing.** In the next few weeks, the ABA Commission on Ethics 20/20 plans to issue proposals relating to lawyers' use of technology for marketing purposes. There is strong opposition. Also see Other Trends & Issues below on "Outsourcing" and "Social Media".

## OTHER TRENDS & ISSUES

- **Contract Lawyers.** BigLaw and some MidLaw firms are hiring more of them. So are some legal departments. Also see “Outsourcing” below.
- **Strategic Planning.** As previously reported, the continuing changes in the delivery of legal services require firms to update their strategic plans or develop new ones. But many firms still have not recognized this.
- **Uniform National Regulations.** Major corporations and foreign firms want them but state bars and the ABA oppose. This could become a major issue down the road.
- **Cloud Computing.** Continues to grow as more firms move document management and other functions out of the office into the hands of software-as-a-service (SaaS) content providers.
- **E-Discovery.** As the need continues to grow, so does the cost. For this reason, firms are partnering with e-discovery vendors.
- **International Expansion.** The growing number of international mergers is also seeing some different structures. One is to separate profit pools in what is known as a Swiss Verein which enables multiple partnerships to operate under a single entity while remaining independent from each other. Meanwhile, instead of merging, U.S. firm Husch Blackwell and Glasgow-based McGrigors have signed a “principal-partnership” creating a formal referral relationship.
- **Lawyer Hiring.** The SEC has so many attorney positions to fill before the end of the fiscal year in September that it has hired Futurestep, a legal recruiter, Annual salaries range from \$81,000 to \$200,000.
- **Partnership Promotions.** They have increased more than 30% in the largest U.K. firms but have decreased in the largest U.S. firms as they focus on recruiting lateral partners.
- **Re-Entry Programs.** They enable lawyers to rejoin their firms and resume their careers. Skadden, Arps developed one of the first formal programs. Other firms include Sidley Austin.
- **Outsourcing.** Continues to increase as the number of legal process outsourcing (LPO) firms continues to grow. Those that provide separate automated legal services might also become competitors for some of their mid-size law firm clients. Meanwhile, the ABA Commission on Ethics 20/20 has issued an initial draft proposal on outsourcing.
- **MidLaw Firms.** They continue to obtain more work from larger companies. Their lower rates is one reason but, in many of them, the high quality of practice is another.
- **Non-Lawyer Ownership.** Australia and the U.K. began allowing firms to take in outside investors several years ago (as we first reported in 2009). This is of great concern to the ABA whose members feel it would compromise the interest of clients. Now Jacoby & Meyers has filed suits challenging state prohibitions on this.
- **Recruiting.** That creative Cleveland-based firm Benesch has done it again – this time by launching a recruiting app, “Benesch Appportunity” for iPhones and iPads.
- **Firm Management.** The situation we reported at year-end 2010 still exists: “70% of the managing partners [or CEOs] do not have a job description and most partners do not know what their MP does. In addition, in firms of more than 100 lawyers, only 10% have full-time managing partners.”
- **Associate Compensation.** Although many U.S. and U.K. BigLaw firms have frozen associate salaries, they, along with some mid-size firms, have awarded large bonuses this Spring.
- **Law School Applications** are down over 11% at 95% of the 198 accredited law schools.
- **Bar Association Membership.** Has been declining in the ABA and many state bars. One big exception: Montgomery (PA) Bar Association where membership increased as the result of the programs initiated by then-President Steve Lupin.
- **Loan Forgiveness.** Early this year Boston College Law School created a loan forgiveness program for new graduates who pursue careers in public interest law.
- **Social Media.** As it continues to proliferate, more firms are developing social media policies for ethics reasons and also to avoid nightmares such as what happened to Akin Gump last Fall.
- **Firm Metrics.** A few experts state that the only accurate measures of law firm performance are Revenues/FTE lawyers and Net Profit after partner/SH draws and before bonuses. We agree.

These are the legal profession lightning bugs we have captured in this bottle.

