

July, 2009

## MIDYEAR UPDATE

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

Change – and expectations of more change to come – continue to permeate the profession. Some of these items are not new but are still significant. Others have been little noticed but are also significant.

#### **PRACTICE AREAS**

##### **Hot**

- Bankruptcy. Of course, although filings in Delaware declined slightly in May.
- Litigation. Particularly environmental, construction, employment, professional malpractice, contracts, patent, securities, personal injury.
- Regulatory. In many industries i.e., financial, banking, health care, energy.
- Health Care. Not just insurance but all areas including transactional.
- Energy. All industries: oil & gas, nuclear, non-nuclear, renewable technologies.
- Employment. Layoffs continue. Also many states pushing for family leave, paid or unpaid.
- Estates & Trusts. Due to scams on the elderly plus expected increase in inheritance taxes.

##### **Cool**

- Immigration. H1-B visa applications declining due to weak demand for skilled foreign workers.
- Patent Applications. But, as noted above, litigation is hot.

##### **Will Get Hot**

- Anti-Trust. Always a major issue with Democratic administrations. Even more so with Obama.
- Labor. Even if Congress doesn't pass the Employee Free Choice Act (EFCA).
- White Collar Crime. Including corporate investigations.
- Alternate Dispute Resolution (ADR). Due to the cost of litigation.
- IPOs? Could at least get Warm. There were three major ones in late June.

#### **GEOGRAPHIC MARKETS**

- Dubai. We first reported a year ago. K&L Gates the latest major firm to open an office there.
- Chicago. We reported at year-end 2008. Firms continue to either expand or open offices there. Also see "MidLaw on the move" below.

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

- Online Networking. As we have been reporting. Hotter than ever.
- Business Development Coaching. As we have also been reporting although not all former sales persons understand working with lawyers and how to properly "sell" legal services.
- Business Development for Women. Women Lawyers Alliance is the most recent organization to provide programs, counsel and a referral network.

#### **OTHER TRENDS & ISSUES**

- Alternate fee structures. Despite the ACC's Value Challenge and what the legal press and many experts say, there's little real movement in this direction. See Bob Denney's article, "Is It Time to Kill the Billable Hour? Why Death Doesn't Look Imminent", in the June *Law Practice*. The bottom line: Most GCs still prefer the billable hour.
- Midlaw & SmallLaw vs. BigLaw. DuPont's current strategy shift from using mostly large, global firms to more mid-size and smaller firms reflects what's been happening since late 2007. MidLaw and SmallLaw firms have many excellent lawyers, their rates are lower and their client service excellent – some of the reasons why they are not only surviving but, in many cases, are doing well.

- MidLaw on the move. As Karen Sloan reported months ago in *The National Law Journal*, mid-size firms are opening branches in major cities that have been the base of large firms. Chapman and Cutler in New York, Vorys, Sater, Seymour and Pease in Houston and Barnes & Thornburg in Atlanta are examples.
- Shift from offices to practice groups. Four years ago two of our BigLaw clients restructured to emphasize practice groups – regional, national and international – over individual offices. Other major firms are now going through the same process – and resultant power shift.
- Increase in legal spending. A recent study by BTI Consulting says Fortune 1000 and other large companies will increase spending on outside counsel 5% in the second half of this year, reversing the trend of the last year and a half.
- Teaming with minority owned firms. In what might be the precursor of a national trend, three New Jersey firms recently formed strategic alliances with minority owned firms.
- Law school applications. While it may defy logic, a number of law schools, such as Virginia, Texas and Yale, are enjoying an increase in applications.
- Joint law and business degrees. Enrollment in many programs has declined. In response, Yale, Penn and Northwestern are offering fast-track, condensed programs.
- Hoarding. Some partners are hoarding work instead of pushing it down and devoting productive non-billable time to client visits, business development, training and mentoring.
- Lateral entries. At partner level in BigLaw and MidLaw firms. But also at associate level in both MidLaw and SmallLaw firms while they reduce or even eliminate entry level recruiting.
- Associate Apprenticeship Programs. Unable to bill out first years at standard rates, this fall Drinker Biddle & Reath and Frost Brown Todd will start them in an intensive training program – at a lower salary – billing them at lower rates if they do any client work. Associates who complete the program can earn a bonus based on performance as well as the opportunity to return to the regular pay track after their first year.
- Firm structure. Although DLA Piper recently eliminated non-equity partnership, many firms are expanding it, also adding contract, staff and part-time lawyers and increasing outsourcing.
- Fewer equity partners. Mainly in BigLaw firms due to the emphasis on origination and the requirement to increase capital contributions.
- Unfunded pension liabilities. Still a ticking time bomb in 20% of the firms. See “Pensions Howling at the Door” in the June *ABA Journal* for interviews with Bob and others on this.
- More lawyers forming their own firms. Despite the risk and financial sacrifice.
- Succession Planning. Has slowed or even stopped in many firms. Why? See next item.
- The Crumbling Pyramid. Many senior lawyers now can’t afford to retire so they continue to practice while their firms cut junior lawyers and reduce recruiting. This will create a Lost Generation, as it did in the early 1990s, in terms of future client responsibility, practice management, firm management and leadership.
- Strategic Planning. Respected expert Patrick McKenna says, “Especially at this time, a strategic vision at the least and better yet, a strategic plan, are important.” We agree.
- Market surveys of clients and non-clients. Far different from client audits. These in-depth, interviews produce invaluable information for strategic planning and developing marketing strategies. More firms are retaining qualified consultants to conduct them. The reason: Clients and non-clients are more candid talking to a third-party than to people in the firm.
- Replacing CEOs. Some BigLaw firms are electing new managing partners because they feel the incumbent is not up to leading the firm in a changing level environment.
- What changes lie ahead? There will be some – but not all that are predicted. See Bob’s article, “Looking Back to See Ahead”, in *The Legal Intelligencer*, October 6, 2008.

*Robert Denney Associates Inc. has provided strategic management and marketing counsel to law firms throughout the United States and parts of Canada for over 30 years – and through at least three prior recessions. We will be discussing some of these issues in forthcoming Communiques. Reports and discussions of other timely issues are posted on our web site, [www.robertdenney.com](http://www.robertdenney.com).*

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