

June, 2014

MIDYEAR UPDATE

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

In our Annual Report last December, we stated that some of our findings are obvious while others are not but we report them because they may become significant. We have applied that same reasoning in preparing this Update. *What is most important to recognize is that the strategic relevance of each item may vary for each firm depending on its size, practice areas and geographic markets.* The resulting picture is a montage of a profession that continues to change.

PRACTICE AREAS

Red Hot

- **Patents.** Despite a drop in manufacturing, applications continue to increase in science and technology. The steady increase in Patent Litigation continues to be fueled to a great degree by patent trolls. See Other Trends & Issues – Patent Trolls and Defensive Aggregators..
- **Health Care.** More issues arise as the result of implementing the Affordable Care Act.
- **Energy.** The fracking boom continues along with opposition. Oil is becoming more important than ever and not just in the U.S. New EPA regulations affect coal. Despite Administration and environmentalists' efforts to expand alternate energy sources, they still provide only a small percentage of our total energy.
- **Environmental.** New rules just issued by the EPA are tough in some states, easy in others.
- **Regulatory.** One of the areas that continues to keep Chief Legal Officers and business owners awake at night. Covers a wide range of matters including cybersecurity and social media,
- **Labor & Employment.** The steady increase in union organization activities adds to the caseloads generated by widespread layoffs.
- **Major litigation.** In the top 100 firms and major litigation boutiques. Many less serious cases are going to MidSize and even some SmallLaw firms

Getting Hot

- **Education Law.** Particularly in firms with colleges and universities as clients. Title IX cases continue to increase.
- **Criminal** due in part to defendants' increasing use of videos in sentencing hearings.
- **Private Offerings**
- **White Collar Crime**

Cool

- **IPOs.** Particularly in technology. As we anticipated in our 2013 Annual Report.

Cold

- **Bankruptcy.** The increased cost of filing is the principal reason. One significant indicator: The venerable Los Angeles-based boutique Stutman Treister & Glatt is closings its doors after 57 years.

GEOGRAPHIC MARKETS

- **Asia.** Proskauer Rose and U.K. firm Withers report substantial growth in their anti-bribery and corporate fraud practices.
- **London.** Recent research confirms that U.S. start-ups in London have the highest partner churn rate. Fraser MacLean, Recruitment and London Start-Up Coordinator, asks why

MARKETING & BUSINESS DEVELOPMENT

Obviously these are more important than ever for any size firm as all firms battle for a shrinking pool of work, particularly high-end. We are not ignoring M & BD, merely referring the subject to the plethora of reports, articles, seminars and blogs that address these areas.

OTHR TRENDS & ISSUES

- **Disaster Plans.** The weather this past winter and spring in most parts of the U.S. makes the need for them greater than ever for all firms, not just large. Pittsburgh firm Strassburger McKenna Gutnick & Gefsky (full disclosure: a client) has one of the most comprehensive plans.
- **LSAT exams.** In 2013-2014, only 105,532 applicants sat for the exam, the lowest number in 15 years. The highest number of takers was in 2009-2010, when 171,514 people sat for the exam. Obviously, unless there is a reversal, this is not a favorable trend for law schools and the legal profession.
- **Law Schools.** Many developments here:
 - **Tuitions.** For the second straight year, the University of Arizona Law School is cutting tuitions for non-residents, this time to \$29,000, down from \$38,841 a year ago. The Board of Regents claims this undercuts the non-resident tuition at more than a dozen peer law schools nationwide.
 - **Faculty Buyouts.** University of Buffalo Law School is offering faculty buyouts in response to a planned downsizing of its study body.
 - **Curricula.** Slow but increasing changes and additions, many focused on technology.
 - Suffolk University: New area of study called “Legal Technology and Innovation”. which includes Process Improvement and Legal Project Management,
 - Michigan State: The Reinvent Law Laboratory to train future lawyers in legal technology software and computer-based methodologies.
 - Florida Coastal School of Law: The Center for Law Practice Technology.
 - In a Harvard Law survey of 124 lawyers at major firms that employ the most HLS grads, they said accounting, statistics, corporate finance, negotiation and business strategy are essential courses to best equip them for practicing law.
- **Uniform Bar Exam.** Enables anyone who passes it to practice in any of the other states that offer the UBA although each state may set its own passage score. Currently offered in 14 states. We expect this number to increase and, sooner or later, the UBA to replace state bar exams.
- **Mandatory Mediation.** The New York State court system is ready to launch a pilot program in Manhattan Supreme Court that would require every fifth case assigned to judges in its commercial division to go to mediation. Could this become a trend? We doubt it.
- **Patent Trolls.** Oklahoma recently became the 12th state to enact legislation aimed at reining in patent trolls – or more politely “non-practicing entities” (NPEs) – which accounts for most patent litigation today. In total, patent bills have been introduced or enacted in 26 states.
- **Defensive Aggregators.** These are recent players in the NPE phenomenon. In exchange for an annual fee, they buy up dangerous patents on the open market before NPEs get their hands on them. When NPEs do sue subscribers, DAs try to arrange settlements for their members, lever-aging the fact that they can strike deals on behalf of multiple members at the same time.
- **Legal Fees and Gender Gap.** According to a review by Sky Analytics Inc., a provider of software to help track legal spending and invoices, female partners command on the average 10% less in fees than their male counterparts. The gap begins at the junior lawyer level and is more pronounced among experienced attorneys at major firms, even when partners have similar levels of experience and work in the same market.
- **Diversity.** While the number of Asian-American and Hispanic lawyers has rebounded from pre-recession levels at the 100 highest-revenue firms, the percentage of black lawyers at these firms is only 3%, the lowest level since 2000. Yet corporate legal departments, not to mention government and regulatory agencies, are increasingly integrated and take affirmative steps to ensure they employ diverse outside counsel.

- **Alternative Fee Arrangements.** Reports from corporate legal departments on the percentage of their legal fees paid in some form of AFA vary widely. However, a growing number of corporations now involve procurement people in preparing RFPs and discussing AFAs. Reports from firms also vary widely but rarely exceed 50% and, in most firms, continue to be much less. Some large firms are developing pricing strategies, particularly those that have hired pricing directors.
- **Non-lawyer investment in firms.** A controversial issue that was hot until a year ago, then cooled down. It's far from dead. See my article in the August issue of *Of Counsel*.
- **MidLaw and SmallLaw firms** continue to benefit as large corporate clients shift work to them because their rates are lower, they have skilled lawyers and fewer conflicts. LexisNexis reported that the share of fees in the U.S going to firms of 201-500 lawyers grew from 18% three years ago to 22% last year while, at the largest firms with more than 750 lawyers, the market share fell from 26% to 20%.
- **Litigation Funding** is still Hot as certain investors continue to fund law suits in hopes of collecting when verdicts come down. Some law firms are even seeking funding arrangements for clients who need help to carry their suits.
- **Virtual law firms** continue to increase. The June 5 edition of the excellent "Attorney At Work" blog contains a thoughtful discussion of how to avoid the isolation that could occur in them.
- **Project Management** continues to grow in importance at mid-size firms as well as the largest because major clients continue to demand "Value" – often undefined – for their legal spend.
- **Succession Planning**, for both management and client responsibility, is becoming a major concern, not only for mid-size firms but also for some of the largest.

- **Lateral Hiring** continues to be a growth strategy, not only in large firms but also in many mid-size ones as well. Abandoned merger discussions, such as the recent ones between Patton Boggs and Squire Sanders, continue to provide an additional pool of potential laterals.
- **Contract and Part-Time Attorneys.** BigLaw and MidLaw firms continue to hire more of them.
- **Equity Partner Compensation** continues to be a critical and even more sensitive issue. With firms need for growth, often just to survive, partners and even senior associates are demanding more recognition for origination or are opposing "sunset origination". The issue becomes more clouded with the other responsibilities partners must handle in even smaller and mid-size firms. Always a major issue in most firms, we see compensation becoming more challenging an issue than ever.

We will be addressing some of these developments, as well as others not included here, in greater depth in subsequent Legal Communiques as well as one our web site which is updated monthly or more often.

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Robert Denney Associates Inc. provides strategic management and marketing counsel to law firms, companies and non-profit organizations throughout the United States. Previous Communiques as well as information about our services may be viewed on our web site.

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