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Practice Area Portrait …

Confluence of Factors Feeds Steady Stream of L&E Work

Although labor and employment lawyers who counsel employers tend to stay relatively busy both through the economic good times and the bad, their workloads weigh especially heavy these days. Consequently, firms are looking for talent to beef up their L&E attorney ranks and gear up for continued hyperactivity.

Not surprisingly, the #MeToo movement and its far-reaching repercussions are compelling employers to keep their attorneys on speed dial. Several other factors, however, are driving the demand for counsel on labor and employment issues and representation in litigation. A recent and an eagerly awaited Supreme Court decision, the push for equal pay, a new plaintiffs' maneuver on disability-related claims, the current upheavals in immigration policy and enforcement, and other dynamics are converging to fuel work in this many-layered practice area.

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Wolters Kluwer

The most recent development – the High Bench ruling – places a win in the employers' column and resolves an important question while also generating work for L&E attorneys. "Everyone's talking about the *Epic Systems v. Lewis* decision and its ramifications," says Wendy McGuire Coats, a partner and appellate lawyer in the San Francisco office of Atlanta-based Fisher Phillips, who handles many labor and employment cases.

In that five-four decision, the Court's conservative majority rebuffed the National Labor Relations Board's position and sided with employers who require employees or want to require them to sign class-action waivers in arbitration agreements as a condition of employment, overturning the NLRB's stance that such agreements violated federal labor law. The ruling essentially upends a Ninth Circuit's decision in *Morris v. Ernst & Young*, which held that these waivers were unenforceable because they violated the National Labor Relations Act.

"Employers now have certainty that those agreements are going to be enforceable," says Nancy Barnes, the practice group leader of the L&E team at Cleveland-headquartered Thompson Hine, who adds that clients need guidance in understanding what their options are. "So now we're getting asked about how to implement a policy like that if employers, our clients, want to sign off on instituting an arbitration agreement. If they do, they have to decide if they do this just for new hires or across the board for all employees."

The recent ruling, however, does not constitute a complete win – at least not for California employers as they could still be open for class actions under the state's Private Attorney General Act. "It's a strong decision for employers to have confirmation from the Court that arbitration agreements are enforceable but PAGA is still excluded," says Marie Trimble Holvick, a partner in the employment and retail and hospitality practice groups in San Francisco's Gordon & Rees, who's also getting a lot of calls from clients on this ruling.

Movement Makes a Mark

Of course the United States is living in the #MeToo era with women across the country speaking out about sexual harassment – and worse – in all sectors of society, particularly in the workplace. Many labor and employment lawyers have reported that nearly every day they get contacted by a client regarding a harassment claim or a question about their preventive policies and procedures.

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Taylor's Perspective …

Transition Survey Identifies Flaws and Calls for Change

Consultants at Altman Weil conducted their first *Law Firms in Transition* survey 10 years ago as the Great Recession was taking hold and law firm leaders were beginning to take action to tighten their financial belts. We all remember the layoffs and budget cuts and revenue dips. And, we recall storied, once-thriving partnerships blowing up, with attorneys parachuting out and looking for a landing spot. The threats were in-your-face.

Today things are different, of course, with most firms positioned on stable ground with revenues rolling in at a steady pace. Yet, subtle hazards pose problems on the horizon, according to the findings in the recently released 2018 version of *Law Firms in Transition*. "The threat in 2018 is broader and more nuanced, arising primarily from the sweeping force of technology evolution over the last two decades that has resulted in the commoditization and commercialization of more and more legal services," write Altman's Thomas Clay and Eric Seeger in the survey's introduction.

Law firms will, however, face and overcome these "broader and more nuanced" threats because lawyers happily embrace change, constantly trying new things to enhance client service, right? Okay, we know that answer to that snarky question. Attorneys have the notorious reputation of rejecting change, or at least dragging their feet when it comes to innovation. Now, is this a fair assessment? Or do attorneys get a bad rap about this?

No, they do not, according to survey responses by managing partners and the chairs of law firms. The rap is right on. "In 69% of law firms, most partners resist most change efforts," the survey reports. And in a corollary finding, "Only 38% of law firms are actively engaged in experiments to test innovative ideas and methods."

It might be easy to dismiss such conclusions as … well … inconclusive and not representative of the big-picture perspective – except for one thing: This is the largest such poll of its kind with participation from law firm leaders at 398 partnerships across the nation with at least 50 attorneys, including 45% of the country's largest 500 firms. With those numbers, the findings seem to me to be pretty darn conclusive.

Although the survey covers a lot of ground, another point stands out: overcapacity. As we reported in the lead article in the June issue, too many lawyers are not doing enough work these days and should be shown the door. Our reporting last month came from an interview with Tom Clay who offered a preview from the transition survey – at the time it was embargoed until its official release. The survey lays this underperformance trend out in stark numbers: "Equity partners are not busy enough in 51% of all law firms." (For more on this, see June's cover story, entitled, "From the Consultants: Overcapacity and Succession Challenges Are among Issues Looming Large.")

Leaders Need to Lead

In another interview after *Transition* hit the streets, so to speak, Clay recounts a

managing partner seminar that Altman conducted in which he assigned homework to all of the confab attendees: Read the survey. In addressing the gathering of about 25 leaders, Clay underscored another survey conclusion and he did not pull any punches, offering his audience unbridled truth.

"I told them," Clay recalls, "Survey respondents talked about how their partners don't know what's going on. That's egregious and that's your fault. You're certainly not going to change if your partnership is unaware of important issues in the profession. You're the leader and one of your main jobs is to make sure your people know what's going on and, more importantly, you have to ask the right, the relevant questions about the future."

So what particular issues should law firm leaders make sure their partners understand? "One trend they're not on top of is artificial intelligence," Clay says without hesitation. "How are we going to get people to think about their staffing models and what AI brings to the table or takes off the table if partners don't even know what it does?"

The survey quantifies another area that most of us know, or at least should know: "Corporate law departments continue to redirect work from outside counsel to in-house staff, with 70% of law firms reporting they have lost business for that reason."

I asked Clay if this is common knowledge. That is, attorneys surely must know about this. "I don't think the rank-and-file knows this at all," he says. "The data is staggering about how much work they're doing in-house. They're not doing this so they can build up in-house staffs – corporations don't like to hire expensive in-house lawyers. But they feel they have to do it because their outside attorneys aren't doing certain things right or efficiently."

The study calls for change and not slow and steady change. It says law firms have to pick up the pace of innovation. That is sound advice – law firms should not wait for the next crisis to hit. Yet, right now many partners do not feel enough financial distress to try different approaches and improve service delivery models, although there are agents of change out there and *Of Counsel* features them when we can (Cleveland's Thompson Hine and Chicago's Jenner & Block come to mind).

Consider this statistic from *Transition*: "59% of law firms are not feeling enough economic pain to motivate more significant change." Clay says many have "settled into a new complacency." That is too bad because when those forward-thinking law firm leaders do implement change innovatively and early, they create competitive advantages.

The study lays out ways to push forward with creative force and it all starts with proper planning. See a section in the survey's introduction beginning on page 10 for clear and obtainable ways to promote change and thereby advance the interests of the partnership and its clients.

Finally, half of the respondents said their firm does not "project a distinct, compelling value that differentiates them from competitors." That does not surprise me. I recently worked on a project for which I talked to dozens of attorneys about differentiation and too many of them simply did not know what makes them stand out in a crowd. Or they offered stale replies to the differentiation question. A little soul-searching might uncover distinctive features that they have but do not realize they have or it might even create new ways to distinguish themselves.

At any rate, the folks at Altman have done it again. I encourage you all to download *Law Firms in Transition* and read it. That might constitute the first step toward positive transformation. ■

—Steven T. Taylor

Key Procurement Benchmarks:

2018 Buying Legal Services Survey

The following article is the first of a two-part series based on the 2018 Legal Procurement Survey from the international trade organization Buying Legal Council. Read Part 2 in the August Of Counsel issue. Download the full study and info graphics as well as brief videos at www.buyinglegal.com/survey.

Legal procurement is no longer an uncharted territory: Following top management's mandate to not only reduce spend but to also drive more value by increasing the quality of work, procurement has clearly demonstrated its own value contribution. The majority of legal spend is now under (some) review and active spend management. A relationship-only business approach to buying – and selling – legal services now represents a small minority among the largest spenders. It is replaced by a professional, business-driven approach to sourcing.

The 2018 Legal Procurement Survey of the international trade organization Buying Legal Council examined the purchasing behavior of 153 legal procurement professionals, focusing on purchasing decisions, cost control, analyses, and trends. It is clear that procurement is having a profound and lasting impact on the purchase of legal services for the world's largest companies.

After early wins, there are still many opportunities for legal procurement professionals to further create value to help save their employers money. Best practices are clear and common. Despite the commonly held belief, it is not just about savings. Legal procurement can drive work to providers who deliver a better outcome, higher response, and savings.

For firms, the pressure is on now more than ever. Clients continue to reduce the number of firms they work with. React now or watch your competitors win lead positions with clients you took for granted. It is both a threat and opportunity for the legal community. Winners will respond and deliver better results at lower costs.

The survey covers key benchmarks, such savings, spend, and number of providers; procurement tools and tactics (which ones are the most used, most efficient, fastest growing?); procurement goals and preferences (when do clients prefer predictability, when low fees? Is familiarity with their organization or matter experience more important to them?). The survey also shows regional differences between North America and Europe.

Savings: 14.6 Percent and More

While price may not always be the decisive argument for legal services, procurement's ability to reduce spending remains an integral benchmark to measure its success. Our survey findings suggest that legal procurement is very successful in reducing spend and saves employers significant amounts of money. These reductions or cost avoidances translate into significant savings per share.

On average, legal procurement professionals were able to save their employers 14.6 percent of the total legal spend, up from an average of 11.4 percent in 2017. For 2018, procurement claims a 16.9 percent reduction in legal costs, which means savings are up six percent in the last two years.

The most successful legal procurement professionals saved their employers 20.8 percent on average. Last year, this number was 23.3 percent. The highest reported savings achieved were 57 percent. The least successful groups ("below average success" and "not successful") were only able to achieve 4.8

percent and 5.3 percent of savings in 2018, compared to 8.9 percent last year.

Tenure. The biggest factor is time: Tenure in the legal category has significant effects on what procurement can achieve. Those with 10+ years in legal procurement on average achieved 19 percent in savings. Those with five to nine years in the legal category saved 15 percent on average, while those with two to four years achieved 13 percent on average.

Interestingly, those with one year or less in legal procurement were able to save 15 percent. It may suggest that some significant quick wins are achievable through applying procurement tools. Once the "low hanging fruit" have been picked, a deeper understanding of the category may be necessary to continue to achieve large savings.

Relationships. Big savings are also more likely when in-house counsel and procurement have a good relationship, as it was a clear indicator for savings. Procurement professionals describing the relationship with their colleagues in the law department as "partners" were able to achieve 21 percent in savings on average. Those describing the relationship with in-house counsel as "collegial" saved 15 percent on average, while those with "reluctant" relationships saved only seven percent on average. Those with nonexisting relationships (What relationship?) on average saved 9 percent.

Although not quite to the same extent, alignment with their colleagues in legal operations (legal ops) is similarly important to guarantee success for their employer. Those describing the relationship with legal ops as "partners" were able to achieve 17 percent in savings on average, those with "collegial" relationships with legal ops saved 14 percent on average, while those with "reluctant" relationships still managed to save 10 percent on average.

It takes time to build relationships between the internal departments, to build trust, and to know what is working for their organization. We expect that the learning curve will pick up for this area in the not very distant future.

Size of the Organization. Legal procurement in the largest companies (with $25B in revenue or more, the Fortune 100 companies and international equivalents) saved on average 15.6 percent of spend, which translates into $16M of savings annually. They were outdone only by companies with less than $500M in revenues: here, procurement was able to save 19 percent on average, which translated into $800K of savings annually.

Companies with $4.1B–$25B in revenue (size-wise classified as Fortune 500 and international equivalents) on average saved 14.3 percent of legal spend, translating into $13M of savings annually.

Five Times More Legal Spend on Traditional Providers Than Alternatives

On average, organizations spend over five times more with traditional firms than other types of legal services providers: Survey respondents spent $113 million annually with traditional law firms, $5.5 million with alternative legal services providers, and $15 million with ancillary legal services providers.

As would be expected, annual spend increased with the size of the organization: the larger the organization, the more it spent on legal services from traditional law firms. The same was true for ancillary legal services, which tended to increase with the size of the organization.

The spend with alternative legal services providers showed a different picture: The smallest organizations in our sample – those with $26 million to $500 million in revenues – spent a disproportionate amount on alternative legal services providers: 73 percent of their budget for legal services was spent

on traditional law firms ($6.75 million) and 27 percent of their budget ($2.5 million) on alternative legal services providers.

The largest organizations in our sample (Fortune 100 and their international equivalents) spent comparatively much less of their legal budget on alternative legal services providers: 82 percent ($152 million) of their $185 million overall legal budget went to traditional law firms, 13 percent ($24 million) to ancillary legal services providers, and only five percent ($9 million) went to alternative legal services providers.

By stark contrast, companies with revenues between $1.7 and $4 billion revenues spend 93 percent ($89 million) of their overall legal budget $96 million) on traditional law firms, four percent ($4 million) on ancillary legal services providers, and three percent ($3 million) on alternative legal services providers.

All this may suggest that smaller organizations have started to embrace alternative firms (sometimes referred to as "New Law") while larger companies conduct a lot of the work in-house and tend to work with traditional firms for other legal services. The findings also suggest a potential area of growth for alternative legal services providers among the largest organizations.

It should be noted that alternative firms had not (yet) been embraced by all organizations in our survey. While all have used traditional law firms as well as ancillary legal services providers, 24 percent have not used alternative firms in the past.

How Many Firms Are Too Many?

Last year, the number one legal procurement goal was to reduce the number of preferred providers. This year, it came in as the sixth most important goal, which may suggest that organizations were able to complete this task in the meantime. Many headlines in the legal press about big companies' panels tell the story about smaller corporate panels and the findings in our survey confirm this.

Major culling has been going on as the average number of traditional law firms instructed plummeted from an average of 362 firms last year to 149 this year. Similarly, the median number of traditional law firms decreased from 200 last year to 100 this year. Although there is a significant reduction in the number of regularly instructed firms, it is still a large number of firms to manage. Working with many firms also prevents clients from using their purchasing power; may lead to administrative inefficiencies; and thwarts the chance for both sides to develop deeper strategic relationships.

It is, without a doubt, an area that large organizations may want to monitor and manage.

What is more, the highest number of "regularly" instructed firms last year was reported as 1,500. This year, the highest number was much lower at 900 traditional firms. Again, it clearly results from bringing procurement discipline to legal services.

The largest organizations (Fortune 100s and international equivalents) appear to have done the most work in this area: Despite their proportionally much larger spend, on average, they regularly instruct 184 firms. The second-largest organizations (Fortune 500s and international equivalents) surpass them with 192 regularly instructed firms.

Alternatives Gaining Traction

Although alternative firms appear to still not have reached full mainstream status among the largest organizations, they are gaining traction: On average, companies worked with four alternative firms last year (median: two alternative firms). This year, the number went up to six alternative firms (median of three alternative firms). We believe there is a lot of growth potential for

alternative firms, particularly among the largest buyers of legal services.

Interestingly, we found that the smallest organizations in our research regularly hire four alternative firms – a disproportionally higher number than one might expect. It is possible that these smaller organizations with their relatively lower budgets for legal services appreciate the (typically) very competitively priced services of alternative firms as a true alternative to traditional firms.

Although clients still work with a large number of traditional law firms, they are using much smaller numbers of ancillary legal services providers: On average, clients regularly instruct 25 ancillary legal services providers. The largest organizations in our survey (Fortune 100s and international equivalents) top the list with 48 ancillary legal services providers on average.

Clients use the largest number of litigation advisory firms (an average of 13 providers), followed by courtroom services (six providers), law department support as well as forensic investigation services (both four providers each). eDiscovery shows similarly low numbers of providers (four providers, up from three last year), suggesting a rather disciplined procurement approach.

Clients regularly instruct three companies for document review and handling. Similar numbers were reported for corporate secretarial and compliance work (three), IT solutions (three), legal staffing (three), class action and claims administration (two), and cyber security (two).

These low numbers of providers may suggest that clients have carefully selected key ancillary legal services provider with whom they maintain strategic relationships. ■

—Dr. Silvia Hodges Silverstein

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Prerequisite for Growth:

Law Firms Require Proactive Online Reputation Management

Reputation, by its very definition, is a nebulous, intangible, and complex concept. Trust, along with an excellent reputation as a legal resource, cannot be directly measured as can income and expenses. An attorney's reputation and credibility matter more today than ever before. Clients prefer to retain attorneys and firms with strong and positive reputations. The internet democratizes information and provides a gateway for increased competition from both the attorney next door and a growing assortment of cost-effective digital legal platforms such as LegalZoom, Rocket Lawyer, and Nolo.

Partners at large law firms and solo practicing attorneys alike may overlook the importance of maintaining a digital presence, especially given their day-to-day priorities. The most astute attorneys recognize that a quality brand and strong reputation are their greatest assets. A quality presence online is a competitive advantage. Attorneys with stellar reputations gain or earn trust from prospects, clients, partners, regulators, and colleagues in contrast to those with lackluster or a tarnished brand image. Law firms grow and achieve results through their reputational assets. Conversely, they decline and go out of business as a result of a defamatory or negative reputation.

The New York bar summed it up when it issued social media guidelines for lawyers: "A lawyer cannot be competent absent a working knowledge of the benefits and risks associated with the use of social media" (*ABA Journal*, June 9, 2015). This article discusses ways to reinforce such existing online reputation management guidelines and promote legal industry best practices.

A New Approach to Reputation Management

With an expanding new group of online communication platforms, effectively managing a reputation requires more effort, coordination, and resources. Relative to just a decade ago, reliance on PR or internal teams probably yields fewer results today than bloggers, web-based media, and nongovernmental organizations. Law firms must now develop new relationships and forge digital partnerships. A network of supporters and partners, which includes journalists, bloggers, and industry associations, can have significant impact on the reputation of a company because of their objectivity and exponentially high potential to share positive experiences in support of a brand.

A lawyer's reputation is now not only defined by the value and results provided to clients, but also by the subjective client opinions and reviews posted online. Furthermore, an attorney's response to a negative review is critical. Ignoring the post can be a liability because prospects often assume the review is truthful. Online legal communities provide a medium for both reading reviews, sharing opinions, and providing commentary. Coordinating people and resources is needed to build an exceptional digital presence. Even smaller boutique firms must learn how to communicate intelligently and mobilize in advance of a crisis or emerging reputational threat.

Lawyers are outsourcing digital marketing at a higher rate than accounting, technology, and HR responsibilities. According to a 2016 Novitex report, 62 percent of law firms were satisfied and happy with lead generation results from marketing vendors. The hiring

cost for an experienced and qualified marketing employee exceeds $70,000, depending on the mandate of responsibility and the firm's location and prominence. This compensation excludes payroll taxes, benefits, incentives, office space, electronic devices, and office supplies.

A viable option could be to allocate the same budget to a professional digital marketing agency. Rather than relying on one employee, a firm gains access to a team of experts with distinct knowledge and experience. Thoughtful resource allocations are required for differentiation and are a precursor of growth.

A Proactive Approach Is Required

To stay ahead of the curve, engaging content that follows proven reputation management techniques should be shared online with prospective clients.

The advice we give to clients is that the best offense is a strong defense. With a strong presence, you build digital resilience and develop a strategy or path for repairing a damaged digital footprint. Creating digital assets, including web properties, that relate to your business and can produce organic search results, is vital for sustaining a positive reputation and attracting.

Some digital assets that can be considered for proactive reputation management include:

- Active social media presence and a coordinated approach for sharing content on LinkedIn, Facebook, YouTube, Twitter, Google+, and Instagram;
- Profile listings on reputable business directories and portals such as Avvo, Google Reviews, Hoover's Glassdoor, Wikipedia;
- Organic earned assets such as feature stories, interviews, quotes, news, and blogs about you, a specific case, or your practice; and
- Paid digital advertising or PR media.

The presence of digital assets on high-authority domain websites will both enhance your digital reputation as well as neutralize any confusing or defamatory web pages that appear in search results.

With clarity on issues that matter most to clients and prospects, lawyers can direct resources and improve communication accordingly. The success of a proactive digital reputation strategy is difficult to measure because it centers on your first impression made on prospects, clients, colleagues, and partners when they search online.

Reputation Management for Clients: Internet Defamation and Reputation Repair

Internet defamation is a growing area of concern for clients, but also an opportunity for attorneys. Quantifying the monetary impact reputation lost or gained is difficult. Following the landmark case of Sue Scheff, the legal community has taken notice of internet defamation cases, which are becoming more commonplace.

Scheff and her company, Parents' Universal Resource Experts (PURE), provided referral consulting for families of teenagers with behavioral problems. After a disgruntled client posted online that Scheff was a "fraud" and "con artist," she sued for defamation in a Broward County, Florida court. In November 2006, Scheff won her internet defamation case and was awarded $11.3 million dollars.

Online, you are guilty until proven innocent. Consequently, it is challenging to overcome negative press. If there are only two pages of search engine results when a name is searched and multiple negative links appear on the first page, you do not have the opportunity to overcome the negative perception.

When a lawyer or client is found innocent and purported violations are dismissed, news and information relating to the case remain

online. The demand for digital reputation repair and suppression is increasing. In the court of law, you may be innocent, but in the minds of your prospects, clients, and potential partners you remain guilty on the internet. There are many situations that require immediate attention and sustainable solutions. As Theodore Roosevelt said, "In any moment of decision, the best thing you can do is the right thing, the next best thing you can do is the wrong thing, and the worst thing you can do is nothing."

One bad review is a challenge, but not responding to negative commentary may invite others, which will have a multiplicative impact when trying to correct or refute the bad press.

There is risk when suppressing content because low ranking and outdated content can be revived on primary search engine result pages by news or events with keyword parallels. There is risk in not responding to a negative news article or review, but also greater risk in how one responds,

View client complaints and feedback as opportunities to improve the client experience. With a more empathetic and collaborative mindset, an improved online reputation can create better emotional connections with clients and future prospects. We recommend an action plan to mitigate the risk of future defamatory content.

Our dependence on the internet for information underpins the paradigm shift in how attorneys and their clients approach creating, repairing, and monitoring their reputations. A law firm's success is now more dependent than ever on what is said (and not said) on the internet.

The most agile firms are listening closer, making better resource allocations, and investing in stronger relationships with strategic partners and clients. ■

—Sameer Somal

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Blockchain:

Its Evolution and Impact on Your Clients

It was only back in mid-2015, while speaking at a couple of legal conferences (one on Client Growth Strategies) to audiences of firm leaders and CMOs, that I would ask, "Show of hands, how many of you have heard of blockchain?" – only to confront an audience that had no idea what I was talking about.

Fortunately, I would speculate that most of these same folks have now heard of blockchain and have some notion of what the label refers to . . . but do they really?

Blockchain is but one example of a new area of legal opportunity that can create confusion arising from our trying to discern whether it is an area of substantive legal discipline, a specific industry, or, perhaps, both. In a recent article, I suggested that "many law firms are recognizing the tremendous growth opportunities available to them in targeting and serving what I call *"Tech-Driven Hybrids."*

These hybrids are not purely substantive legal practices, nor are they correctly categorized as industry practices. Rather, a hybrid can be both – in that as a partner or law firm you can choose to serve Artificial Intelligence companies (e.g., Deep Learning) and/or some specific sub-industry niche (e.g., FinTech) that may be dramatically impacted and disrupted by AI."

With respect to Blockchain, I thought it might be interesting to highlight a few of your existing clients (industries) out there that are likely to be impacted, or even disrupted by this technology while concurrently identifying a few of the blockchain "industry" players involved in creating this disruption.

At its most basic level, any legal work which involves the transfer of ownership, say either intellectual property or real estate deeds, will be made enormously more efficient through the application of blockchain and its system of distributed ledgers and "smart contracts."

The concept behind smart contracts is that, once agreed-upon conditions are met, the contract will execute automatically when conditions are filled – meaning payments will be forthcoming, deliveries dispatched, or anything else executed as defined by the contract.

Here are but a few of the industries and industry players where blockchain is beginning to have an impact:

Entertainment: Founded by a singer-songwriter, Ujomusic tracks musicians' royalties as well as allowing them to create evidence of ownership of their work.

Insurance: AIG is piloting a smart contract system to oversee the creation of complex policies requiring international cooperation.

Real Estate: A relatively new company, Ubiquity, is creating a blockchain-driven system for tracking the process that creates friction and expenses when legally transferring real estate.

CyberSecurity: GuardTime is a company creating "keyless" signature systems to secure the health records of one million citizens, using blockchain.

Health Care: SimplyVital Health has reported two different health-related blockchain products in development. ConnectingCare tracks the progress of patients after leaving the hospital while Health Nexus provides decentralized patient records.

Recruitment: Blockchain CVs have now been developed that will streamline the selection process by verifying candidates' qualifications and relevant experience.

Media: Kodak recently announced that it is developing a blockchain system for tracking intellectual property rights and payments to photographers.

Manufacturing: BlockVerify is a special blockchain platform focusing on anti-counterfeit measures for diamond, pharmaceutical, and luxury good producers.

Non-Profits: A business-led community project called Transactivgrid based on Brooklyn allows members to locally produce and sell energy with a goal of reducing costs involved in distribution.

Retail: OpenBazaar is an attempt to build a decentralized market where goods and services can be traded – with no intermediary or middle man.

Travel: An online travel portal, Webject has developed a track and trade solution to fill last-minute vacancies of empty hotel rooms.

And finally, according to one report I read, **Global Banking** is currently a $134 trillion industry. Banks help inter-mediate payments, make loans, and provide credit. Blockchain as a trustless, disintermediated technology may disrupt all of that, including:

- Payments: By eliminating the need to rely on intermediaries to approve transactions between consumers, blockchain could facilitate faster payments at lower fees than banks.
- Clearance and Settlement Systems: Blockchain and distributed ledgers can reduce costs and bring us closer to real-time transactions between financial institutions.
- Securities: By tokenizing traditional securities such as stocks, bonds, and alternative assets, the blockchain is upending the structure of capital markets.
- Loans and Credit: By removing the need for gatekeepers in the loan and credit industry, blockchain can make it more secure to borrow money and provide lower interest rates.

These examples should serve to evidence just a few of the vast potential opportunities that blockchain technology can offer, how your clients may be affected, and the need to enhance your legal knowledge of this tech-driven hybrid. ■

—Patrick McKenna

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Most Firms Talk About Succession…

Many Are Running Out of Time

With an estimated 30 percent of U.S. law firm partners today identified as Baby Boomers approaching retirement, it is both reassuring and encouraging to hear, almost on a daily basis, announcements about new firm leaders being named. If your firm has recently gone through the process of selecting and installing a new leader, you should feel some pride and a sigh of relief – but, do not sigh too deeply.

We should note succession in law firm leadership is not limited to the role of the Managing Partner/CEO of the firm. Succession, in a labor-intensive business such as law, must address the full gamut of positions where someone is expected to lead others – at the firm level, at the practice group level (for practice groups that focus on the disciplines of law or on market segments served or both), at the professional development level, and at the client service level.

If your firm has indeed successfully implemented a succession plan that addressed all of your requirements, you can take that deep sigh of relief and continue reading this article only if you want to see whether there is something you might do differently the next time around.

Nevertheless, if your firm has not yet addressed all of your succession requirements, you might want to continue reading to get a better sense of the steps necessary, and the time required, to develop and implement a comprehensive and needs-based succession plan (at all levels of law firm management).

The Deadly Sins of Succession Planning Failure

My partner Peter Giuliani pointed out in his article *"The Seven Deadly Sins of Succession Planning"* (*Law Practice Magazine*, Nov./Dec. 2015, published by the ABA Law Practice Management Section) that the *"firms that survive and prosper over time are those that have created a culture of legacy as opposed to a culture of individuals. Culture based on individuality and short-term thinking cannot succeed"* in the long term and will ultimately sow the seeds of decline and destruction. "*Legacy cultures most often lead to multigenerational success*." Indeed, recent studies have shown that the current boom in law firm mergers is being driven by smaller firms that no longer see a successful future as independently owned and operated enterprises.

The second deadly sin that Peter cited in his article was the "*failure to create and nurture the next generation of owners.*" Think about what would happen to a football team if every time the quarterback tossed a pass, the receiver was not in position to make the reception. Subsequent "*generations of partners must think and act like owners. They need to be involved in the firm and commit to building its future. They cannot do this in isolation.*" They will only learn and develop these skills by participating and learning by example.

The third deadly sin citied by Peter was the "*failure to address succession issues until it is too late.*" By maintaining an individualist culture for a considerable length of time, too many firms have discovered that they just do not have enough time to develop and implement a workable succession plan. Many of those firms find themselves confronted with a lease renewal that no one wants to commit to, or they discover that attempting a merger at such a late point in the history of a firm is not viable since most prospective buyers (merger partners) do not see value in a law firm with

only superannuated partners and a cadre of junior associates.

The steps in developing and implementing a viable succession plan follow.

Define the Scope of Your Plan

Firm leadership needs to periodically look at all of their partners and prepare an inventory list with:

- Their ages and the expected timeline to their retirement;
- Priorities set for those with retirement horizons in the near term (three to five years);
- Grouping of other leaders (those with longer horizons in three-year increments up to a total of nine years into the future);
- The addition of new names as required every three years.

Set Requirements

Prepare current descriptions of the leaders' roles and responsibilities. These position descriptions will serve as the basis for your next step.

- Discuss with your current leaders and selected others in your firm what works about these roles and what could be done differently in the future to improve effectiveness and efficiency within the leaders' purview.
- If appropriate and beneficial, involve selected clients in these discussions.
- Also identify via these discussions what key traits and characteristics are evident in the incumbents that contributed to their success over time in their position of leadership.

Document Findings

When you have completed this process for the priority positions, document your findings.

- Prepare position descriptions including roles and responsibilities
- Prepare position specifications including characteristics, traits, and experiences
- Review the documentation with the relevant incumbents.

This step is critical if you want to avoid the next deadly sin cited by Peter Giuliani – *"failure to clarify the meaning of equity."* As he stated previously, the legal profession has over time recognized the following indicia of partnership:

- Sharing in the profits and losses of the firm,
- Contributing to and maintaining capital in the firm,
- Having a say (or a vote) in the affairs of the firm, and
- Having an ownership interest in the net assets of the firm or of the residual estate if it dissolves.

All too often, equity is mistakenly perceived to mean sharing in profits and losses, that is, having a piece of the pie. Successful firms and those that prepare carefully for successive generations know that young lawyers are developed to have an understanding of the privileges and accompanying responsibilities associated with owning a share of the business. Failure to educate, mentor, and prepare the next generation to accept the full mantle of partnership in all of its aspects will ensure that succession fails in the long run.

Identify Candidates

When your documentation is completed, it becomes time to begin to identify possible candidates for leadership roles in the future. These roles include firm-wide governance, management, and strategic thinking. Nevertheless, the positions to be considered filter all the way through the organization. including practice areas, clients, and matter management as well.

You can begin the identification process through observation and by speaking with others in the firm, including the incumbents and selected clients, if appropriate.

Start Development Process

As candidates are identified, your immediate goal is not to promote them but rather to develop them.

You or a trusted colleague must be tasked with the responsibility of bringing the candidate along a path where their entrepreneurial skills become evident in their performance. This is critical because the fifth deadly sin is the failure to encourage entrepreneurship.

Successful entrepreneurs, and most law firm founders, understand how to take calculated risks, how to build and lead a team, how to deploy people, physical assets, and capital, and how to create positive economic results. Each of these skills is necessary at the appropriate level for each stage of leadership in a law firm.

In addition, successful entrepreneurs understand the principles of good business practices – timely billing and collections, cost control, client service, and the need to keep matters moving through to completion.

The law firm that lacks entrepreneurship at each stage of the leadership ladder is likely to find itself confronted with a critical shortfall in successive generations.

As the mentoring, training, and development of future leaders gets underway, it is important that current firm leadership have accountability for each of the candidates under their purview. Targets should be established for specific steps to be taken, accomplishments to be made, dates for milestones, and other steps to occur. The objective is more than to ensure that the required development is taking place; it is also to ensure that current leadership is taking all the necessary steps to avoid the sixth deadly sin – the failure to "*let go*" and trust others.

As an example, succession planning and implementation at the client relationship level is focused on passing on existing client relationships to others, so that those client relationships have a higher probability of enduring. But we all have seen situations where those relationships are intensely personal or have been closely guarded by the "relationship partner" out of fear that their compensation will be negatively impacted if others become involved with the relationship.

Similar issues arise with respect to governance and control of the firm. Incumbents hang onto control because they do not trust likely successors to treat them fairly.

The resulting behaviors frequently lead to a point where incumbents become impediments to the adoption of new policies and initiatives that are of vital importance to the firm's future. Incumbents who act in a protection mode, fearing what might happen if others are inserted into their client relationships, exhibit a lack of trust that will eventually sabotage any effort at succession planning.

Training and Monitoring

Here is a primary reason why firms must do so much more than merely promote the most likely candidate into the leadership role in question, be it at the firm management, practice group, or client management level. The final stage in the process of implementing a succession plan involves training the candidate. Give them roles and responsibilities that will help to prepare them for the ultimate position identified for them at each level of their development and growth.

Again, specific tasks, accomplishments, target dates, and milestones should be established. Regular follow-up by firm leadership regarding the developmental progress of each candidate must occur. Leaders must be prepared to implement corrective actions when

required in order to keep the development on course and to prevent the participants from abandoning the development program.

Such actions help firms avoid the seventh deadly sin of succession planning – the failure to educate the next generation about the finances and economic realities of the firm. As leadership candidates progress through their learning and developmental cycles, they will learn and demonstrate a better understanding of the skills and competencies required at each level they touch until, eventually, they can be brought into the full top-down requirements for leading and managing a modern law firm enterprise. They will have developed a sense of shared enterprise and teamwork that is essential in the 21st century law firm.

As this process proceeds to a successful implementation of your plan for each priority leadership position you identify, you are ready to proceed with your next group of leadership positions that require succession. ■

—Gary Fiebert

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L&E Growth

Continued from page 2

"We're getting more calls from human resource departments and in-house counsel who are no longer as sure as they used to be about their own gut, whether what they're doing in this area is sufficient," Barnes says, adding that many companies are taking what amounts to a no-second-chance position on those employees accused of harassment, a result of the #MeToo movement. "The pendulum has swung more to the side of – we're not going to give this person a second opportunity. There's less tolerance than there was a year or two ago for rehabilitating and coaching this person out of the problem."

The employers are far more aware of how to prevent these claims and handle them if they do arise. The movement isn't necessarily leading to more litigation – yet – but it is raising awareness in the work environment and stirring up action.

"It's leading to better workplaces," Holvick says, noting that she and her team are conducting more training sessions these days to guard against harassment and what to do if it occurs. "We're doing a lot of training even in states where two-hour training isn't required by law (as it is in California) because employers want employees to know what they should or should not be doing and where they should go if they have a complaint and what the internal company policy is for reporting a complaint. And, more companies are getting training for their entire workforce and not just supervisors and owners. It's a great development."

Equal Pay Push

Another movement afoot, of course, centers on equal pay for equal work with employees filing claims, albeit not a flood of them but that's likely to change. "I expect we'll see equal pay claims rise very soon," says Charles Thompson, the chair of the employment class action group of Kansas City-based Polsinelli, who practices out of and manages the firm's San Franciso office.

Employers are increasingly taking notice on this front and asking for legal advice – and law firms are delivering that counsel. Fisher Phillips attorneys get inquiries frequently on specific equal pay issues and are often asked to conduct audits of their clients' operations and compensation systems. The firm also has an equal pay page on its website that offers information on the topic for each state.

"You have employers taking stock about whether they are compliant," Fisher Phillips's Coats says. "It takes a lot of self-analysis to do the equal pay audits, and for the most part it's a reaction to litigation. It's a desire to proactively self-assess and not just be compliant from legal requirement. Employers want to see if there are holes in the system with receiving compensation that's not comparable [to others doing the same work]. They want to correct that so that everyone's on par. We're seeing a lot of movement on this."

And, after a unanimous Ninth Circuit Court of Appeals' decision handed down in April, there is likely to be even more movement. In *Riso v. Yovino*, 11 judges ruled in favor of the plaintiff, Aileen Rizo, overturning a prior court ruling against her. Rizo filed suit after she discovered that she was paid $13,000 less than a male co-worker who had less experience simply because he received more compensation at his previous job. The Ninth Circuit's ruling should help women demonstrate that the gender pay gap violates the Equal Pay Act, enacted in 1963.

"That decision got a lot of people's attention," Coats says concisely.

In addition, labor and employment groups are busy providing counsel on other company human resource issues. "Clients want to know if their HR practices are keeping up

with [employment] leave laws," Thompson says. "They want to make sure the rights of the women in their company are being protected and that they have enough pregnancy leave. We're training in this area, using best practices."

ADA Claims Up

Across the country employers and L&E attorneys are seeing a sizeable increase in Americans with Disability Act claims, according to Equal Employment Opportunity Commission statistics. "For 2017, the EEOC numbers show an uptick in these claims, which amounts to a 22 percent increase in the last 10 years, and there's an increase in age discrimination claims too," Thompson says, adding that the two categories are often related. "We're dealing with an aging population with employees working longer so there are more physical problems, and it's much more difficult for people over 55 to find jobs if they're laid off. That accounts for part of the reason for the uptick."

And then there is a new phenomenon in the ADA litigation space, with claims filed against hotels and restaurants. "The new rash of ADA claims involve website accessibility," Holvick explains. "People who suffer from visual impairment are using accessibility software that reads the restaurant or hotel site out loud and if there's a glitch in the website – for example, if you hit on the reserve button and it prevents you from getting to the page to reserve a table or room – that can lead to a website accessibility claim."

With only three years of case law in this relatively new area, there are not enough decisions to offer clear guidance for employers to follow. "They're getting these letters similar to classic physical barrier litigation where the same person mails letters to 20 different businesses on one day making the same allegations," Holvick says. "It's frustrating for employers, many of whom are trying to do the right thing and often don't realize there's a [website] glitch."

Another recent development regarding immigration also requires employers to seek legal assistance: ICE raids. When Immigration and Customs Enforcement agents charge into the workplace, with guns and dogs, to haul away, detain, and eventually deport undocumented workers, employers find themselves in a tough spot. "Of course, they want to do right by the law but they also want to do right by their employees," Holvick says. "They want people to be able to work and they want to be sure they're compliant; they've got a lot of questions. So my colleagues and I do a significant amount of training about what to do and say if an ICE officer suddenly appears and who handles it."

What is more, as *Of Counsel* reported on in an article about class action litigation in the May 2018 issue, employers are facing a wave of wage-and-hour claims. (See the cover story, entitled "Claims in a Wide Range of Areas Fuel Class Action Litigation.")

All of the attorneys interviewed for this article, including those not quoted, say their L&E groups are bringing in more first-year associates and lateral attorneys to keep pace with demand, including clients' needs for counsel on how to handle wage-and-hour claims. "We have been hiring more in our practice group, because for one thing, the wage-and-hour litigation has flooded us," Holvick says. Thompson essentially says the same thing and adds that he and his partners seek diverse attorneys to add to their 60-lawyer L&E group.

Although hiring partners look for candidates with many skills, one trait stands out among their multi-faceted criteria. "Labor and employment cases are driven by business decisions and we want lawyers who are able to understand the particular client's business needs and goals and how the litigation or strategy made in a case or series of cases helps them accomplish those goals," Coats says. "That's a cultured viewpoint that says, 'We stand alongside the business owner and management to help them make the best business decision.'" ■

—Steven T. Taylor

Of Counsel Profile

Continued from page 24

OC: You're dealing with a lot as the chief legal officer at Schneider, given all your responsibilities. I know that in recent years you've been very heavily involved in the many acquisitions that Schneider has engaged in. But right now what's keeping you busy the most?

PW: Today I'd say we have a lot of challenges on a variety of investigations. I was very lucky that last year I restructured my team, putting some very key people in place. I think that's bearing fruit now, with the development of young talent, strong people to challenge me, and very good subject-matter experts, as we continue to build upon a world-class team.

The other thing that's keeping us busy is the recent tension in Russia, Iran, and China because we import and export to those countries all the time, and our technology is used in refineries, pipelines, automation equipment, mining. Those markets have required a lot of attention.

OC: I know you retain about 100 law firms worldwide—about how many do you work with in the States?

PW: Spanning all subject matters, from high-stakes litigation, M&A, employment matters, IP prosecution, and local matters, I'd say it's between 10 and 15. We try very hard to minimize the number of law firms.

"One-Stop" Myth

OC: I hear many lawyers talk about how they're partnership is "a one-stop shopping law firm," and often I think, Eh, I don't know about that. Companies want firms that are special in certain areas. To what extent is there overlap with one of your law firms handling two or three different areas, or do you have one particular law firm for each particular area that you need?

PW: More or less, yes, we have a different law firm for each area, although we may have two or three in a given area, like M&A, where we have a first, second and third, because we run into conflicts because we have big competitors and some of the top-tier firms do work for our competitors. But we've gotten to the point of knowing who can do what for us and being careful about that.

I agree with you about a "one-stop shopping law firm" – it doesn't exist; it's not possible. Every time I hear that, I chuckle. And, I'm quite resistant to that marketing effort. I'm a little battle-hardened on it.

I fundamentally believe it's all about the relationships you build with people that you trust, because they provide great service, and if they're really genuine and have your best interests at heart, they're going to tell you when they can't do something. I think that's more valuable than saying, "I can do it" when they really can't. And also responsiveness is important.

As an example, I have an interesting problem on my plate. I picked up the phone and called somebody. They called me back and said, "Yeah, I can help you with that, but I don't know this piece; you're going to have to get somebody else to help you." And I said, "Okay, thanks, I appreciate that." I wouldn't expect anything different from him.

That's invaluable because if you're a busy guy with things to do, time is the most precious commodity; that's the thing we need the most of, so you want to be efficient with it.

OC: I can imagine that some of the smaller or mid-sized firms are one-stop shopping, but once you get to the level that you're talking about, that just doesn't happen. Besides Jenner & Block, which I know does both litigation and transactional work for Schneider,

are there any other firms that handle more than one area for you?

PW: Debevoise & Plimpton. They handle more than one area – M&A and a lot of compliance-related matters. They also have a nice presence in Russia, which helps us out on some commercial matters, but mainly in the M&A and compliance area for them. Cravath is our other big US firm. They handle antitrust and some M&A. Those are my big three M&A shops in the United States.

OC: You mentioned that two of the things you look for in outside counsel is honesty in terms of saying, "I can't do that work" and responsiveness, the willingness to call you back in a timely manner. What other characteristics do you look for when you hire a lawyer at a law firm?

PW: Number one, obviously, is capability. I think I've said this in the past; I don't engage in the normal bidding panel-type process. My criterion is to use the best lawyer for that particular job, and that's it. And I do believe that if you hire the best people, you're going to save money in the long term.

Also, I want attorneys who have the ability to work in a manner that fits our company. You can be the most brilliant lawyer on the planet, but if you can't interface with the client in a client-digestible way, it's not going to work.

Technical Proficiency Matters, Brands Don't

OC: Does it help if they can speak the lingo and have a technical background?

PW: On the IP litigation side, absolutely. They have to be able to understand the products. I think what's really impressive about certain firms on the antitrust side is that they're able to both understand the products and how they function and can discuss matters with the relevant authorities when you need it. That's especially true overseas. So there's a lot of technical knowledge that you need to have to represent us on the antitrust side.

OC: How important is a big name?

PW: It's not.

OC: So it doesn't matter if the other side has a big, great litigation firm, you don't feel the need to match it?

PW: No. Brand doesn't matter. The people matter. We really appreciate the litigators at Jenner, and at Debevoise, but also at Hinckley Allen in Providence. There's a fantastic litigator there named Jerry Petros, I think he's as good as anybody else.

Let me give you something that highlights this. I had a matter maybe 10 years ago where we had several employees go to a competitor, and we were forced to sue that competitor for alleged trade secret violations and other things. They'd made a practice of stealing tons of employees. I went to Jenner and said, "Hey, we've got to stop this." They'd been involved in similar matters. Terry Truax, who's a partner at Jenner, and was then the head of the litigation group (and now is its managing partner) said we should get a great local litigator and recommended Jerry Petros at Hinckley Allen. He turned out to be fantastic litigator. He's not at a name firm, but I'd put him up against anybody. We have a lasting relationship with Jerry.

OC: What makes you want to fire a law firm, other than them mishandling a case?

PW: Yes, that's number one, mishandling a case. Number two is inability to be effective with people. I had two great people at a law firm; but they both pissed everybody off because they didn't listen. Still, I thought enough of them that I didn't fire them, and when I proposed them to work on another matter at another time, people said, "No!" But I said, "Don't worry. I've educated them and they'll be fine." They were a lot better the

second time around. So the top two things are competence and how you interface.

No one likes to lose, but if you lose and you understand that you put your best foot forward and that the lawyers and the business people and everyone is on the same team, then the loss is maybe a little less bitter. At least it's understandable. But when you have a winning team, even if that team doesn't win every game, but they've still got a good team, you want that for the long haul. You don't want to be replacing your people. And that's what I've tried to build: continuity, and not just with people at the law firms and people at the business, but how they interface. That's one reason why we're very successful. Honestly, compared to companies our size, we have extremely low litigation and also extremely low cost as a result. For a company our size, we probably have the lowest proportional amount of litigation.

OC: And that's because you get enough compliance and prophylactic training in?

PW: Not just on the compliance side. But also just before someone sues you, you need to be getting good advice. Rarely do you just get the hammer dropped on you – you know something is coming – especially in the commercial context, the IP context. For any kind of litigation, you've got a good idea of what's going to happen.

Yeah there are outliers like trolls and things that will come after you, but really, most disputes come out of a few main buckets. You've got your employment stuff – everybody deals with that; you've got your IP litigation and commercial litigation – you usually see that one coming like a freight train down the pike. So if you're getting good advice up front with the same team that's going to litigate for you, you can probably remediate that before it becomes a law suit. Or, if you get a law suit you can resolve it early.

We had one case that dragged on for years; it cost us more than we offered them to settle. So if you think about that, that drives our costs way down – the early understanding of the litigation. And, if you've got competent lawyers communicating well with your business, they're going to explain it early, and you can make a fight/don't fight/settle analysis at the outset so that you're not wasting time and resources to defend litigation. Management time and internal resources to defend litigation wears on people. You want to be able to deal with that efficiently. If firms can't do that, they're gone. And that's way before you win or lose.

Say What You Need

OC: In the months and years after the recession, I talked to a lot of consultants who said the legal profession was going to be transformed. There was going to be a sea change. Clients were going to ask for a lot more and the main thing would be efficiency. And to some extent that's happened, but not to the extent that some of these consultants were predicting. Did you see that and did you see as a GC that you needed to get more from your law firms? Did you expect more in terms of performance?

PW: No, because the low performers were already gone. I'm certainly not blaming the law firms or their models. But people always said: "The death of the billable hour is coming." I haven't seen the death of the billable hour, have you?

OC: That became a cliché, and no I haven't either. Certainly, however, there are a lot more alternative fee arrangements.

PW: Yes, but a lot of things didn't come to pass. If you're operating efficiently from the get-go, you're pulling from them exactly what you need. I haven't noticed a difference because we have always strived to use outside counsel efficiently. And back to your point – "we can do everything for you" – no, you can't. This is what we want from this person at this time and we don't ask any more or any less. We understand their core competencies. When you understand that, you can

put together the right match. I don't know if you're a football fan but have you ever heard of Don Meredith?

OC: Sure, Dandy Don, the quarterback for the Dallas Cowboys in the 1960s.

PW: That's right so you probably remember Walt Garrison.

OC: Yes, he was a Dallas running back and a real-life cowboy when he wasn't playing football.

PW: Right. Meredith used to say, "I know if I need two yards, Walt will get me two yards. And if I need four yards, Walt will get me two yards." [laughter]

I know the attorneys. I know what they can do, and I know what I'm going to ask them for. I let outside attorneys know what I expect: "This is what I need and you know what you can do on that side – you should be well ahead of the pack."

OC: You communicate that expectation.

PW: Yes, you communicate that expectation, just like with a spouse or partner, you have that communication. This is what I'm expecting from you, this is what you can deliver, and I'd rather you under-promise and over-deliver than the other way around.

OC: To what extent do you want to see the law firm that you're working with have diversity among their lawyers, or does it matter?

PW: It doesn't matter. I'll use the same analogy I use in my department. Here are my metrics. I have a healthy balance on my senior staff of women to men. I think it's 60 percent women to 40 percent men on my direct report line. My general counsels are local general counsels, so by definition they're not like me. I have Indians in India, Russians in Russia, Africans in Africa, Brazilians in Brazil, Columbians in Columbia. My point is, it's the best person for the job.

I'm not saying people should be color-blind, but they should be color- or gender-agnostic. I'm the executive sponsor for the LGBTQ because I have a higher degree of gay and lesbian people in my department. I've got people from all walks of life, not just from North America, but from around the world. For me it's the best person for the job. I operate in almost 100 countries and have lawyers in 40 countries. I can't afford to be parochial.

OC: What would you advise to a law firm? What comes to mind?

PW: Do everything you can to understand your client's actual business operations when you're representing them – because that will not only provide stickiness with that client, but it will also allow you to look and expand into new areas. If you really understand their business and you're representing them on something like a case where a product hurt somebody and you really understand why the product failed and didn't work, you can help them. You can say, "Hey, you have a problem with your supply chain; you have a problem with this."

Once you understand the business there are more avenues for you to augment your business with that customer. It's not about pitching things; it's about understanding it first. Then you can target your marketing efforts on things that are real-world problems versus just sending solicitations like, "Hey, are you GDPR compliant?" I get a thousand of those a day. I think that's a basic one, but I demand the same of the in-house lawyers. I make my guys attend seminars on why our products work the way they do, why we sell them the way we do, how we sell them. If you take the interest and time to understand that and figure out if it's in your core competency to help them – if it's not then you find another area – that one thing will raise your revenues and make you more valuable and more efficient with that client. ■

—Steven T. Taylor

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Of Counsel *Interview …*

Global Giant GC Tells It Like It Is Regarding Outside Counsel

It does not take long to figure out that Peter Wexler likes his job. While serving as the general counsel and senior vice president of Schneider Electric places rigorous demands on him, Wexler speaks enthusiastically about what he does for the company known as "the global specialist in energy management and automation." At the same time, he comes across as calm, even cool – in an engaging way – and downright witty.

Operating in nearly 100 countries around the world, Wexler has as many lawyers working for him as a medium-sized US law firm – at 250 worldwide. And, he retains about 100 outside law firms to help him and his team navigate the many legal issues that arise in doing business from Boston to Beijing and scores of places in between.

Consequently, Wexler knows a lot about the ways in which law firms operate, their inner workings, their attributes and flaws. Recently *Of Counsel* talked with the man who has shepherded Schneider through complex and headline-making acquisitions, helping this big, strong global corporate heavyweight become, well, bigger, and stronger. Wexler offers readers keen and candid insight into what he likes and does not like about outside counsel.

Of Counsel: Peter, how long have you been with Schneider?

Peter Wexler: I worked for eight-and-a-half years for a company called American Power, and then it was acquired by Schneider a decade ago, so I've been here 18 years. Before that I was primarily with an engineering company called Stone and Webster Engineering; it was one of the largest engineering companies in the world but it doesn't really exist anymore.

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