London Calling

Special Advertising Supplement to The American Lawyer

NOVEMBER 1999

Empire Builders: For U.K. Firms, All the World's a Stage

Expanding the Magic Circle

Why U.S. Corporates Look to Leeds

Roundtable
Law & Accounting: Match or Mismatch?

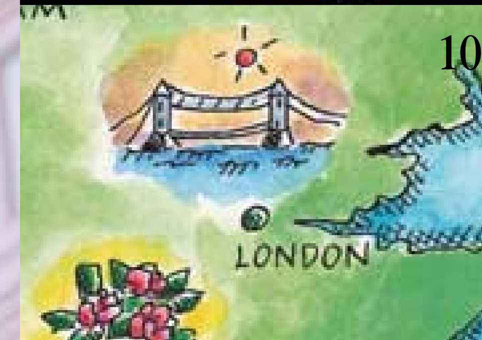
The Barristers' Y2K Problem

Mestel & Co

Table of *Contents*

4 Will the Circle Stay Unbroken?

Whether you're measuring fees, profit-per-partner, or hot deals, the five firms that make up London's Magic Circle are having a great year. And so is "Herbies," a high-profile, high-profit firm that's busy angling its way in. Plus: a collection of British boutiques.



10 Think Global, Act Local

When the 7,000 U.S. corporations doing business in Britain look for counsel, where do they turn? While many seek out the Magic Circle, an increasing number are talking to Mike McGrath at Addleshaw Booth in Manchester. Or William Downs, in the Leeds office of Hammond Suddards. Or Martin Shaw, at Pinsent Curtis in Birmingham. The allure? Price. Performance. Proximity.

15 Roundtable: The Future of the Multidisciplinary Practice

As the walls that separate law and accounting crumble, are practitioners of both professions setting up house under the same roof? Representatives of both camps break bread at a London roundtable to see if this notion is ready for prime time.

28 The New British Empire

New offices to open. New alliances to craft. New territories to conquer. New markets to explore. Forget the Asian crisis. Ignore fears of world recession. British firms are on the move, planting flags wherever they can—across Europe, throughout Asia, from sea to shining sea.

48 Whither the Barrister?

Will England flip its wig?

Unconventional Wisdom Wins Out—Again

When an American manufacturer with operations in Birmingham, England, is looking for British counsel, the firm he's most likely to choose, reports legal writer Tom Blass, is not one of the select Magic Circle firms in London's Square Mile. It's a smaller, less well-known firm with headquarters in Birmingham—and branch offices in Leeds, Manchester, London—and Brussels. A logical decision, given the firm's proximity to the U.S. company's local outpost. But it's also a decision that flies in the face of conventional wisdom—wisdom that would more likely dictate choosing the big-name firm while espousing the mantra of virtuality that's been enabled by new technology. Location, after all, should no longer matter.

But if there ever was a time when conventional wisdom held, it certainly isn't today. Consider the range of developments covered in just this issue of *London Calling*: Magic Circle firms that are thriving, locally and internationally, despite a vicious Asian flu and fears of a global economic meltdown (page 4). British niche firms that are growing rapidly, despite the Magic Circle's primacy in most practice areas (page 6). U.K. firms outside of London that are capturing not only British and American business in their regional offices but global accounts in outposts they've established around the world (page 10). Discussions about the coming dominance of multidisciplinary practices, despite several false starts and an abiding sense that few clients are yet asking for this range of services (page 15).

London-based Blass, himself, who wrote the features, sidebars, and back page column in this issue, is anything but a conventional writer. At 28, he's almost a barrister—but he skipped his pupillage, and forsook, for now, his license to practice, deciding that, at this point in his career, journalism gives him "more access to more interesting people; you get to see managing partners of law firms and get treated with respect." As a beginning lawyer, he laments, "I'd be doing photocopying—and earning $100,000…instead of less than that!" Will covering law someday give way to practicing it? Blass says that's something he's considering. –*Michael Winkleman*

London Calling

November 1999

Produced by
American Lawyer Media Custom Publishing

Publisher	Michael Winkleman
Associate Publisher	Jeanne Goffred
Art Direction	William Heitzman Design
Writer	Tom Blass
Art Researcher	Sharon Lee Ryder
Director of Manufacturing	Glenn R. Filippone
Assistant to the Publisher	Wanda Williams
Advertising Directors	Terri Tobey Court Jeffrey Morgan
Advertising Sales	Barry Abrams Michaela Appruzzese Dina Blackman Karen Carvelli Lisa Corrigan Julie Duffy Eric Elting Susan Hecox Austin Holian Carolyn Kynard Ron Oshins Tammy Taniguchi David White

American Lawyer Media, Inc.

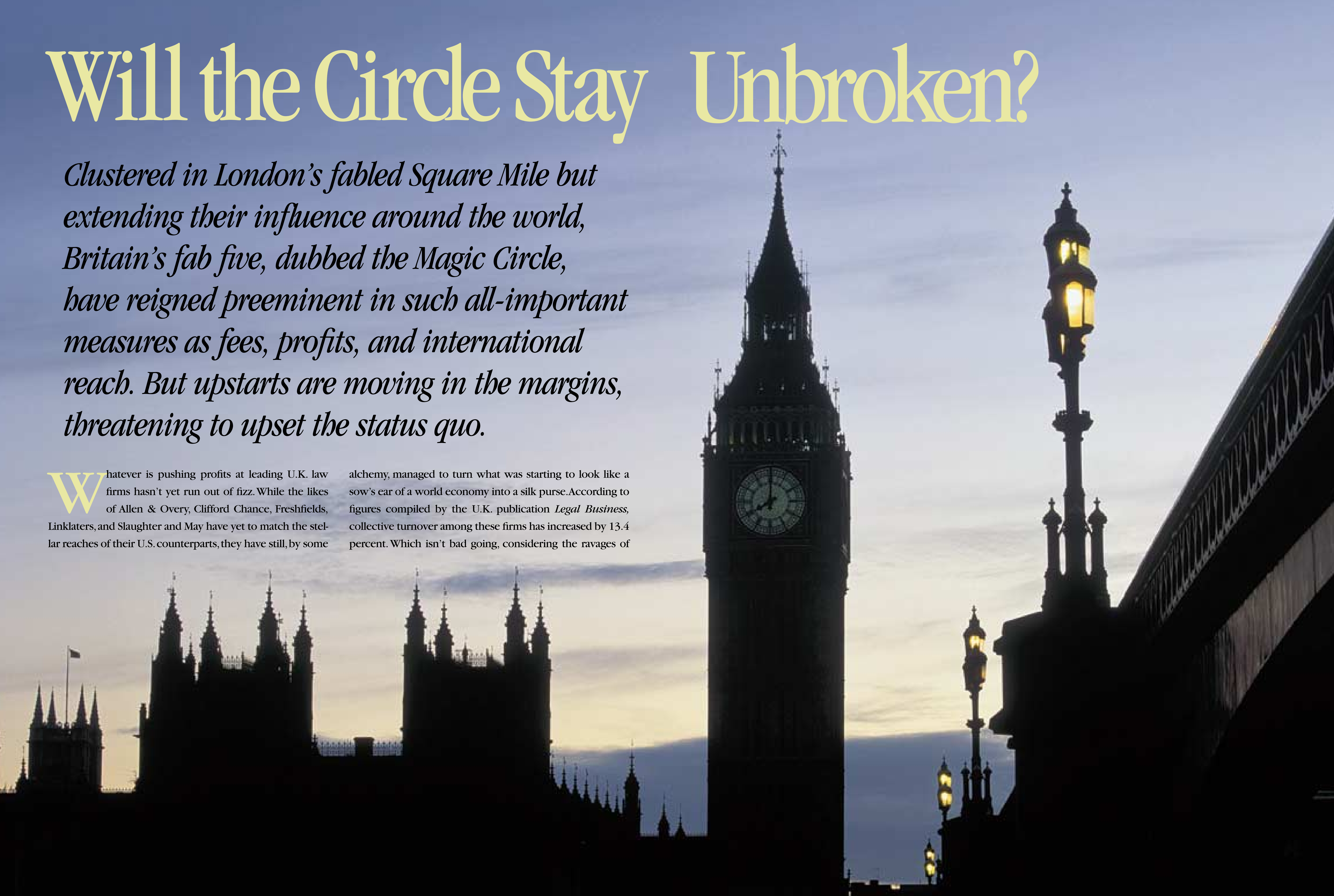
Chairman	Bruce Wasserstein
President/Chief Executive Officer	William L. Pollak
VP/Chief Financial Officer	Leslye G. Katz
VP/Strategic Planning	Jack Berkowitz
VP/Corporate Affairs and General Counsel	Stephen C. Jacobs
VP/Marketing	Michael Cronan
VP/Professional Information Divisions	Sally J. Feldman
VP/Group Publisher	Kevin J. Vermeulen

The editorial staff of The American Lawyer was not involved in the production of this supplement.

Rowe & Maw

Will the Circle Stay Unbroken?

Clustered in London's fabled Square Mile but extending their influence around the world, Britain's fab five, dubbed the Magic Circle, have reigned preeminent in such all-important measures as fees, profits, and international reach. But upstarts are moving in the margins, threatening to upset the status quo.



Whatever is pushing profits at leading U.K. law firms hasn't yet run out of fizz. While the likes of Allen & Overy, Clifford Chance, Freshfields, Linklaters, and Slaughter and May have yet to match the stellar reaches of their U.S. counterparts, they have still, by some alchemy, managed to turn what was starting to look like a sow's ear of a world economy into a silk purse. According to figures compiled by the U.K. publication *Legal Business,* collective turnover among these firms has increased by 13.4 percent. Which isn't bad going, considering the ravages of

the Asian flu and the collapse of the economy in Russia. Both of which, pessimists predicted, had the potential to turn the world sour.

One significant factor behind this success has been the boom in M&A deals consolidating business in the U.K. and in Europe. Other areas of work, such as tax, employment, and corporate finance, have been following happily in the footsteps of corporate teams (although admittedly, debt issues have been relatively few and far between). Dispute resolution, usually seen as indicative of lean years, has almost paradoxically stayed healthy, despite the clement weather. A managing partner remarked that it was only when "…nothing is happening at all" that law firms had to worry. Bill Tudor John, the managing partner of Allen & Overy believes, "There has been no recession for law firms. If they can't make lots of money, then they shouldn't be practicing." Allen & Overy's transactions in the last year have included the $80 billion merger of Mobil and Exxon, representing Investcorp on its acquisitions of Watmoughs and BPC, and advising ICI on its $1.6 billion ongoing divestment program. The firm's 1998 turnover was in excess of $400 million.

With profits-per-partner in the past year exceeding the $1 million mark, Slaughter and May has once again proved that it leads the pack by a head. Managing partner Giles Henderson reflects with graceful and understated pride that, "We're lucky enough to have very good clients who are pretty active and pleased with our help and advice." The firm has always had the pick of the FTSE 100 among its clients—and an extremely high caliber of lawyer. The managing partner of a rival firm notes (not without a hint of jealousy) that "Slaughters has excellent lawyers throughout. It just doesn't have any weak links in the chain." The proof, of course, lies in the pudding, which this year has been rich. The firm has represented, among others, Astra, on its $67 billion merger with Zeneca; BTR, in its merger with Siebe; and the Energy Group in its acquisition by Texas Utilities.

Clifford Chance has always enjoyed a preeminent position for its banking department. But in 1998-99, the firm steadily increased the profile of its corporate practice. Partner David Childs confirms that in the last year the firm has acted on more than 170 deals, with an aggregate value topping $80 billion. Big transactions have included acting on the $24 billion merger between insurance companies General Accident and Commercial Union, the $4.5 billion merger between the Irish Permanent and Irish Life building societies, and the BP/Amoco merger, in which Clifford Chance represented Merrill Lynch as financial adviser. At this writing, the firm is representing the U.S. company Air Products in its joint bid with the French company Air Liquide for the U.K. company BOC. Childs says the deal volume has confounded predictions he made this time last year that a slowdown was on its way. "Things have stayed very busy. In fact, this was our busiest August ever," he says. "There has been so much talk about not doing deals at the end of the year [because of fears surrounding the millennium bug], and that this would have a knock-back effect. In fact, what we're seeing is that people are simply working their way around possible problems."

Childs expects that Clifford Chance's mergers with Pünder Volhardt Weber & Axster and Rogers & Wells should give an extra boost to the firm's deal volume. "We already do a lot of cross-border M&As," he says. "This should give us a step up." Two of this year's transactions—the Air Liquide bid and the $26 billion BP/Amoco bid for Arco—have a com-

> *"Things have stayed very busy," says Clifford Chance's David Childs. "It was our busiest August ever." So although "there has been so much talk about not doing deals at the end of the year [because of Y2K fears], what we're seeing is that people are simply working their way around possible problems."*

Niche Magic

Vive la difference. Increasingly, in the modern age, law firms try to be all things to all people. Ever-busy marketing teams churn out brochure after brochure in the attempt to persuade their existing and potential clients that any need can be met. But niche firms are alive and kicking nonetheless. Some of these address new and esoteric sounding specialties: IT law, sports law, music law...(theater law?!) Others have the ring of being the law firm equivalent of an antique shop. (One London firm runs a thriving business in ecclesiastical law.) In the regions, boutique practices include a firm specializing in litigation arising out of yachting mishaps, and a firm with a client portfolio almost exclusively drawn from the ranks of the nation's bloodstock breeders. Clients don't always like the one-stop shop approach. And large firms can't always turn a buck operating in the obscurer areas of the law. The firms below all have the distinction of providing a service dedicated to one or several related areas of practice. Some compete with similarly sized or larger outfits. Some have the niche almost to themselves. Each is unique.

Peters & Peters, founded in 1938, is the largest niche, white-collar crime practice in the U.K. and possibly Europe. (Senior partner Monty Raphael was once described as "the doyen of white-collar crime" by the *Times* of London.) Big involvements for the firm have included representing Kevin Maxwell in the litigation precipitated by the untimely death of his father, Robert, and representing a major creditor of BCCI.

Mishcon de Reya is known first and foremost as a firm specializing in defamation, entertainment, and media-related work. The high profile of its clients means that the firm is often in the news. Last year, the firm generated some controversy in its role as trustee of the Princess Diana Memorial Trust.

Watson, Farley & Williams is perhaps *the* niche asset financing firm. For a niche firm, Watson, Farley enjoys quite a spread of offices, with a presence in New York, Paris, Piraeus, Moscow, and Copenhagen. Areas of expertise the firm prides itself on include, Liberian law, French law, *quirat* financing, the structured financing of drilling rigs… and more. Watson, Farley also has a reputation for representing shipping companies in the U.S. bond markets.

Fourteen-partner strong *Marriott Harrison* specializes in media law, advising on the production of software formats (including film, television, music, CDs, CD-ROMs, and computer games). The firm is very strong in relation to its tax law practice—setting up offshore structures, for example—and for its IP/IT-related litigation practice.

Among the ranks of the five-partner-strong firm *Townleys* are a number of ex-pro sportspeople—as befits the only dedicated sports-related law firm in the U.K. This is big-business sports. The firm represents soccer teams from London to Russia (namely, Fulham FC and Spartak Moscow). Much of Townleys' practice relates to the commercial exploitation of major sporting events, including Formula One motor racing, the Commonwealth Games 2002, and the Rugby World Cup 1999.

bined value in excess of $35 billion. Linklaters & Alliance too, are on their way to reaping the benefits of stronger international ties. Managing partner Tony Angel says the firm has seen "absolutely no slowdown in M&A transactions." Linklaters has acted on transactions that include the Coopers & Lybrand merger with Price Waterhouse and has represented Siebe in its merger with BTR, as well as Vodafone in its merger with Airtouch. Observers believe that the depth and spread of its European network is going to increase the urgency that the firm must sense to find a U.S. partner.

This feeling of pleasant surprise at the way things are faring is echoed by Freshfields' all-around performance. A major coup for the firm last year was acting on the BP/Amoco merger. But this year's big deals have been no less impressive. They include acting on the $60 billion merger of AirTouch and Vodafone, and the $19 billion merger of Scottish Power with PacifiCorp (incidentally, the first public M&A deal in the U.S. by a U.K. utility). The firm is also acting on the joint bid for BOC, advising Air Liquide. *Legal Business* figures put Freshfields third in this year's profits-per-partner rankings, at around $900,000. Chief executive Alan Peck admits, "This is a very funny market. The M&A work is magnificent. But strangely, the litigators are also very busy, which is unusual in a [U.K.] bull market. The finance guys are very active as well." Peck reflects that there has been a slowdown in debt issues, which he hastens to add has never been one of the firm's fortes. He bemoans that Wall Street firms are still far and away more profitable than their City counterparts. "But the City firms don't have to spend the resources to support an international network," he adds.

"This is a funny market," says Freshfields' Alan Peck. "The M&A work is magnificent. But the litigators are also very busy, which is unusual in a U.K. bull market. The finance guys are active as well." Still, he notes, when it comes to profitability, Wall Street firms are still way ahead of their City counterparts.

Whether the heady days can be sustained is yet to be seen. As one lawyer puts it, "This time last year everyone was saying everything would go pear-shaped. Now they're saying everything is fine. There must be a lesson in that somewhere."

For the moment, it seems, everything is fine. But one probable outcome is that the hegemony of the Magic Circle five will be broken. Already Herbert Smith, long-regarded as the premier contentious firm in the U.K., has broken ranks with its peers and is aiming to be regarded as one of the country's leading all-around law firms. The firm has been involved in some very high-profile transactions, including the Price Waterhouse merger with Coopers & Lybrand and BAT's merger with Rothmans. Average profits per partner were in the region of $850,000, which, according to the publication *Legal Business*, puts it ahead of the Magic Circle's Linklaters.

But Herbert Smith's aspirations to ascend to the upper reaches aren't realistically matched by other firms. The next rung of firms, including Ashurst Morris Crisp, CMS Cameron McKenna, Lovell White Durrant, Simmons & Simmons, and Norton Rose, are all continuing to do well, but remain a head behind.

How long it takes before "Herbies" swells the ranks of the upper echelon is a moot point. The firm doesn't have the same breadth of an international network as Allen & Overy, Clifford Chance, Linklaters, or Freshfields, and is unlikely to launch a sudden international expansion program. Some marketplace observers are doubtful that Herbert Smith could really use Slaughter and May as a template for their own success.

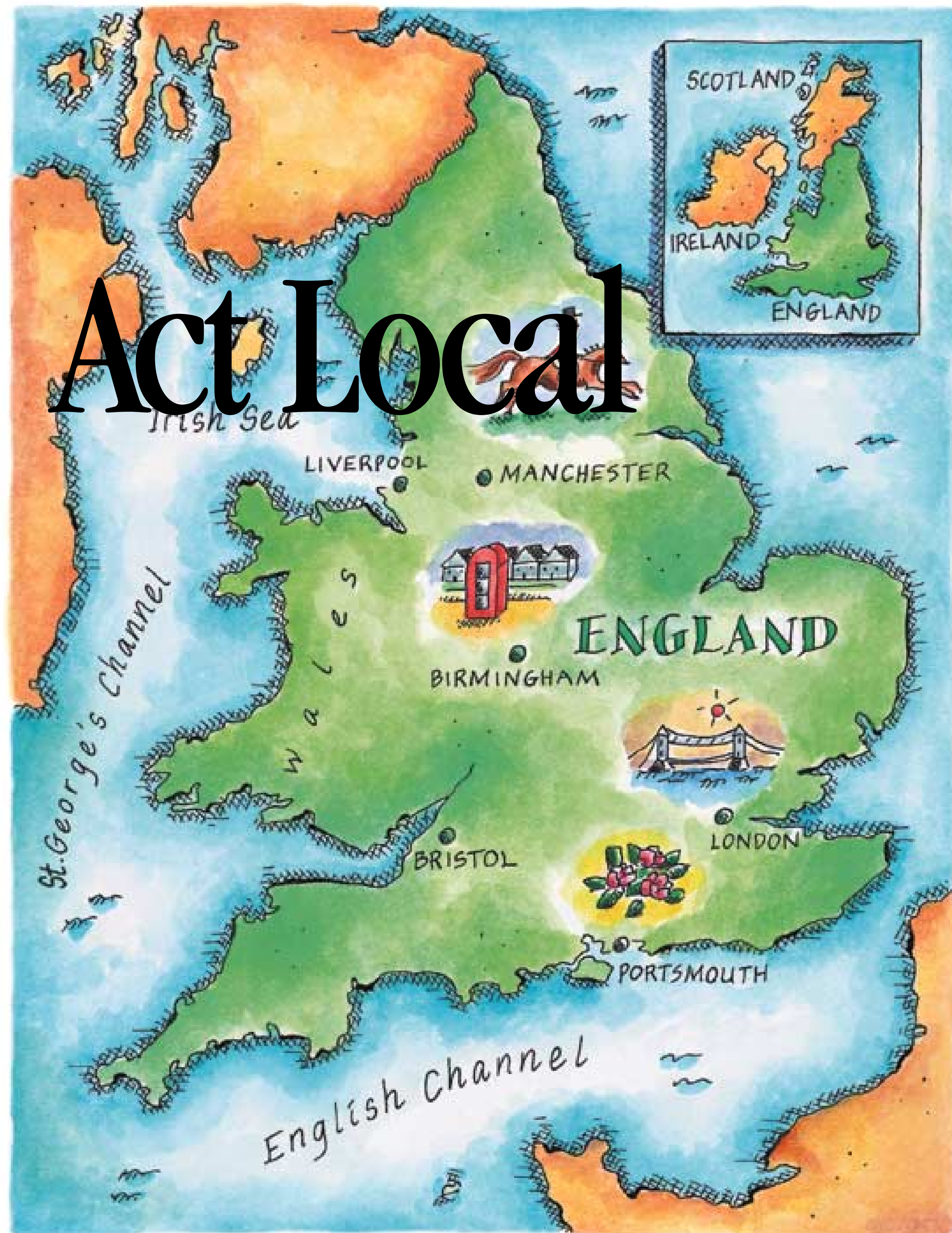
Nonetheless, it may only be a matter of time. Because it seems that if the firm is good enough, there's enough work to go around.

Baker & Botts

When it comes to choosing a British law firm, more and more U.S. corporations are stepping out of the circle and

Think Global, Act Local

even out of town—looking for savings, service, local smarts, and proximity. So much for virtual representation.



Mike McGrath is a corporate lawyer at the Manchester office of Addleshaw Booth & Co, a U.K. "national firm" with 96 partners and offices in Manchester, Leeds, and London. For a firm with a presence in the capital that's less than a year old, Addleshaw Booth & Co. has an enviable portfolio of domestic clients that includes the venture capital group 3i plc, Airtours plc, British Aerospace, the U.K.'s Ministry of Defence, Railtrack, and Virgin Direct. But it's not the British clients that absorb most of McGrath's time. Indeed, he reports, he spends between 50 and 60 percent of his billable hours representing U.S. clients, many of which, he says, "use the U.K. as a stepping stone into Continental Europe."

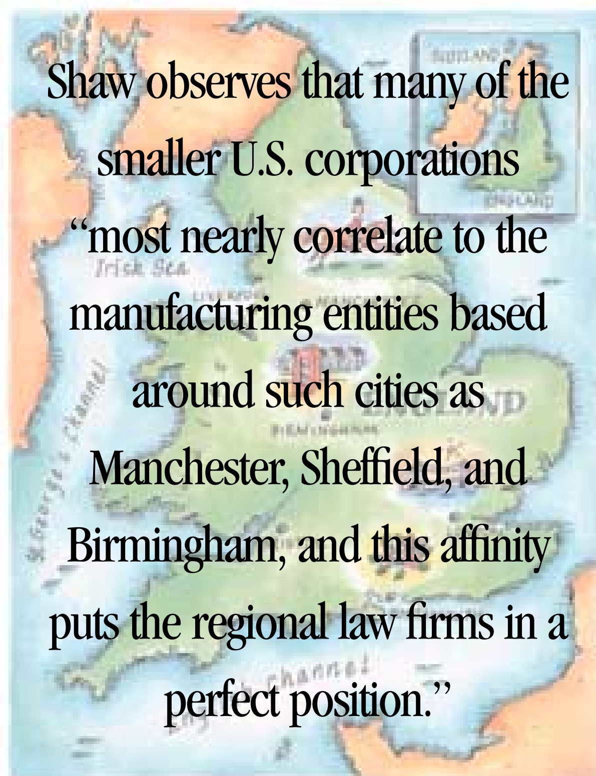
Five years ago, this source of work was virtually nonexistent. The change, says McGrath, has been fueled by the local firms' focus on courting U.S. clients just as U.S. investors have been getting interested in the U.K. And McGrath's experience advising U.S. clients is comparable to that of other firms of similar size: "We represent a number of smaller Fortune 500 and Nasdaq clients," he says. "Often, these are companies that have tried [larger, City of London-based] firms, but realize that in the City they receive much less partner attention and are essentially fobbed off with the 'B' or 'C' team. When they come to us they get the 'A' team." The managing partner of another firm boasts of the Northerners' grit and their readiness to get involved. "You don't get the same 'roll your sleeves up' approach with the City boys as you do with us," he says. In contrast, "the City firms often come across as patrician."

There are currently more than 7,000 U.S. corporations doing business in the U.K.—90 percent of them manufacturing companies—and many of these, rather than pay the high fees demanded by law firms in the City of London, are using the services of the "national" or "regional" firms. Largely based outside of London in cities such as Birmingham, Manchester, and Leeds, these firms commonly have offices in all these locations (as well as in London). The close proximity of their offices makes it easy to operate a centralized client service program and harder to know where, in fact, the hub of the operation lies. These firms (including Hammond Suddards, Addleshaw Booth & Co, Dibb Lupton Alsop, Pinsent Curtis, Walker Morris, Eversheds, and a number of others) all undertake high-end commercial work, on many occasions competing with the City firms. Where a difference becomes apparent is in the lack of an international network of offices in Continental Europe and in Asia. Still, these firms shouldn't be accused of parochialism. All have thriving international connections and clients. And all have been able to persuade U.S. corporations that they don't necessarily need a high-profile Magic Circle firm to represent them.

Addleshaw Booth & Co now has more than 200 U.S. corporate clients, representing about 10 percent of its corporate department's revenue. "Often, we're involved in the European end of the U.S.-driven deals," notes McGrath. "For example, we acted in a supporting role on the U.K. end of a $680 million

disposal by a major U.S. client. One of the services we offer our clients is a project management role, coordinating all the European aspects of a deal from the U.K." McGrath believes the very fact that firms like Freshfields, Clifford Chance, and Allen & Overy are developing their own U.S. practices means that traditional referral ties between U.S. and City firms are being loosened. Addleshaw Booth & Co itself has cultivated a strong relationship with a number of the larger regional U.S. firms, including the 180-partner Atlanta firm Kilpatrick Stockton LLP, where McGrath once spent a four-month secondment working with their international M&A team.

Hammond Suddards is a local rival to Addleshaw Booth & Co, competing for clients in all sectors, throughout the Midlands and the North of England. Lean years throughout the 1980s and the beginning of the '90s have trimmed the fat off both firms, and alongside their peers they're cost-effective and service-oriented. Hammond Suddards, however, has a larger network. The firm's head office is in Leeds, but it also has substantial presences in Manchester and Bradford as well as two offices in London (one located in the Lloyds of London building, from which the firm can service its insurance clients). The firm has also established a presence in Brussels, useful in an increasingly EU-centric age.



Corporate finance partner William Downs believes the attraction of using a firm like Hammond Suddards goes beyond cost-efficiency. "Usually clients new to the country want to know 'who to know,'" for example, prominent local business people, politicians, and local authority figures. "And they want to be briefed on local issues. We can offer that, and its a genuine point of differentiation between us and City of London firms." Downs is the Hammond partner responsible for overseeing the firm's relationship with Kodak, a major U.S. client with substantial interests in the U.K. "Kodak," says Downs, "…made a conscious decision not to use a City firm for reasons concerning quality of service and cost." Downs claims he spends a great deal of time in the U.S. selling the firm's services to corporations, counsel, and other professionals. The approach seems to be working. *Inter alia,* the firm has recently represented ITW Inc. in its $300 million purchase of Morgan Crucible (Magic Circle firm Freshfields represented the target), and has won as clients Ampco of Pittsburgh and the telecom and IT company Brightpoint Inc.

Martin Shaw is the managing partner of Pinsent Curtis, a firm that has its head office in Birmingham but has offices in Leeds, Manchester, London, and Brussels. Shaw observes that many smaller-capitalized U.S. corporations "most nearly correlate in terms of industrial background" to the manufacturing entities based around cities such as Manchester, Sheffield, and Birmingham, and that this affinity puts the regional firms in a perfect position to meet their requirements. "Most of our clients are industrial or automotive companies," Shaw points out. He claims that because of experience representing domestic companies on the Continent, firms like Pinsent Curtis, Hammond Suddards, or Addleshaw Booth & Co. "…have a more acute sense of what's happening in Europe."

The benefits of local knowledge are very much believed in by Paul Smith, a partner at the national firm Eversheds. Eversheds is a firm that stretches the definition of a national firm to its limit. In addition to its head office in London and offices in 11 other U.K. cities (including Cardiff, the industrial capital of Wales), the firm has a presence in Brussels, Copenhagen, Paris, Monaco, Moscow, and the Bulgarian capital of Sofia. Nonetheless, it is a "national firm" in the sense that its core business lies in representing clients, both local and foreign, in their domestic U.K. enterprises. "With 90 percent of the U.K.'s U.S. companies in manufacturing," he says, "what they need is representation near their plants"—largely in the Midlands and in the North. He claims that if an EU commission were to carry out a dawn raid on a client, the firm could have a lawyer at the premises within 45 minutes. It is this kind of client-friendly attitude that makes the strong national firms a cost-effective option for foreign clients as well as law firms looking for a contact in the U.K. As Addleshaw Booth & Co.'s Mike McGrath proudly proclaims: "At the end of the day, you don't have to go to a City firm for excellent service."

Bristows

Derwent

The Future of the Multidisciplinary Practice

Law and Accounting
Collaboration and Competition

Many of the managing partners of the world's largest law and accounting firms predict that 10 to 15 global law firms will dominate the marketplace within the next five years. These legal powerhouses may not fit the mold of today's firms; some will be multidisciplinary practices, a development made possible by the integration of law and accounting, two industries that were once kept separate by a host of rules. Now, those walls are steadily crumbling.

Recently, a group of legal experts from the worlds of journalism, firm management, accounting, and consulting met at the London office of Jones, Day, Reavis & Pogue, to discuss the future of the multidisciplinary practice. Their discussion follows:

Top Row, left to right: Jonathan Brenner, Jean Bernard Thomas, Paul Smith, Ian Coles, Christopher Tite, Mark Andrews, Michael Simmons, Neil Cochran, Bob Ruyak.
Bottom Row, left to right: Stephen Fiamma, Alison Crawley, Margaret Doyle, Ian Terry, Stuart Benson, Elizabeth Wall, Richard Levick. Not shown in photo: Ian Barlow, Neil Rose

Moderator

RICHARD LEVICK, Levick Strategic Communications

Panelists

Law Firms

STEPHEN FIAMMA, Jones, Day, Reavis & Pogue
BOB RUYAK, Howrey & Simon
IAN TERRY, Freshfields
IAN COLES, Mayer, Brown & Platt
MARK ANDREWS, Wilde Sapte
PAUL SMITH, Eversheds

Accounting Firms and Legal Affiliates

CHRISTOPHER TITE, Arnheim Tite & Lewis *[affiliated with PricewaterhouseCoopers]*
IAN BARLOW, KPMG
NEIL COCHRAN, Dundas & Wilson *[affiliated with Arthur Andersen]*

Executive Representatives

ALISON CRAWLEY, The Law Society
ELIZABETH WALL, former General Counsel to Cable & Wireless PLC

Legal Consultants

STUART BENSON, Howard Nash Management
JONATHAN BRENNER, Zarak Group

Journalist

MARGARET DOYLE, *The Economist*
NEIL ROSE, *Gazette Weekly Journal* of the Law Society

RICHARD LEVICK
President, Levick Strategic Communications: We are at the Jones, Day office in London for an Internet and satellite simulcast of a legal discussion. Today's topic is at the forefront of many people's minds. Let's start the conversation with Stephen Fiamma, giving us a general overview of what MDPs are and what the future looks like.

STEPHEN FIAMMA
Partner-in-Charge of the London Office, Coordinator of Jones Day's European Tax Group: MDPs are the developing area in which mostly accountancy and legal firms practice together in partnership. The models used to achieve that are different, of course—sometimes it is by way of full merger, other times it is by way of associate firms—but, broadly speaking, the idea is to link the two professions. This has been a subject of growing discussion and interest across both professions, and it is taking place at different paces in different countries. From the point of view of the legal profession, it represents a new challenge, one that previously has not existed, because the barriers to joint practice have been quite high. I think, from the point of view of law firms in the United States, in particular, it represents a development we have not seen to any great degree in our domestic market. The questions are many: are the clients ready for this development, and what are the commercial rationales and benefits to going multidisciplinary?

The question that provokes the greatest controversy among lawyers is how the growth of multidisciplinary partnerships, and how the growth of very large accounting and legal practices will be able to accommodate the very strict rules on conflicts of interest. It is an area that concerns us greatly, because at

the end of the day I believe accountants and lawyers do different things. The rules of conflict have developed in the legal profession for a very specific reason: to protect clients. Each of us has seen instances in which the failure to observe those rules has ended up hurting clients' interests. I think it is important in considering multidisciplinary practices to consider as well how we can deal with the very important issue of conflicts that could arise in extremely large practices spanning the globe which take in not just legal services, which are subject to their own sets of rules, but also accountancy, consulting, actuarial, and other services. It is a challenge that has not yet been adequately addressed or answered.

MARK ANDREWS
Senior Partner, Wilde Sapte: I think the fundamental issue is giving clients freedom of choice as to where, how, and from whom they buy the services they want. I do not think that is something that should be dictated by lawyers; I think that is something that should be dictated by much wider considerations. There should also be freedom of choice for lawyers to choose what kind of partnership they want to be in, what kind of business they want to do, and with whom they wish to be in partnership. I do not think that it is appropriate for our existing professional rules to tell us necessarily with whom we can be in business.

Moving from there to where I think the market is, I think the potential for MDPs is at three quite different levels of the business. There certainly is potential for it on the high street; there are many who think the high street is the natural home for the MDP. The second level is the sort of mid-corporate market, where I am sure there is a certain size of corporate client for whom it would be tremendously convenient to be able to buy the complete package of professional services in one place, but I do not think that is a very huge market. Then finally —and this is the one of most interest to the larger commercial firms—I believe there is a demand for global transactional business to be done by MDPs.

IAN BARLOW
Tax Partner, KPMG: I think it is a mistake to characterize this as a marketplace driven just by financial institutions. We have made reference to corporate transactional work, but there has not been an emphasis on that. That is a huge marketplace. I read an article to do with Garretts the other day: A client in Leeds had quite a small transaction he wanted to do across six or seven jurisdictions in Europe. It chose a combination, in that case, of Arthur Andersen and Garretts, because in a place like Leeds they could deliver on this. That was quite a small transaction; it is a massive marketplace. That is why it excites us because it is a marketplace that we are in today in respect of other services. We see the logic of linking legal with that. Can I also comment on the point about the countries where the legal practices are small? Where the legal practice is fragmented like that, it will consolidate. I think a lot of those firms are already knocking on the doors of the largest players, both the existing large legal firms and some of the accountancy-based multidisciplinary firms, to see, in the context of realizing that they have to consolidate, whether they can actually join one of those big networks as their first and only leap, as it were.

MR. LEVICK: Let me ask a question of Bob Ruyak from the United States at Howrey & Simon. Your law firm has been first in many areas; you have been the first law firm to do feature advertising, the first to do other types of marketing, and then the first to consider a more corporate structure. Where do American law firms stand in terms of preparation for MDPs?

ROBERT RUYAK
Managing Partner, Howrey & Simon: I think we were also first in multidisciplinary practice in the United States as well. We have had an economic consulting group as a subsidiary of the firm, we have had an accounting group as a subsidiary of the firm, and, uniquely in Washington, D.C., we have had the opportunity to have non-lawyer partners. The District of Columbia is the only jurisdiction in the United States that permits that. When we expanded into California and opened an office there, we had to retract it, because California state law prohibits it. The unique thing about the United States is wherever you have offices the firm is bound by the laws of that particular state, and you cannot simply isolate that state unless you have a separate partnership there. If you have one partnership, it is all over. To address your question: I think law firms in the United States are looking very seriously at multidisciplinary practices. They are hamstrung in many ways, but firms like ours have accomplished that without violating those laws by having partner equivalencies: i.e., compensation equivalent to partner compensation. This is not a sharing of fees; it is a different methodology. We are hopeful the day will come when those regulations will be less strict and we will be able to expand and have associations and affiliations with all types of different practices, including engineering firms, which could assist in our large commercial property practice. I think we have been innovative in many ways, and I think this is another way we would like to be innovative for the sake of the practice and, I think, for the sake of the profession.

MR. LEVICK: There are a lot of people both in this room and throughout the legal community who argue there will be 10 to 15 global law firms in the next three to five years. Is that an accurate prediction of the future and if that is true, does that mean we are in a race and what is the best way in which to be at the front of that race?

STUART BENSON
Founder, Howard Nash Management: We keep hearing references to the "global law firm," and I think it is worth considering what "global law firm" means, because we have had international and worldwide practices for a long time. I think White & Case opened their first office in Paris in 1920, and since then Baker & McKenzie has expanded worldwide, but they have not been described as "global law practices." To my way of thinking, the "global law practice" actually means something different than the international practice. It seems to me what we are talking about with global practices is the fully integrated firm. Instead of having a series of offices which cooperate, it is complete, integrated teams that match, for example, many of the financial institutions. I think the concept of the global law practice is largely driven by the financial institutions, the big banks and so forth. I think they will be looking for that truly integrated "global law firm." I personally doubt that many other clients outside of the financial network will be so driven by looking for global law firms. That brings me back to the point; I think there is only room for about 10 to 15 global law firms.

PAUL SMITH
Head of the Environmental Law Practice, Eversheds: We have a questionnaire we give when we take on graduates. We ask, "Why did you choose Eversheds?" Another question is, "Why did you choose a law firm rather than a law firm that is connected to an accountancy firm?" They all say they feel that, as a lawyer, their talents will best develop in a law firm

"Lawyers should be free to choose what kind of partnership—and business—they want to be in."

MARK ANDREWS
Senior Partner, Wilde Sapte

"It is a mistake to characterize this as a marketplace driven just by financial institutions. Corporate transactional work is a huge marketplace."

IAN BARLOW
Tax Partner, KPMG

"With all the shaking up that occurs, there are a great many more opportunities for firms to make and remake themselves in many different ways."

RICHARD LEVICK
President, Levick Strategic Communications

"The concept of the global law practice is largely driven by the financial institutions. They are looking for that truly integrated global law firm."

STUART BENSON
Founder, Howard Nash Management

"Law firms in the U.S. are looking very seriously at multidisciplinary practices. But they are hamstrung in many ways."

ROBERT RUYAK
Managing Partner, Howrey & Simon

"If you look at the skill sets, lawyers are probably closer to advertising executives than to accountants."

PAUL SMITH
Head of the Environmental Law Practice, Eversheds

rather than a law firm that is attached to an accountancy firm, because, I think, the skills of a lawyer are very different from the skills of an accountant. I think if you look at the skill sets, lawyers are probably closer to advertising executives, people with creativity, people who give independent judgment, than they are to accountants.

JONATHAN BRENNER
Director, The Zarak Group: It is very interesting from the resourcing point of view, because hopefully we and others are going to be finding people for these new law firms. I want to pick up on something that was said earlier about what is going to happen to the other 80 percent of the profession that is not involved in this. Over the last six years, we have seen enormous competition, in London in particular, but also nationally, for certain talented lawyers in certain areas, and it has become increasingly difficult to win the race for that talent, because the young lawyers and the partners who have moved have got such a variety of different types of law firms to choose from. What is going to happen to the very good quality medium-sized English firm, say, which has been chasing a corporate rainmaker or a decent two-year qualified corporate lawyer and finds that there is yet more competition now, because the talented people who are moving want a name on their CV and they want to be associated with a firm that has a global reputation? I think this is going to open up competition even more for the talented lawyers.

"We have seen enormous competition for certain talented lawyers, and it has become increasingly difficult to win the race for that talent."

JONATHAN BRENNER
Director, The Zarak Group

CHRISTOPHER TITE
Managing Partner, Arnheim Tite & Lewis: I was a partner in a City firm, and then I started Tite & Lewis alongside Coopers & Lybrand. You get all the sort of cultural bit that comes up, like "Hey, you're in bed with accountants; they're bean counters, they're dreadful," etc. I have been struck by several things including the fact they are not just bean counters. In PwC's terms, about 19 percent of their business is audit. You are actually dealing with a very catholic group of people from tax advisers to corporate financiers, management consultants, actuaries, and a whole host of other professions. One of my challenges was getting used to working alongside other professionals who do have something to bring to the party. Yes, there will always be lawyers who want to be in a law firm. What we found in the recruitment market is there are an awful lot of people—and I have to say they are at the younger end—who are prepared to embark on what they see as a completely different journey. Five or 10 years out, it could be that the sort of M&A deal lawyer you all know and love will be the sort of guy who will probably be fulfilling an investment banking type role with his core legal skills in place, but with access to a whole suite of other skills and the ability to work in a totally different environment. Some of that is visionary stuff, but the concept is large. The overriding point is there is room for all sorts, but we have to make sure the church is a sufficiently wide one to accommodate all sorts and, very importantly, that all different client tastes are catered to. There are all sorts of clients out there, and we must not lose sight of the fact we can talk about global firms, international firms, and whatever else. The fact is we are here for one thing: to get business out of clients and to do work for them excellently.

"What we found in the recruitment market is that there are a lot of people prepared to embark on what they see as a completely different journey."

CHRISTOPHER TITE
Managing Partner, Arnheim Tite & Lewis

MR. LEVICK: Does that force us to reevaluate what law firms are doing? For example, Eversheds has been positioned de facto very effectively. It is not a City firm. And then the world changes. Now it is a global law firm and people perceive it much differently. When we look at how the different markets look at different firms, Americans look at Eversheds much differently than legal consumers in Britain might, because they perceive it as a global firm as opposed to a non-City firm. It seems like with all the shaking up that occurs there are a great many more opportunities for firms to make and remake themselves in many different ways. It is once again an extension of how many different ways this issue breaks down and ripples through the organizations.

Morgan Lewis

Ashurst

Margaret Doyle

Finance Correspondent, The Economist*:* I think the legal profession is going to develop a little bit like the finance world; I am surprised to see people holding back so much. It seems to me a little bit like the finance profession in Britain prior to Big Bang, where people were very proud of their firms and their names and their particular part of it, whether it be as a jobber or whatever. The other thing was the finance profession in Britain was dominated by British people in ownership of stockbroking firms; the American firms were nowhere. Even within the States, someone like Goldman Sachs, which is now considered to be probably the best investment bank, was much, much smaller. It appears to me the same transformation is going to happen to the legal profession. I am surprised to find people are still holding on so strongly to their identity as lawyers and as legal firms and maybe to their regional identities. There seem to be some people who say, "Well, it has got to go that way," but it does not seem to me there is a recognition it is going to travel as fast, if it is anything like the finance industry. I will be curious to see whether people see that parallel to the finance industry or whether they think that that may be a false analogy.

"Is it going to be the Americans who are going to win, or are British firms going to be able to be big players?"

Margaret Doyle
Finance Correspondent,
The Economist

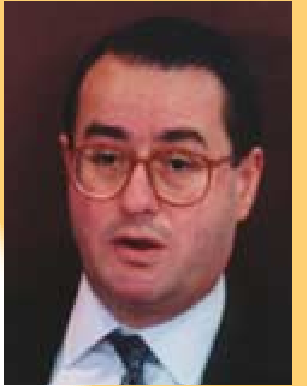
Neil Rose

Reporter, Gazette Weekly Journal *of the Law Society:* The one difference between the American firms and the accountants so far is the accountants have not been able to recruit from the top-cream City firms the kind of lawyers for the level of service they need to be providing. Why is that?

Mr. Tite: Speaking from the Arnheim Tite & Lewis experience, we have not hired people at partner level at all from top City firms. We have hired 90 percent of our associates from firms within the top 15 in the U.K. I mentioned before it is younger people who are more receptive to the new proposition, but among those younger people there are certainly those who are more than interested and are indeed prepared to join us in what we do alongside PwC.

Mr. Fiamma: I think the rules governing the legal profession are designed to preserve the independent judgment of the lawyers providing advice. I think the growth of law firms on their own, leaving aside the MDP problem, creates commercial problems. When you have a huge law firm which just practices law, but which has many clients, all kinds of conflict and commercial issues come up that potentially could impinge on the judgment of the lawyer and his independence in rendering advice to his client. I think everyone does their best to try to overcome those. I think we cannot ignore the fact that, when we add in the additional functions that, say, an accounting firm performs, we are increasing those pressures and further potentially undermining the independence of the legal function and its ability to render independent judgments. This is an issue the accounting firms have confronted in the area of taxation and audit functions.

In the area in which I practice (structured finance, tax-based structured finance products), you have on the one hand the accounting firm for a company that may be employing one of these things, which is obliged to report to the shareholders of the company what the financial results of the year were, including any reserves that may need to be taken against dodgy financial product transactions. Then you have as a really independent party, perhaps, a law firm that is meant to negotiate and document them, and there is a creative tension between the two functions to ensure things are done properly and, if they are not, the shareholders are ultimately informed this was not done properly. There is the problem that may come back to bite you. Looking at this example, what happens if all of these functions are brought under one umbrella? The accounting firm goes out and markets a tax-based product to clients, the client decides to accept it, and employs the accounting firm's associated law firm to negotiate and document the transaction. Let us say there is a flaw in what is happening. Now the audit function comes in and is supposed to review it and give the shareholders an accurate picture of what risks there are. Yes, of course, we can talk about Chinese walls and all that, but, if it is the same entity that has both initiated the advice, provided the documentation and now is obliged to audit it, how likely are they to be completely independent in blowing the whistle and saying, "This thing is a mess. This is disaster staring us in the face"?



"When you have a huge law firm that has many clients, all kinds of conflicts come up that could impinge on the lawyer's judgment."

Stephen Fiamma
Partner-in-Charge of the London Office,
Coordinator of Jones Day's European Tax Group

Alison Crawley

Head of Professional Ethics Division, The Law Society: At the moment we have a model in the U.K. regulation to permit the sort of associations that have been set up on the basis that the independence of the law firm is governed by the same laws and regulations of all other law firms. It contains all the client protections, confidentiality, privilege, and conflict and deals with that, but it allows a close association, improved quality standards, cross selling, improved services to the clients, and a bit of a one-stop shop. What is wrong with that?

"What is wrong with the current model? Why is there a need to have a full merger?"

Alison Crawley
Head of Professional Ethics Division, The Law Society

Fullbright & Jaworski

DTG

Why is there the need to go one stage further and have a full merger?

Ian Terry
Managing Partner, Freshfields: It seems to me the regulatory issues are clearly very important and I think the conflict problems would be more acute with a multidisciplinary partnership. I think these things are ultimately solvable and, if the market wants multidisciplinary practices, there ought to be a route through that. I think the interesting thing from the perspective of a large international law firm is where the client demand is. I think in certain areas we have seen there clearly is client demand for multidisciplinary practices and it has been the case that some of the larger accounting firms have been the largest employers of lawyers in some European capitals for many years, mostly practicing on the tax and employee benefits side. There is now a push by the major accounting firms to get into the higher value commercial work. Speaking from the perspective of my firm, we have not seen evidence of the client demand for the multidisciplinary practice for the sort of transactional high-value multinational work we have done. Last year the average value of the M&A deals we discharged was £1 billion. I think the clients who we service are very sophisticated consumers of lawyers. They want to go to the firms that have the top lawyers in the specialties in which they are interested, whether it is for a big acquisition, international finance, or whatever. We have not to date been pressed by our clients to provide a much wider service than the one we do. Certainly, internationally there is that pressure to be in different jurisdictions to handle those transactions which do involve a number of jurisdictions. But I was interested to see there was a *Commercial Lawyer* magazine survey of the top 350 FTSE companies; something like 85 or 88 percent of the in-house lawyers and finance directors of those companies of that size seemed actually to be not just neutral but hostile to the combination.

Mr. Rose: If I can get us back to the kind of issues the journalists here want to hear, it is on the issue of quality. Clearly, the accountants want to get to the top end of the market, where, I assume, quality of service is more important than convenience. I have mentioned already the problem of recruitment. In the U.K., at least, the accountants have not been able to attract lateral hires at the top end of the market. Is the only way in which accountants are going to be able to get into that top end is to take over a Wilde Sapte or even a Freshfields? I use the word "takeover" advisedly, given the relative size of the organizations.

Mr. Terry: I do not think they will be taking over a Freshfields. I think one of the key issues for lawyers is autonomy. Speaking for our firm, I do not think the partners would wish to be a business unit in a massive organization like one of the accountants. I think the key point to come to is this: We do not see at the moment that what the accountants would bring to us would actually enhance the quality of our current practice. I think what we have felt is the client pressure to be in different jurisdictions, but not necessarily to broaden the range of our services. We like to think we are a client-driven firm. We do not feel the pressure to do that. We do not

Runaway Groom

When, in the fall of 1998, Arthur Andersen called off its marriage to City law firm Wilde Sapte, there was an audible sigh of relief among many of the U.K.'s commercial lawyers. This was the second time the firm had led a willing bride-to-be toward the altar—and jilted its betrothed. "I think," said one City partner, "that put the issue on the back burner." At this writing, the accountancy firm's legal adjuncts include Arnheim Tite & Lewis and Garretts and Dundas & Wilson. But while these are credible firms, they don't give the accountants the market place kudos to which they aspire. • Law firms in the U.K. know the accountants and MDPs are live issues. But it isn't yet clear what form the threat will take. The Big Five, it is rumored, have made overtures to possibly all the U.K.'s leading law firms. But they know that breaking into the top end of the market is going to prove difficult. From a marketing perspective, the global dimension of the accountants is very seductive, but only if you're competing for a client that needs seamless service from Manchester to Mumbai. And they just don't have the clout to attract clients of that caliber. Without stronger marketplace credentials, the accountants can't get the best lawyers. Without the best lawyers…*res ipso loquitur*. • U.K. lawyers voice their reservations on several planes. Conflicts of interest are inevitably invoked, as is a strong belief that lawyers just can't function well in organizations the size of the Big Five. But beneath the logistical arguments lurks a professional pride verging on snobbery. Those caught up in their own reactionary rhetoric are likely to be left behind. • But a more compelling reason for not rushing into an MDP was summed up by the managing partner of a City firm who said, "As far as we can tell, it's just not something that our clients either need or want yet. And until they do, it isn't something we'll even consider." *–Tom Blass*

Corrao Miller
bleed

see the synergies and the benefits very obviously in the area of the market in which we practice.

Ms. Doyle: Our focus today has been on multidisciplinary practices, but it seems to me the accountants are the ones who see their strategy is to go into other professions, whereas the lawyers are much more ambivalent, with a few exceptions. Are we going to see within the City what has happened in finance, which is a sort of Wimbledonization: that it happens here, but all the best players are from overseas? Are we going to see the traditional City houses retain their dominance and, perhaps, develop a worldwide structure? We have seen various City firms pursue that strategy and then we have seen other City firms that seem to slip into a middle league and, perhaps, find themselves in an awkward position, because they are not quite niche players and they are not quite in the global league. I guess my question is, is it going to be the Americans who are going to win or are people confident the British firms are going to be able to be big players? Most of the big accountancy practices are British by descent, even if they call themselves international now.

Mr. Benson: I do not see much demand from many clients for the multidisciplinary practice, but, having said that, who knew they wanted the Sony Walkman until it had actually been invented and someone told them the value of having one? I do think there is this element among many law firms that says, "Well, clients don't really want it, so we're not actually going to think about reinventing ourselves and finding new and better ways to deliver services." I think it is up to us as professionals constantly to look to improve and see ways in which we can find better services. At the end of the day it may be there are problems we are facing here that mean many clients will not want to choose that service, but I think, even though there is not much client demand, we still have to look at ways in which we can improve and reinvent ourselves. I think that is the responsibility of all the people around this table and in the professions as a whole.

Mr. Levick: If I may direct the question to our lone member of ACCA Europe here from in-house, as general counsel, have you heard why these issues speak to your needs?

Madeline Elizabeth Wall
General Counsel, Cable & Wireless, PLC: I think the issue of quality is the one with which the in-house community is most concerned. As long as one is buying optional add-ons, I think that it is all right. There may be, for example, an excellent French law capability, simply because MDPs in France have been there for a long period and the quality is good, but one might not feel so comfortable in other places, and one might feel one preferred either the one-stop shop law firm approach or going independently on a country-by-country basis. Therefore, I would say the Walkman analogy is fine, as long as what is being provided is a quantum leap in terms of technology, convenience and so on. If it is not that type of innovation—and a lot of the issues we have discussed today have not been addressed—then it is probably not something with which people will want to deal.

"There may be an excellent French law capability, simply because MDPs in France have been there for a long period and the quality is good."

Madeline Elizabeth Wall
General Counsel, Cable & Wireless, PLC

"I do not think the partners would wish to be a business unit in a massive organization like one of the accountants."

Ian Terry
Managing Partner, Freshfields

Ian Coles
Partner, Mayer, Brown & Platt: I think MDPs will come; I think it is absolutely inevitable. They have come in most other countries in the world, and they will come here and in the States. I think one thing that has come out of this roundtable is that that is not necessarily the successful model. It may be a successful model, but there is room for more than one successful model. If you look at other areas in which the accountants have engaged beyond their traditional audit activity and tax, they have been into corporate finance, banking, and all kinds of things. Within each of their areas, there are centers of excellence which exist outside the accounting firms, so I do not think law firms should be too concerned about their intrusion. It seems to be accepted there are going to be 15 global law firms; there are only five accounting firms, so there is room for 10 more. I think some of the interesting activity is going to be in the struggle to be one of the other 10, if that is your model. I think we are going to see a lot of activity with lots of people falling by the wayside.

Mr. Levick: It was mentioned earlier that there is some level of pain lawyers may feel in terms of the changing market, but there is also extraordinary opportunity and it is really up to law firms in particular, because it is their market that is being interceded. In that regard, it is now a challenge for law firms. Will the law firms remake themselves? I think therein lies the challenge of organizations that have been largely flat organizations for years. From a marketing perspective, it is fascinating to go into a law firm and have one of these branding conversations. We say, "What would you like to brand?" and they say, "Well, here are 12 practice areas;" branding 12 practice areas is like putting a gun rack in a Mercedes. It cannot be done. You really have to be very narrow about what it is you want to accomplish. It raises all sorts of challenges in terms of how decisions are made. Will they be made by an individual or a small group of individuals, or will there be so many layers that firms cannot respond to the challenges that are being raised? In summing up what we've heard today, it is that in large part MDPs are here to stay. The question is how will they be regulated, how will law firms reinvent themselves, and how will the accounting firms reinvent themselves and associate to undertake both the concerns and the opportunities that exist in the market. Let me thank all of you for participating today, our panelists, and Jones Day for hosting this event.

"If you look at other areas in which accountants have engaged beyond their traditional audit and tax activity, there are centers of excellence."

Ian Coles
Partner, Mayer, Brown & Platt

Field Fisher

Stewart Title

The New British Empire

Europe. Asia. America. The sun never sets on the British lawyer's work day.

The U.K. has nearly always created a larger global impression than its diminutive land mass should, in all fairness, dictate. And while the empire has been severely whittled down on most fronts, its law firms are still busy planting flags. In many respects the path has already been paved for them. U.K. law (or to be precise, English law) is the bedrock of constitutions throughout Asia. Along with New York State law, it is *the* legal system of choice under which big transactions are conducted. Despite fears of world recession, the last year has witnessed the U.K. legal market substantially upping the pace of its international expansion program. In Asia, firms have been redeploying staff and reevaluating strategy, in some cases injecting manpower to levels exceeding the pre-Crash levels. In Europe, frenetic courtship between firms eager for a tie-up has given rise to some high-profile weddings. Others are almost certainly in the offing. And then, of course, there is the matter of Britain's Clifford Chance and the U.S.'s Rogers & Wells. Everybody's trying to stake a claim.

Bill Tudor John is the managing partner of Allen & Overy, with offices in more than 20 locations. For Tudor John, U.K. firms face very particular pressures that force them to practice abroad. It isn't itchy feet. "One of the interesting differences between a U.S. and a U.K. commercial legal practice is that American law firms are operating in a very big market and don't need to look outside that market for work," Tudor John says. He also observes that in the average U.S. law firm, "30 to 40 percent of fees come from domestic litigation. In my firm, that figure is around 12 percent. The British law firms don't have the luxury of such a large and litigious market."

All his competitors face the same challenge. The U.K. domestic market is too small to sate them; and there are other firms that they know can do the work for less money.

Kluwer

If they are going to keep the profits coming in, they have to pay attention to the world stage.

It is Allen & Overy, Clifford Chance, Freshfields, and Linklaters, the four most global members of the five firms recognized as the U.K. top tier (and universally known as the Magic Circle), that really pique the interest of observers. These firms have the financial clout, the big clients, and the people

The U.K. domestic market is too small. If firms are going to keep the profits coming in, they have to pay attention to the world stage.

to propel them across borders and to take risk-taking hits. City blueblood Slaughter and May, the other Magic Circle denizen, sits somewhat aloofly apart. While it has offices in Paris, Brussels, Singapore, Hong Kong, and New York, it has shown little public inclination to expand further. (Critics may scoff, but Slaughters has demonstrated the highest profits per partner of any U.K. law firm for as long as anybody can remember.) Tudor John believes, "The firms that have [globalized] successfully have done so because to be a global affair you have to have a client base that is firmly rooted in the FTSE 250 or the Fortune 500. Those companies that are themselves international look to their professional advisers to be like them."

Colonial nostalgia doubtless played some part in explaining why U.K. firms paid such a great deal of attention to Asia. Until two years ago, of course, Hong Kong was still a jewel in the U.K.'s disappearing crown. They also did it simply "because it was there." Freshfields chief executive Alan Peck remarks that his firm built up its Asian network in the first part of the decade "when it just wasn't really possible to build in Europe." Now the firm has offices in Beijing, Bangkok, Hong Kong, and Singapore. Despite the crisis, Freshfields claims to have had its most successful year in Asia and boasts of having acted on some major transactions, including a power project in Shandong, the securitization of Hong Kong mortgage-backed receivables, the $300 million bond issue for EGAT, and the PT Astra International debt restructuring in Indonesia.

Latham & Watkins

This success Peck ascribes to the firm's Asian offices having reached critical mass, in addition, undoubtedly, to the opportunities that have arisen by virtue of low asset prices and accelerated economic reform. He admits that in Hong Kong and China, things have been somewhat "bumpy" over the course of the last five months, but he points out that in Tokyo the firm has been making substantial profits. "Everyone thought it would be impossible to make money in Tokyo, but in fact we're having to turn down work." The firm's Bangkok office, he believes, is facing ever-growing competition from Thai firms, as well as a host of U.K. firms such as Linklaters, Clifford Chance, Herbert Smith, and Allen & Overy, each of which has consolidated its presence in Thailand, as well as from the strong complement of U.S. firms (including White & Case and Coudert Brothers) that have been active since before the Asia crisis. The Singapore office, says Peck, is "extremely busy" handling restructurings in countries around the region, including Indonesia and Malaysia, and as an extra boost for the firm's Bangkok office if and when help is needed.

A significant factor that Freshfields has on its side is that the International Finance Corporation is a major client, and no matter how deep the economies of the East plunge, the firm is going to be paid well to help pluck them out. But work isn't all driven by restructuring. Rock-bottom asset prices have fueled a spate of M&As with which to stop the corporate teams from twiddling their thumbs. Tony Angel, the managing

Colonial nostalgia played some part in explaining why U.K. firms paid such a great deal of attention to Asia.

partner of Linklaters, confirms that on the manpower front, the firm has seen "substantial growth" in its Asian offices overall. Interestingly, he echoes Alan Peck's observation regarding Japan: "The office that's expanding fastest is our Tokyo office, and we're having to move additional partners over there." But reading between the lines, it's clear that opportunistic corporate work and restructuring aren't necessarily the ideal bedrock for a growing legal market. "Recovery," says Tony Williams, managing partner of Clifford Chance, "is pretty patchy throughout the region." Alan Peck's analysis is diplo-

Akin Gump

The really exciting arena has been closer to home, in Europe, where firms of all shapes and sizes have been doing a giant hoedown: sizing up and considering potential partners.

matic to the point of sounding esoteric: "Asia," he reflects, "…is demonstrating a number of counter-cyclical elements."

But the really exciting arena has been closer to home, in Europe, where firms of all shapes and sizes have been executing the steps of what looks like a giant hoedown: sizing up and considering or rejecting potential partners. Several factors are driving this. Certainly, European integration on a political plane is one. Communications technology is another; it is simply easier than it once was to maintain a large, transnational law firm. But at the heart of the matter is the enormous volume of corporate convergence. As Alan Peck puts it, "Scarcely a week goes by without another giant deal being announced."

Some of the most illustrative European maneuvers have been executed in the process of establishing what is now Linklaters & Alliance. Before the Alliance came into effect in September 1998, Linklaters was a member of a referral network—the Alliance of European Lawyers, composed of the German firm Oppenhof & Rädler, Dutch firm De Brauw Blackstone Westbroek, Belgian firm De Bandt Van Hecke Lagae & Loesch, Swedish firm Lagerlof & Leman, the Paris-based international firm Jeantet & Associés, and one of Spain's most profitable firms, Uría & Menéndez. As Linklaters tried to draw the Alliance into an ever-closer unit as a prelude to full merger, two of those firms, Jeantet and Uría & Menéndez decided that they weren't ready for a greater degree of intimacy than they already enjoyed, and they pulled out.

But the big coup was persuading Oppenhof & Rädler to join the Alliance. The economic powerhouse of Germany is the most coveted Continental jurisdiction for U.K. firms and to get hitched to a German bride is seen as marrying into wealth. Some time will lapse before Linklaters and Oppenhof can actually effect a merger—Oppenhof & Rädler is effectively a multidisciplinary partnership, a major stumbling block on the path to the altar. Nonetheless, the new entity of Linklaters & Alliance is seen by competitors as a great step forward by the Linklaters & Paines they once knew.

As recently as August, Clifford Chance had found its Teutonic bedmate in Punder Volhardt Weber & Axster, a Frankfurt-based firm with offices from New York to Beijing. (Interestingly, both Rogers & Wells and Punder Volhard Weber & Axster voted 100 percent in favor of three-way merger. Clifford Chance could only scrape together 98 percent.) Allen & Overy, on the other hand, has built its Frankfurt presence from scratch, with

Mallesons

TRUE OR FALSE?

T F

Custom publishing helps marketers target the exact audience they need to reach.

Explore the benefits of custom publishing.

AMERICAN LAWYER MEDIA

Equiteam

a thriving office largely staffed by ex-partners of Bruckhaus Westrick & Stegemann. Slaughter and May extend a "best friend" approach to Hengeler Mueller Weitzel, a strong working and referral relationship which managing partner Giles Henderson believes offers his clients a seamless service. But there are rumors that the old City firm is going to "make a good woman" of its German counterpart and consider a more established tie-up.

Of course, the summer's talking point has been the impending merger between Clifford Chance and Rogers & Wells. Tony Angel admits that his firm has been watching this saga unfold very closely: "The U.S. has been an issue for us for well over 10 years. We first considered [how best to take advantage of the U.S. market] in 1986 in the Cortez report." It isn't a question of *if*, for Angel, but of how and when. "If you aim to be one of the best law firms in the world, you need a U.S. presence." The choices, "either to acquire a second-tier [domestic] firm, to merge with another first-tier firm, or to grow one's own firm" are still open, and it's clear that there are rumors in the market about Linklaters' talking to a big U.S. name. Publicly, the firm is taking a "wait-and-see" approach. Freshfields chief executive Alan Peck remains tight-lipped about his firm's plans in the U.S. Freshfields has recently moved into larger office space in New York and has set up shop in Washington, DC. Peck does make the observation that organic growth in the U.S. is very difficult for a U.K. firm, and that attracting the wrong kind of lawyers (i.e, any but the very best) is likely to damage the office's reputation. Slaughter and May maintains close relationships with several U.S. firms, which, claims Giles Henderson, "…gives the client more choice." Tony Williams is happy to report that although it's "early days yet," the reaction of the firm's clients has been very encouraging. He is quite aware that the merger-to-be is unlikely to precipitate a headlong rush, but then, he adds, "We're quite happy for the others to sit and wait." Given the way things are going, they probably won't wait long.

> "If you aim to be one of the best law firms in the world, you need a U.S. presence."

The Wait is Over...
Don't Miss the Next Issues
April 2000
October 2000

London Calling

For further information on Editorial Content or Advertising Rates contact Michael Winkleman, Publisher @ 212.545.6141 or Jeanne Goffred, Associate Publisher @ 212.545.5904 at American Lawyer Media's Custom Publishing Unit.

TRUE OR FALSE?

- ✓ T / F — **Custom publishing helps marketers target the exact audience they need to reach.**
- ✓ T / F — **Custom publishing helps marketers build a strong relationship with customers.**
- ✓ T / F — **Marketers all across the country are using custom publications as a part of successful integrated marketing programs.**

As successful marketers everywhere know, custom publishing allows you to present your brand's message to an audience tailored to the specific products and services you offer or to target an audience pre-qualified by demographics and special interests. Because custom publishing allows marketers to connect so strongly with a consumer's interests, it helps you develop a one-to-one relationship with your best customers and prospects.

Learn more about....
American Lawyer Media's Custom Publishing Unit by contacting Michael Winkleman, Publisher @ 212 545-6141 or Jeanne Goffred, Associate Publisher @ 212 545-5904.

Explore the benefits of custom publishing.

A2 CAREER OPPORTUNITIES

A3 INSIDE PERSPECTIVES

Lateral Partner Recruitment:
The New Global Competitive Challenge — *Jean M. H. Fergus (212) 767-1775*

The increasing globalization of legal practice has generated a greater demand for partner-level talent in the U.S. as well as internationally. U.S. firms are hiring U.S. and U.K. partners at a fast pace. U.K. firms are also opening their doors to lateral U.S. and U.K. partners. Their challenge is how to attract the best partner candidates. Learn why partners leave their firm, how to integrate new lateral partners, and how they ultimately benefit the firm.

A6 OUTSIDE PERSPECTIVES

Look Before You Leap Across the Pond — *Laurence Levy 44 171 444 3509*

Developments in U.K. M&A come thick and fast as the takeover frenzy continues unabated.

International Exhaustion of Intellectual Property Rights — *Ian Wood 44 171 782 8897*

International exhaustion of IP's is a hot topic. This article gives an insight into the European trademark position where historically some (but not all) countries have recognized international exhaustion.

An American Law Firm Opening an Office in London–*An English Legal Perspective* — *Peter Borrowdale 44 171 600 2222*

A short review of some of the issues arising in connection with the opening of an office in London by an American firm, covering partners' duties of good faith, restrictive covenants, notice periods, and issues attaching to non-partner candidates, structuring of the London partnership and conflicts of interest.

CAREER OPPORTUNITIES

DTG Worldwide Legal Placement Advisors

A Division of Datacom Technology Group, Inc.
350 Fifth Avenue, Suite 3805
New York, NY 10118
Tel: (212) 629-5720
Fax: (212) 629-4666
E-mail: lawjobs@datacom1.com
Website: www.dtg-legal.com
Principal contacts: Christopher D.M. London, Esq., Philip Bradford, Lisa Zambetti

DTG Worldwide is the legal search and advisory division of a leading global information technology company providing strategic career planning and global placement services. We are unique in our commitment to support the emerging synergy in the information technology, legal and compliance operations of our clients in law, financial services, new media/internet and software development.

Current Opportunities
In House
- 40 Act/Mutual Funds Attorneys
- COO/Entrepreneurial Lawyer with operations/business experience for VC backed Silicon Alley Company

Partners
- Corporate
- Finance & Banking
- Securitization

Associates
Domestic & overseas assignments at the junior to senior level in:
- Corporate/Securities
- Project Finance & Utilities (1935 Act)
- Capital Markets

EJ Legal

44-45 Chancery Lane
London WC2A 1JB
Tel: (44) 171 404 6669
Fax: (44) 171 404 8817
E-mail: info@ejrec.com

EJ Legal has built its reputation on providing a first class, independent, candidate-driven recruitment service to attorneys working in private practice. Increasingly recognized as the first choice for partners and associates seeking a move, we apply our bespoke, focused approach in all areas of our work.

Our pledge to you is to give you as much of our time as you need. We devote all our resources to finding you the right position, just as we are committed to finding the right individual for each law firm.

We believe that it is by directing our time and energy to satisfying our candidates' needs that our clients' interests are best served. Our understanding of the changing London legal scene is unquestionable and our professional, friendly and innovative approach is recommended time and again. For further information please contact Simon Janion, Director.

HW Daniels Bates Legal

High Holborn House
52-54 High Holborn
London WC1V 6RL
Tel: (44) 171 806 6700
Fax: (44) 171 831 7969
Website: www.hwgroup.com

HW Daniels Bates Legal is one of the largest and longest established, nation-wide legal recruitment consultancies in the UK with a team of over 25 legal specialists operating in 3 distinct markets:

Domestic Appointments: dealing with all levels of legal recruitment from attorney to partner level throughout the UK;

International Appointments: dealing with all levels of recruitment for international and local firms, particularly on the Continent, in Asia and Australasia;

In-house Legal Departments: both corporates and banks both in the UK and overseas.

We offer a unique combination of product and market awareness at all levels, with our primary aim being to simplify the often complex and time-consuming recruitment process.

For up to the minute opportunities in the UK or overseas please access our website at www.hwgroup.com or for a confidential discussion about local market conditions please contact:

UK Appointments: Geraldine Hetherington, geraldine.hetherington@hwgroup.com
Overseas Appointments: Mike Wolff, michael.wolff@hwgroup.com
Corporates and Banks: Lisa Owens, lisa.owens@hwgroup.com

Kellyfield Consulting

Ground Floor, 15 Basinghall Street
London EC2V 5BR
Tel: (44) 207 600 2233
Fax: (44) 207 600 8833
E-mail: mark@kellyfield.com
Principal contacts: Mark Field, M.A. (Oxon), Hugh Kelly

Widely regarded as London's leading legal recruitment firm, Kellyfield Consulting was launched in February 1995 by Mark Field (a former corporate lawyer at Freshfields) and Hugh Kelly (then Head of Human Resources at Ashurst Morris Crisp). With an enviable UK and US law firm clientele, the firm has gained universal respect within the London legal community for its highly professional, sympathetic and quality driven approach.

Adopting the highest professional ethics, if you are a US (or dual) qualified associate contemplating a move to London and valuing sensible, down-to-earth advice we should be very pleased to discuss with you your future career options.

During recent months we have placed associates from New York, Chicago and Seattle with leading UK law firms building up their US Securities, International Capital Markets and Project/Telecomms practice. We also have vacancies for lawyers in the international corporate finance, international taxation, private equity and asset/structured finance practice areas.

Lipson Lloyd-Jones

127 Cheapside
London EC2V 6BT
Tel: (44) 171 600 1690
Fax: (44) 171 600 1972
E-mail: info@lipsonlloyd-jones.co.uk
Website: www.lipsonlloyd-jones.co.uk
Principal contacts: Marian Lloyd-Jones, Lucy Boyd

Lipson Lloyd-Jones has just celebrated its 12th year in business, 12 years in which it has established itself at the forefront of the legal recruitment market place in the UK. With offices in the City of London, Leeds and Manchester, as well as associate offices in New York, Hong Kong and Australia, the company offers the most comprehensive coverage both nationally and internationally.

Our consultants are qualified lawyers and recruitment experts, committed to providing a service which is skilful, responsive, accessible and immediate. Our clients include every major law firm in the UK, numerous overseas practices and a myriad of domestic and global banks and blue chip corporations.

Lipson Lloyd-Jones is noted for its innovative approach to recruitment assignments, ensuring that every possible angle has been covered. The company is now poised for further significant expansion in the new Millennium.

Longbridge

International plc

London • New York • Hong Kong
Head Office: 85 Gracechurch Street
London EC3V 0AA
Tel: (44) (0)171 208 5858
Fax: (44) (0)171 208 5859
E-mail: legal@longbridge.com
Principal contact: Frank Varela

Longbridge International pioneered executive search in the UK legal industry in 1989. It remains the leading legal search & human resources consultancy, servicing a blue-chip, international client base in the legal and financial services sectors.

Our unrivaled experience, expertise and market knowledge enables us to place top lawyers into private practice and in-house positions.

Longbridge also advises on human resources issues such as market trends, remuneration packages, growth and team building approaches and staff retention. In particular, we have considerable experience of the human resources aspects of developing new international branch offices.

For further information, please see:
www.longbridge.com

INSIDE PERSPECTIVES

Lateral Partner Recruitment: The New Global Competitive Challenge

JEAN M.H. FERGUS

Introduction

The recently announced merger of London-based English firm Clifford Chance with New York-based U.S. firm Rogers & Wells, and with Frankfurt-based German firm Punder, Volhard, Weber & Axstel has raised the stakes in the race for global dominance in the legal services arena. This international merger has ruptured conventional wisdom on how partnerships are organized and managed, called into question standard strategic initiatives, and made the traditional mode of partnership growth solely though internal promotion a thing of the past.

Notwithstanding this breakthrough merger, the one constant all firms continue to face is the need to attract and retain highly skilled legal talent.

The Global Competition

The new challenge for those firms that are competing for partner talent in the global marketplace is how to attract key partners from competitor firms. To do so effectively, it is necessary first to understand why partners leave their firms. This is important from the standpoints of recruitment, how a firm attracts the partners it wants, and management–how a firm keeps these partners once they've joined.

Why Partners Leave

The key motivators in the current domestic and international marketplaces are platform and management.

As the world has gotten smaller, partners in certain practice areas are recognizing that their horizons have gotten bigger. These partners are eager to gain access to new clients with global needs that will afford them greater professional satisfaction. Other attractions include access to practice areas that are nonexistent at their present firms, enhancement of prestige by either moving to a firm with a "trademark" name or assuming a greater role within its hierarchy, or exercising more control and responsibility over their department's direction. The lateral marketplace now offers opportunities for these partners to reach their goals by moving to better-positioned firms.

Dissatisfaction with management remains a significant motivator as well. Weak or poorly managed firms lead many partners to consider other options. Contrary to popular thinking, partners rarely leave their firms solely because of money. However, partners want to realize an appropriate return on their "intellectual capital"–their time, energy, and skill–in much the same way they would look to other business investments. Fiscal health is a primary responsibility of firm management, especially in order to take advantage of opportunities in the global marketplace.

However, a delicate balance is required to maintain both profitability and the firm's cultural environment. Firm management must be sensitive to the institution's historic cultural values. A too-sudden shift will create internal conflict, resulting in the departure of partners who do not share the new set of values. In Zen terms, these partners are no longer "at one" with the firm.

One recent four-partner defection from a top New York law firm underscores this reality. These partners were well compensated and well positioned within their practice area, but the firm management had changed to a more aggressive, bottom-line approach which was inconsistent with the firm's previous set of values. During my discussions with them, they articulated this by saying the firm was less collegial than it had been when they were elected to the partnership, although the

SPECIAL ADVERTISING SECTION

firm itself had become more profitable. They chose to move to a firm with a lock-step system of compensation which, they felt, assured a more team-oriented environment.

Attracting The Best Lateral Partners

On both sides of the Atlantic, the methods of lateral partner recruitment have undergone significant changes. Many U.K. firms are relatively new players in the lateral partner recruitment market. Hiring partners from competitor firms was just not done, at least not openly. Using the technique traditionally relied upon for the hiring of junior solicitors, U.K. firms paid recruitment agencies to place ads in legal publications announcing a firm's interest in a partner candidate that fit a specific profile. In this way, firms could argue that they had not called the partner, he had called them. However, the effectiveness of these hit-or-miss ad campaigns has been called into question. Advertising tends to pull in only those partners who are already unhappy and shopping for a new firm. The best partners are just too busy to read ads or to respond to them. Increasingly, U.K firms are following their U.S. counterparts in relying on the discreet and targeted approach of legal search consultants.

In the U.S., law firms utilize legal search consultants to help them hire partners and partner groups. Law firms routinely retain the search services of an experienced consultant, giving the search consultant confidential information about the firm's strategic goals while placing their own partner talent "off-limits" to the search consultant's other clients. In this close pairing, the search consultant becomes an important tool in helping both to devise a law firm's hiring strategy and to implement it effectively.

By using a targeted approach to lateral partner hiring, U.S. firms avoid some of the pitfalls associated with a more opportunistic method. U.S. firms found that waiting for a partner to call directly or waiting for a search consultant to call "marketing" a lateral partner was not sufficient to meet their growth needs. The drawback was that the partners in the market for another firm affiliation tended to select only the firms they or the search consultant knew and excluded those firms with which they were unfamiliar. Many firms found that they were "a day late," only learning about a key partner's availability when they read in the legal press of his joining another firm.

Rather than waiting for opportunity to knock, U.S. law firms now do the knocking, targeting key partners with practice skills that fit in with their overall growth needs. Here the role of the search consultant is invaluable. Sitting down with the firm management, the search consultant can help formulate a plan to address their long-term goals.

As part of implementing this plan, the search consultant undertakes a market evaluation, identifying the key partners with the practice skills required, along with an analysis of how these partners are compensated and the likelihood of each candidate's potential interest in the opportunity offered by the client firm. This enables the firm to place candidates in a competitive context where their practice skills and other attributes can be compared with similarly situated candidates.

The candidate pool is then carefully whittled down to a handful of targeted individuals. The search consultant works with the law firm to fine-tune an appropriate message tailored to the individual's particular situation. This further benefits the firm by assuring that only those partners the firm deems appropriate will hear their message, reducing the risk of confidential strategic information entering the marketplace. Indeed, we have conducted searches where the candidate pool consisted of just three qualified partners.

During the candidate approach stage, the search consultant will draw out important questions and concerns the candidate may have and seek to address them with the client prior to any face-to-face meeting, thus eliminating "paper fits" that are unlikely to satisfy the client's or candidate's needs.

The Right Fit

During the interview process, both sides should take time to evaluate their own strengths and weaknesses. It is in everyone's interest to minimize the risk of making poor hiring decisions. Figuratively sitting on the same side of the negotiating table, each should candidly discuss what they have to offer and what they expect from the other.

The importance of hiring a partner who will fit in with the law firm culture cannot be overemphasized. Firms, as well as people, have their own personalities. There are many examples of mismatched marriages of partners and law firms. I recall the fallout after a very staid New York law firm hired a very high-profile litigation partner with a well-known volatile personality. He left after two years to join another firm. The firm then threw itself a party to celebrate his departure. However, I could not help but wonder how this happened. Did they overlook the partner's personality because of his substantial business base? Or did they lack the finesse to effectively manage a high performer? The partner's ultimate failure was also their failure.

Due diligence on client conflicts and billing history is standard protocol. More frequently, additional due diligence includes personal and professional references on the partner being hired. The search consultant is useful in putting together these reports. References should include former partners, former associates, and other partners in the same practice specialty who have worked with the partner candidate. This information is important not only to support the firm's nomination process, but it also is an important tool for managing the new partner once he or she is on board. Also, the firm should make an inquiry of the bar association to check for any disciplinary action involving the potential partner and to verify bar status.

Integrating The New Partner

The real test of a successful lateral partner addition comes after the partner has joined the firm. Lateral partners need to be managed in a different way from the home-grown variety. These lateral partners have been part of another firm and have a basis of comparison that non-laterals lack. And they have already determined their threshold of commitment. Three years ago, we analyzed lateral partner retention of New York law firms over a 10-year period and found that one-third had left their firm. The saying "lateral in, lateral out" is truer today than it was then. One very high-profile New York corporate partner, for example, now at his fifth firm, is rumored again to be on the market.

Cooperation among partners is key to the integration of the new partner. The law firm should ensure that prior to bringing in a new partner, the partnership has reached a consensus that this person is valuable to the firm and all agree to help in his or her success within the firm. Those law firms with a history of lateral partner recruitment have something of an advantage here.

The law firm should recognize the difficulties the new partner will have in his or her own transition to the new firm. Studies have shown that a person making a career move can suffer as much as a year-long period of disorientation. He or she may miss the old office, its routines, and other personal ties established at the old law firm. The firm should make an extra effort to put the new partner on firm committees, seek his or her input on decisions, and involve the partner in social and professional events. A periodic check on the new partner's progress is helpful in making the new partner feel valued.

Benefits Of Lateral Partner Recruitment

Lateral partners and practice groups offer many benefits. They can bring in new ideas, new practice expertise, new clients, and new energy. They force a firm to look outside itself and appreciate the talent in competitor organizations. They can bring a firm greater stability as firm revenues grow and its practice base diversifies. They can enhance a firm's prestige and reputation in a key practice area. They can help attract other lateral partners.

Yogi Berra, the great New York Yankee baseball player, may have expressed it best: "The future," he said, "ain't what it used to be." U.S. and U.K firms have awakened to the opportunities lateral partners offer a firm. The competition for these key additions is intense and will continue as such into the next century. The challenge for law firm managers will be to attract, motivate, and retain these highly mobile assets.

[Reprinted from *The American Lawyer*'s Jan/Feb 1999 Supplement–The introduction has been modified and updated.]

Jean M. H. Fergus is an attorney and a principal with Fergus Partnership Consulting. The firm has offices in New York and London and has been successfully conducting searches internationally for over two decades.

OUTSIDE PERSPECTIVES

Look Before You Leap Across the Pond

LAURENCE LEVY

Following the record levels of M&A activity in the U.K. in 1998, deal flow has continued unabated throughout 1999, with U.S. corporates continuing to figure strongly among acquirors. Amid all this activity, practitioners and regulators alike are having to move quickly to keep pace with the changing demands of the market. This article highlights some recent developments concerning issues that will need to be considered at the outset of a possible bid for a U.K. public company.

The use of break fees, whereby a target company will pay an agreed amount to a bidder if in specified circumstances the bid fails to go through, has long been a feature in the U.S. In recent times break fees have begun to catch on in the U.K., but face a number of legal and regulatory hurdles. The biggest limitation on their use has been the level of the fee. Unlike in the U.S., where break fees often reach 3%, 5%, or even 7% of the target's value, the U.K. practice has generally been to limit the fee to 1% of that figure. One reason for this is that it is unlawful for a U.K. company to give financial assistance for the acquisition of its shares; however, in the context of a carefully drafted break fee agreement, the arrangement will not be unlawful if payment of the fee would not result in a material reduction in the target's net assets. Whilst there is lively debate among corporate lawyers as to the application of these rules to break fees (which will always need to be examined on the facts of any particular case), the consensus view is that 1% of net assets will not generally be material for these purposes. In public company deals, the use of break fees is also restricted under the U.K. Takeover Code, the Takeover Panel being particularly concerned that they might deter competing bids and prejudice target shareholders' interests.

Given the increased prevalence of break fees, the Panel has recently announced certain safeguards to protect target company shareholders:

- any break fee must be de minimis, which will normally mean no more than 1% of the bid value;
- the target company board and its financial adviser must confirm that they believe the fee to be in the best interests of shareholders (the directors in any event have fiduciary duties to this effect);
- full disclosure of the arrangements will be required.

In all cases, it will also be necessary to consult the Panel in advance when break fees are proposed, and the Panel will need to be satisfied with the justifications put forward for the proposal.

The Panel's safeguards have in effect formalized the practice that was beginning to develop in the market. They have not met with unanimous approval–particularly in the low-cap private equity market where the costs of mounting a bid can sometimes exceed 1% of the target's value. In the current climate of shareholder activism, however, it seems unlikely that U.K. public takeovers will adopt break fees at the high levels seen in the U.S..

It is a fundamental principle of the Takeover Code that a bidder should only announce an offer when it has every reason to believe that it can and will continue to be able to implement the offer. Many provisions of the Code are designed to reduce uncertainty for target companies, their shareholders, and the market. Therefore, although offers may be made subject to a number of conditions, the Code restricts the use of any condition which depends solely on the subjective judgments of the bidder's directors or the fulfillment of which is controlled by the bidder. Thus, for example, a due diligence condition would not normally be permitted.

Even where an offer condition is objective, a bidder will not be able to invoke that condition unless it satisfies the Panel that the circumstances are materially significant in the context of the offer. The recent Panel decision relating to the bid by New Carlisle for Corporate Services Group illustrates this. Aware of possible shareholder action against the CSG board, the New Carlisle offer included a condition that the CSG board remain unchanged. When subsequently, a number of CSG directors resigned, New Carlisle sought to lapse its bid by invoking that condition. However, the Panel ruled that the board changes were not sufficiently material to justify invoking the condition and required New Carlisle to continue with its offer.

There are, however, other means by which a bidder can lapse its offer. Generally, the Panel's consent is not needed to invoke the acceptance condition, i.e., a condition that a minimum level of target shares are tendered (90% being the typical level initially specified, as that is the trigger level for squeeze-out rights). An offer may be lapsed on any closing date if the acceptance condition is not satisfied, even if the bidder is entitled to keep the offer open. As it is quite unusual for a 90% acceptance level to be achieved on the first closing date, this condition can in practice be invoked as a means of lapsing an offer, even where the bidder has additional reasons to lapse the offer but which the Panel may not allow the bidder to invoke. This was how New Carlisle lapsed its offer for CSG.

Circumstances can arise where a bidder wishes, or is forced, to announce that it is considering a possible offer, but does not want to be committed to making the offer. Announcements of this type are permitted by the Code, and can include preconditions to which the making of an offer is subject. However, if shareholders are unable to assess in what circumstances the offer may be made, the Panel will be concerned that a misleading or confusing impression about the bidder's intentions may be created. The Panel has therefore recently announced guidelines as to the content of such announcements. In particular, the announcement must make clear whether the preconditions must be satisfied before an offer can be made or whether they are waivable. Interestingly, the Panel has stated that the preconditions may, depending on the specific circumstances, be subjective in form. The preconditions must be cleared in advance by the Panel and, given the Panel's desire to maintain market certainty, it is likely that the Panel will be reluctant to permit their use without good cause.

This year has seen a host of developments in U.K. public M&A. A common theme to many of these developments is the Takeover Panel's continuing drive to ensure good business standards and fairness to shareholders. This may sometimes result in new hurdles for bidders to navigate and reinforces the desirability of early consultation with legal advisers who are experienced in dealing with the Panel. What these developments also demonstrate, however, is the flexibility of the U.K.'s nonstatutory regime for the regulation of takeovers. It is that flexibility, combined with the speed and certainty of confidential response that the Panel brings to front-line transactional issues, without any realistic ability for a party to litigate a Panel ruling, that has helped stimulate the recent growth of foreign investment in the U.K..

Laurence Levy is a partner in the corporate finance department of Norton Rose. If you would like further information on any of the issues discussed in this article, or any aspect of M&A activity in the U.K., please contact Laurence Levy at levylb@nortonrose.com or +44 171 444 3509 (direct line).

www.nortonrose.com

OUTSIDE PERSPECTIVES

International Exhaustion of Intellectual Property Rights

IAN WOOD

Even approaching the millennium, in an era of vast and ever increasing international trade, the position on the exhaustion of intellectual property rights in cross-border trade is uncertain and confusing. A clear example of this is in the European Union, where a debate rages over the rights of registered trademark owners to use their trademarks to block parallel imports into the European Economic Area (which comprises the European Union countries plus Norway, Iceland, and Liechtenstein) of goods to which the registered trademark has been applied.

It is well established that where goods to which a registered trademark has been applied are first put on the market *within* the EEA with the trademark owner's consent, then the owner's rights in that trademark are "exhausted" and so the owner cannot subsequently prevent imports of that product in unaltered form from one EEA member state into another. However, the position regarding such imports from *outside* the EEA is not so clear-cut.

In some (but not all) EEA countries the parallel import of goods bearing a registered trademark has generally been permitted in the past–including, for example the United Kingdom, Austria, Germany, and Sweden.

By way of example, in the United Kingdom, the legal basis on which parallel imports have been allowed in the past has been either that:

- once the trademarked goods were placed on the market anywhere in the world by the owner of the trademark, or with his consent, all his rights in the goods (including the trademark rights) were "exhausted." Thus, the original owner of the goods had no further rights in the goods and so, for example, could not prevent their import into the United Kingdom; or

- even though the owner retained rights (for example, by contract), and thus his rights were not exhausted, on his sale or other disposal of goods the owner granted an implied license to deal with those goods, which included an implied license to import those goods into the United Kingdom. Thus, as a general rule for parallel import goods, either the United Kingdom Courts held that the trademark owner had no further trademark rights in respect of such imported goods or, if he had, he was unable to enforce them.

There were very occasionally exceptions to this rule–where the reasons for not allowing the parallel imports could be justified objectively. For example Colgate-Palmolive was able to prevent the importation into the United Kingdom of genuine Colgate toothpaste intended for the Brazilian market where, due to local Brazilian economic constraints, the quality of the toothpaste for the Brazilian market was much lower than that for the U.K. market. The Court held that there was no implied license, and Colgate's trademark rights were not exhausted.

ECJ decisions—Silhouette and Sebago

In July 1998, the European Court of Justice (ECJ) dealt a significant blow to parallel imports in the EEA by ruling in *Silhouette*[1] that the owner of an EEA-registered trademark could use that mark to prevent the importation of his branded goods into the EEA, even though the brand owner himself had placed those goods on the market *outside* the EEA in the first place. The ECJ held that, under the EU trademarks Directive,[2] the national trademark laws of EEA member states cannot provide for international exhaustion of registered trademark rights. As a result, parallel traders, consumer bodies, and others are attempting to find ways around this ruling–both by lobbying for a change in the wording of the Directive and by trying to limit the scope of the judgment, for example, by arguing that the registered trademark owner implicitly consented to the importation of the goods into the EEA.

The ECJ has already had an opportunity to reconsider the *Silhouette* decision. That was in *Sebago*[3], when in July 1999 the ECJ rejected the (what seemed to be legally weak) argument that a trademark owner who has consented to a particular consignment of goods being marketed in the EEA has also implicitly consented to the sale of all other consignments of identical or similar goods within the EEA, including those which have been legitimately first put on the market outside the EEA.

Zino Davidoff -v- A & G Imports

A case with a seemingly greater chance of limiting the effect of the *Silhouette* decision is the *Davidoff*[4] case concerning luxury toiletries and cosmetics. Such products bearing Davidoff's trademarks are made in France and distributed throughout the world. In May 1999 the English High Court agreed with the *Silhouette* decision in that there was no automatic exhaustion of Davidoff's trademark rights in the EEA where the goods had been placed on the market outside the EEA. However, the Court considered that the *Silhouette* decision went too far in that it "bestowed on a trademark owner a parasitic right to interfere in the distribution of goods which bears little or no relationship to the proper function of a trademark right"–namely as a badge of origin.

In the High Court's view, a trademark owner itself *could* prohibit the importation into the EEA by the distributor or subsequent purchasers by including appropriate and explicit contractual provisions in the original sale contract–with self-perpetuating obligations to be imposed on subsequent purchasers in the distribution chain. Alternatively, the trademark owner *could* give its express consent to the importation and subsequent sale in the EEA. The judge also considered that there could be a situation, under English contract law at least, where the registered trademark owner is deemed to have consented to the importation and sale by others within the EEA–namely, where the trademark owner has not imposed any effective contractual restrictions on onward sales.

This case has been referred by the English High Court to the ECJ–whose judgment will be awaited with interest. However, pending the ECJ decision in *Davidoff*, it will be difficult for registered trademark owners to stop the parallel importation, at least into the U.K., of branded goods acquired outside the EEA (although as an interesting side issue the High Court stated that the evidential burden of proving where the imported goods come from is on the *parallel trader*).

It remains to be seen whether the "implied consent" defense will be invoked against owners of other intellectual property rights, such as copyright.

There are further developments in the U.K. which may minimize the impact of the *Silhouette* decision. Although it has generally been held in the past that where a claimant had established infringement of intellectual property rights in the U.K., he was usually entitled, as of right, to a wide injunction restraining the defendant from any future infringements of that right; in a separate case brought by Microsoft in the English High Court (which related to counterfeit products, rather than parallel imports), it was held that the Court could, in exceptional cases, grant relief in a narrow form–for example, an injunction which would prohibit any dealing in products which the defendant knew or ought upon reasonable enquiry to have known were counterfeit. It is likely the U.K. courts at least will make greater use of such restricted injunctions to minimize the impact of the *Silhouette* decision.

But however matters progress in the Courts, the politicians will undoubtedly influence parallel imports in the future. For example, in July 1999, a U.K. House of Commons committee published its findings on the parallel importation of cheaper designer goods into the EEA and the impact of the ECJ decision in *Silhouette*. Following submissions from major retailers, brand owners, and representative bodies, the committee's recommendation to the U.K. government was that the EU trademarks Directive should be amended so as to remove the restrictions on parallel imports for clothing, shoes, perfumes, toiletries, and motor vehicles from outside the EEA. The committee recognized that pharmaceuticals and music products should be treated differently and that the principle of international exhaustion of trademark rights should not apply to them.

The debate over parallel imports looks set to continue.

Ian Wood
Rowe & Maw
20 Black Friars Lane
London EC4V 6HD

(1) Silhouette International Schmied GmbH & Co KG and Hartlauer Handelsgesellschaft mbH in the European Court of Justice; judgement dated 16 July 1998.
(2) First Council directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trademarks–incorporated into U.K. law by the Trade Marks Act 1994.
(3) Sebago Inc. and Ancienne Maison Dubois et Fils SA -v- GB-Unic SA; judgement dated 1 July 1999.
(4) Zino Davidoff SA -v- A&G Imports Limited 1999 RPC.631.
(5) Microsoft Corp. -v- Plato Technology Limited; English Court of Appeal judgement dated 15 July 1999.

Rowe & Maw

OUTSIDE PERSPECTIVES

An American Law Firm Opening an Office in London– *An English Legal Perspective*

PETER BORROWDALE

This article notes a number of areas where tricky legal issues arise.

People

The duty of good faith and the supply of information

An English partner approached by an American law firm will have to observe the duty of good faith owed to existing partners. There is no concept of inducing a breach of this duty but the duty is often contractually written into the partnership deed, e.g., full-time attention to the affairs of the firm, confidentiality. The American law firm will have to be careful not to induce a breach of that contract.

Restrictive covenants

In the United States restrictive covenants are unenforceable according to professional canons of ethics. The opposite is the case in the U.K. where the House of Lords in *Bridge -v- Deacons [1984] 2All ER 19* essentially stated that because of the special relationship between partners, a departing partner had to observe a restrictive covenant whereby that partner agreed for a period not to act as a solicitor in a given geographical area for clients of the firm or any client of the firm in the preceding three years. Thus, a release will have to be obtained or the American firm will have to sit out the restrictive covenant and support their new colleague in the meantime.

Notice periods

Notice periods for English partners of one year are common. Sometimes partnership deeds contain queuing provisions allowing only a limited number of departures in a given period. Some partnership deeds contain "garden leave" provisions, allowing the firm to require the departing partner not to represent his or her clients when notice to leave has been given. Client power can have the effect of persuading the former firm to release the partner from the garden leave provision since it is often not going to be in the interests of the former firm to insist on the garden leave provision being observed.

Non-partner candidates

Notice periods are shorter, and restrictive covenants are common and more susceptible to challenge. Again, the U.S. law firm must take care not to induce a breach of contract, for example, by seeking to have the lawyer give short notice or to obtain confidential information.

Structure

Law Society rules will only permit solicitors to share fees with "registered foreign lawyers" (RFLs). At its simplest, all the U.S. partners should therefore become RFLs in an enlarged U.S./U.K. firm. Of course, this is unlikely to make commercial sense. The London partners will therefore have to be organized into a separate partnership with certain U.S. partners becoming RFLs, as a subset of the American firm. The London partnership will then conduct the English practice. This leads to the complication of running separate books of account, frequently operating on a cash (U.S.) and an accruals (U.K.) basis.

U.S. law firms are often organized as corporations in the U.S. and the question will be whether they can organize a subsidiary company in the U.K.. The shareholders in such a corporation organized in England may only be solicitors or RFLs. There is a similar rule for the directors and officers. It is not permissible for any such shareholder to hold shares for and on behalf of a U.S. corporation. It would be technically possible to organize a corporate structure with the shares held by the solicitors and the RFLs for their own benefit. As with a partnership structure, any surplus profits payable to the RFLs could be reflected by a reduction in their draw from the U.S. corporation.

There is a strong argument that if losses are made in the early years the partners in the English partnership will have no tax to pay, even though they may have been receiving a "draw" funded by the U.S. firm. It may well then be the desire of the firm to have the "tax," which would otherwise have been payable by the English partner, allocated to the current accounts of the non-U.K. resident RFLs rather than paid to the English partner. This will assist group cash-flow, and reduce the surplus needed to be earned by the non-U.K. resident RFLs before their negative current account is extinguished.

Funding of the English Partnership

Usually English partners feel that all the partners at large, U.S. and U.K., should be primarily liable for funding the new venture. In the case of a bank line, a loan might be made to the American firm with amounts drawn down being loaned on to the English partnership. For the same reason, the English partners may require that the premises lease is taken by the U.S. firm or in the name of a company owned by the partners as a whole. An arrangement might also be required under which the U.S. firm picks up the excess of expenses over income of the English partnership in the early years.

Conflicts of Interest

Law Society rules tend to be very direct about whether or not a conflict of interest has arisen, depending upon (a) whether the firm is on both sides of a matter or dispute; or (b) whether a firm has confidential information relating to a client which would compromise the firm. U.S. rules are often aimed at relationships, making it difficult to represent two clients in overt competition with each other. A decision will have to be made as to whether the English practice may apply English rules only.

Overview

To their frustration, American firms investing in the U.K. find that moves between firms happen very much more slowly than in the U.S.. Also, the concept of the "portable practice" is not as readily identifiable in the English market as in the American. However, significant cultural, legal, and ethical similarities exist. Given the enormous power of U.S. business in the United Kingdom and Europe, it makes sense for the legal professions on either side of the Atlantic to move closer together.

Peter Borrowdale
Partner, Sonnenschein
London

Sonnenschein

"My wig is not a hairpiece…

Whither the Barrister?

it's the cornerstone of the constitution."

Times change. One January evening in 1661, a barrister recorded that the King kicked off the season's revels in an Inn of Court "…by throwing the dice himselfe in the privy chamber, where was a table set on purpose, and lost his 100£. The ladies also plaid very deepe... Sorry I am that such a wretched costome as play to that excesse should be countenanced in a court which ought to be an example of virtue to the rest of the kingdom." In 1988, U.S. Chief Justice Warren Burger wrote admiringly: "…nowhere have I seen more fearless, more vigorous, and more independent advocacy than that found in Britain's courts…At the core of [barristers'] training is the inculcation of strict standards of ethics, civility, and decorum."

Wandering through the winding nooks and crannies of the Temple, one would be forgiven for thinking one had slipped accidentally into a living heritage center or working museum. Even in 1661, the bar was a doughty old beast, most of the Inns of Court having been established way back in the 13th century. Now, as then, a large number of barristers had studied either at Oxford or Cambridge. And now, as then, the bar wasn't just another profession, but a way of life. But not everything is the same. "Dancing," observed a certain William Dugdale, was not "merely permitted, but thought very necessary and much conducing to the making of gentlemen more fit for their Books at other times." But the oddball, fancy footwork is now more of an extracurricular activity. As an institution, the bar remains redolent of another age.

The quaintness of the bar, however, is dangerously deceptive. While barristers constitute only a fraction of the nation's lawyers, their influence is disproportionately strong. Ninety percent of judicial appointees come from the bar. The Lord Chancellor is invariably a barrister, and it is an almost ubiquitous profession for members of parliament to hold. Barristers have establishment clout. But despite—or because of—all this, the bar is coming under pressure. Traditional conservatism—mirroring, some would say, the caution that safeguards the common law—is seen in some quarters as reaction. Some sets of chambers, for example, resisted the implementation of EU equal opportunities legislation. Currently, a pupil (apprentice) barrister is suing her chambers for contravening U.K. minimum pay legislation. This has real significance for the future of the bar: Currently 40 percent of pupillages are unfunded, which, critics say, perpetuates the predominance of independently wealthy—and, more often than not, white—barristers. Paradoxically, the bar is also coming under fire for the $1.5 million-plus incomes that its most preeminent members receive from the Legal Aid Board, the government body responsible for funding litigation for those who can't afford it.

The challenge for the bar is to accommodate change without being bowed by it. Most barristers would be sad if their profession discarded its more ceremonial guises for the sake of modernity. As one barrister insists: "My wig is not a hairpiece; it's a cornerstone of the constitution." Doubtless, the bar can't remain immune from criticism. Barristers are enormously privileged: They enjoy subsidized office space in highly desirable period buildings. It is still very difficult to sue your barrister for professional negligence. And the bar represents a perfect launching pad from which to pursue a public life. If it continues to maintain its "strict standards of ethics, civility, and decorum," many of the bar's idiosyncrasies will be forgiven. Even the wigs.

Orrick

Fergus