

COMMERCE Magazine's First Annual Law Firm Managing Partners Roundtable

COMPILED BY MILES Z. EPSTEIN
EDITOR, COMMERCE

AS PART OF *COMMERCE* MAGAZINE'S CONTINUING series of forums for business CEOs, this issue features the First Annual Law Firm Managing Partners Roundtable. Law firm leaders address key issues such as trends involving legal services, best practices for marketing legal services, and an assessment of laws that are needed or need to be repealed in New Jersey. The following managing partners participated in this market analysis:

- Managing Director Patrick C. Dunican, Jr., Esq.
Gibbons, Del Deo, Dolan, Griffinger & Vecchione, PC.
- Managing Partner John J. Eagan, Esq.
Norris McLaughlin & Marcus, P.A.
- Managing Partner Thomas S. Howard, Esq.
Kirsch Gartenberg Howard, LLP
- Managing Partner Frank V.D. Lloyd, Esq.
Harwood Lloyd, LLC
- Managing Partner David H. Nachman, Esq.
Nachman & Associates
- Managing Partner Richard W. Schey, Esq.
Jackson Lewis, LLP
- Managing Partner Lois Van Deusen, Esq.
McCarter & English, LLP

Q. *What trends are you seeing in legal services, and specifically in business-related litigation?*

DUNICAN: Business-related litigation is extremely active. Corporations are involved in major matters across the entire spectrum of disciplines including environmental, intellectual property, products liability and antitrust. In a growing number of these cases, electronic discovery is being used as a sword and shield. To address this, last year Gibbons created an interdisciplinary Electronic Discovery & Information Management Counseling Team including attorneys and IT professionals to assist clients in creating policies, complying with current law, and answering the problems that arise during litigation. This team assists the firm and its clients by providing cutting-edge technology and solutions for even the most difficult e-discovery issues. By counseling clients before litigation occurs, the team has also managed to assist in providing safeguards and policies that minimize the risk of litigation and extensive, and expensive, electronic discovery requests.

EAGAN: Norris McLaughlin & Marcus has seen two significant trends in business-related litigation in recent years: (1) parties are increasingly agreeing to use experienced mediators to assist in resolving litigation; and (2) courts are ordering the parties to bear the expense of a neutral private attorney to serve as a discovery master. Despite the increasing number of retired judges and experienced attorneys advertising their services as mediators, there is a small group of mediators who have

continued on page 64



Law Firm Roundtable

continued from page 62

“In a growing number of cases, electronic discovery is being used as a sword and shield.”

—*Managing Director Patrick C. Dunican, Jr., Esq.;*
Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C



“We see two significant trends in business-related litigation: parties are increasingly agreeing to use experienced mediators to assist in resolving litigation; and courts are ordering the parties to bear the expense

of a neutral private attorney to serve as a discovery master.”—*Managing Partner John J. Eagan, Esq.;*
Norris, McLaughlin & Marcus, P.A.

the reputation of successfully mediating complex and substantial business disputes. Their services are so highly sought after that they often have long waiting lists and limited availability. In those matters which are not resolved through mediation, we often see courts appointing private attorneys to act as discovery masters to resolve discovery disputes between the parties. The parties are responsible for hourly fees charged by the discovery master for his or her services.

HOWARD: Clients are becoming more sophisticated in evaluating their legal requirements, and in selecting legal counsel. Clients also expect that their lawyers will

work at achieving cost containment while remaining responsive and attentive to the client's need. The effect in business litigation is to produce a greater degree of openness about the cost of litigation tactics and tools, and to involve the client more in deciding how to proceed with the litigation.

LLOYD: Clients are looking for one-stop legal services. A client who retains a firm for one matter wants the convenience and comfort level of being able to go back to that firm for other matters such as commercial or residential real estate or business transactions, estate planning, elder law, and family law.

NACHMAN: Our practice is highly-specialized as we focus on the representation of management in immigration-related affairs. There are a couple of trends that I have noticed in immigration law; the first being the increasing demand for the H-1B professional and specialty work visa. Every year, the quota for H-1Bs is used up faster, and earlier in the year. This clearly demonstrates the need for highly-skilled workers and specialized skill-sets that we are not able to find in the U.S. worker pool. In response, there is a provision to increase the H-1B quota from 65,000 to 115,000 in the proposed “Comprehensive Immigration Reform” Bill being bandied about in Congress. A second trend worth mentioning is the increased regulation on “security” and “identity” verification in connection with the employee hiring process. The government is proposing that an employer can face up to 10 years in prison and fines up to \$250,000 for each undocumented worker that may be on the company payroll.

SCHEY: Since Jackson Lewis is one of the largest firms in the United States representing management exclusively in workplace law, we have the opportunity to observe the trends in legal services across the country, as well as regionally. On all fronts, the increase in employment litigation continues, with defense of discrimination, wage and hour, restrictive covenants, implied contracts, whistleblower claims, and other traditional employment and labor matters a priority for corporate legal and human resources departments. As a result, many employers are looking for ways to reduce liability and minimize the risk of litigation through management and employee training, internal dispute resolution programs, and employment practices liability insurance, among others. Combined with the increasing importance of corporate compliance and the pressure to control legal costs, providers of legal services must be flexible and adaptable to changing client needs. At the same time, organizations are demanding greater competence, efficiency, and responsiveness, and at the same time are pressing for the most competitive pricing for legal services. Responding to this changing corporate

continued on page 66



Law Firm Roundtable

continued from page 64

“Clients are becoming more sophisticated in evaluating their legal requirements, and in

selecting legal counsel.”—*Managing Partner Thomas S.*

Howard, Esq.; Kirsch, Gartenberg, Howard, LLP



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—*Managing Partner Frank V.D. Lloyd, Esq.;*

Harwood, Lloyd, LLC

climate is the biggest challenge for mid-sized to large law firms, and in particular, “boutique” firms, such as Jackson Lewis.

VAN DEUSEN: We at McCarter & English see consolidation and convergence in the market for legal services as clients seek to work with outside firms which can provide for more of their needs in a coordinated fashion. There seems to be an increase in arbitration and mediation as an alternative to the time consumed in litigation.

Q. *How are law firms marketing themselves in the New Jersey marketplace? What mediums are getting the best results?*

DUNICAN: Gibbons' goal is to be known as a full-service, regional firm throughout the mid-Atlantic and Northeast. To reach this goal, the firm has increased its client base, while retaining our valuable clients, by going beyond New Jersey and to leverage that expansion by offering additional services to existing clients and attracting new clients who would otherwise engage the services of competitor firms. As part of this strategy, Gibbons opened its New York office in 1997 and its Philadelphia office last year. Today, the New York office has more than 35 attorneys practicing in all areas of the law and the Philadelphia office expanded this year to more than 30 attorneys through the acquisition of a prominent civil litigation boutique. As a result of this momentum, the firm has garnered some attention in the legal press. At the same time, the firm has focused its efforts on building a strong brand through targeted advertising that will positively reinforce the clients' perceptions about the firm's practice areas. Direct mailers have also proven to be an effective way of communicating to our existing client base.

EAGAN: Law firms continue to market themselves through a combination of media, including advertisements, the web, and public relations. For example, our implementation of a public relations strategy has allowed the firm to publicize its recent merger with a New York City real estate/litigation firm in various New Jersey and New York media, such as law journals, business and industry publications and regional newspapers. Public relations has also helped the firm's recruiting efforts, which are very important in today's legal industry since there is stiff competition for legal talent. As a result of Norris McLaughlin & Marcus being named as one of the “Best Places to Work in New Jersey” for 2006, the firm's name was prominently mentioned in the media and this enhanced visibility yielded a much higher number of inquiries from interested attorneys.

HOWARD: We participate as speakers in continuing education programs and at various gatherings of business executives. We also try to publicize our clients' successes—subject to confidentiality considerations—and to publish articles on topical legal issues. Our best form of marketing, however, is through the positive words our clients and colleagues use in sharing their satisfaction with our services when recommending us to their friends and associates.

LLOYD: Speaking before targeted groups and writing for professional or trade publications; networking through professional associations; advertising in professional and business publications; personal contact with present or potential clients. The best approach is still one-on-one contact in business and social settings with existing or potential clients.

continued on page 68



Law Firm Roundtable

continued from page 66

We are seeing an increasing demand for the H-1B professional and specialty

work visa.”—*Managing Partner David H. Nachman, Esq.; Nachman & Associates*

NACHMAN: Law firms are taking more initiative toward implementing a marketing function in the organization. Lawyers today are coming to an understanding that they need to implement “marketing” as a discrete function within their organization—whether the firm is large or small. Law Firms are now hiring marketing directors and graphic designers who are responsible for promotional development. Law firms have traditionally marketed themselves in newspapers, magazines and journals; however, the Internet has opened up a new medium for lawyers to afford information to the public. In terms of what mediums may get the best results with marketing—our marketing philosophy is that “if you throw enough against the wall, some of it is bound to stick.” We have found that by constantly exploring new mediums, we have been able to reach potential new clients.

SCHEY: While all of our attorneys are skilled at counseling and case management, many have devoted a significant amount of their practice to specific substantive

areas of workplace law by building subject matter expertise and experience within the broader range of employment, labor, benefits and immigration law. In this way, Jackson Lewis has been able to tailor responses to requests for proposals, to cross-sell services among existing clients, and to position the firm through topic-specific media outlets, business and trade associations, and other focused marketing initiatives. This topic-specific expertise also enables Jackson Lewis attorneys to respond immediately and in depth to the news of the day as it impacts workplace law, such as the April and May immigrant rights rallies encouraging people to boycott their workplaces. For Jackson Lewis, among the most successful marketing initiatives are topic- and region-specific management education events and newsletters, including regular and special e-mail updates. Our award-winning Web site concentrates on content with substantive value to in-house counsel and human resources professionals; content is updated daily. When needed, we issue e-mail alerts within hours of a breaking news event, enabling Jackson Lewis to be the “go-to” law firm when New Jersey employers and media need a quick and accurate response to a workplace issue or situation.

VAN DEUSEN: Lawyers' most important marketing tools—quality service, responsiveness, personal relationships—have not changed. Among the media available for outreach, the Internet has become a significant factor, especially as a way to make available timely information on new developments in the law. We have also found CLE programs directed to in-house counsel to be good marketing initiatives.

Q. *What can be done to improve the business climate in New Jersey? Are there any state laws that should be repealed, and if so, why?*

DUNICAN: Attracting major businesses to New Jersey and helping these businesses stay in the state will only

continued on page 70



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Law Firm Roundtable

continued from page 68

“On all fronts, the increase in employment litigation continues, with defense of discrimination, wage and hour, restrictive covenants, implied contracts, whistleblower claims, and other traditional employment and labor matters a priority for corporate legal and human resources departments.”—*Managing Partner Richard W.*

Schey, Esq.; Jackson, Lewis, LLP

help the business climate. The state government must create tax policies that encourage companies to come to New Jersey, remain in the state and encourage employees to live here. We were pleased that the much-discussed sales tax on professional services was not part of the Governor's proposed budget. Such a tax, in a service economy, would make legal services more expensive and put New Jersey-based firms at a competitive disadvantage.

EAGAN: One New Jersey state law in particular that should be reassessed is the Natural Resources Damages Claims Law. This law currently allows for claims of reparations of alleged loss of resources, particularly in the use of water at sites where hazardous use has been discharged. Even in cases where cleanup has been done, parties are being held accountable for natural resource damages, even if no one has ingested hazardous substances or been harmed by them. One would expect a law to apply where there are demonstrated damages as opposed to theoretical damages.

HOWARD: Businesses constantly consider the relative merits of remaining in New Jersey versus moving to another state. The comparatively high business taxes in New Jersey are one of the principal considerations. Accordingly, the leadership of this state must make every effort to ease the burden imposed by such taxes. To the extent the taxes are believed necessary, our state leaders must insure that the state's businesses are benefiting by remaining in New Jersey. Among other considerations, New Jersey has an excellent network of higher

education—producing a trained workforce. We need to continue to foster such a quality education so that this state may continue to attract new businesses. New Jersey also has a superb infrastructure of highways, railroads, seaports and airports—but much of the connecting infrastructure is aging and underfunded. Among other things, this state needs to provide for the continued funding of the Transportation Trust Fund. New Jersey business can continue to have confidence in this state only so long as New Jersey provides the educated workforce and the transportation infrastructure to support growth. We need to continue to focus on the long-term growth, not short-term fiscal gimmicks that increase debt or that move expenses from one budget line to another. Education and infrastructure will attract business, including the pharmaceutical and high-technology firms that have led the way in New Jersey for the past 25 years.

LLOYD: Generally, certain statutory and regulatory processes should be repealed or modified to make it easier for businesses to more quickly complete transactions or enforce their rights and remedies.

ISRA is, in some cases, overly broad, and, as a result, impedes the prompt completion of a transaction that all parties want. For example, *ISRA* is triggered by a “change in ownership” of an “industrial establishment.” That includes “the sale or transfer of the business of an industrial establishment or any of its real property...” We were recently involved in a loan transaction where the current owner of an “industrial establishment” was selling the real estate—not the business—to a third party. The new owner would then lease the property back to the prior owner. There would be no interruption in the business that had been conducted on the property for many years. Nonetheless, consummation of the transaction was delayed for several months until the requirements of *ISRA* were met, frustrating the seller, buyer, and the lender.

The *Fair Foreclosure Act* creates needless procedural hurdles for lenders seeking to foreclose residential mortgages. For example, NJSA 2A:50-58 requires that at least 14 calendar days before it applies for judgment, a lender mail by certified mail, return receipt requested to borrower, a notice that unless the borrower, within 10 days after receipt of the notice, mails a statement in which it in good faith certifies as true that there is a reasonable likelihood that it will be able to cure the default within 45 days of when the notice is mailed, the lender will apply for judgment and upon its entry, the borrower will lose its right to cure the default. A lender who receives such a statement from a borrower cannot apply for judgment with a return date earlier than 46 days after the date the notice was mailed. The 14-day notice is duplicative of prior notices and nearly no borrower responds to it anyway. When a borrower does respond, it's generally

continued on page 72



Law Firm Roundtable

continued from page 70

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with outside firms which can provide for more of their needs in a coordinated fashion. There seems to be an increase in arbitration and mediation as an alternative to the time consumed in litigation.—*Managing Partner Lois Van Deusen, Esq.; McCarter & English, LLP*

for purposes of delay. Additionally, the Clerk's Office has interpreted the section to mean that if the borrower refuses or doesn't claim the certified mail, it has not *received* the notice and the lender cannot apply for judgment until at least the 46th day after the notice was mailed. If a borrower is in foreclosure, assuming it can be located, it is not likely to accept a certified letter from its lender or its attorney—in most instances there is an unwarranted 46-day delay in being able to apply for judgment.

NACHMAN: The New Jersey business climate should be modified to be more friendly toward international investors. This can be done by passing special tax incentives and special tax rebate programs that would allow foreign companies to establish themselves in the State of New Jersey. While there are programs like this presently, the information about them is hidden. The State of New Jersey needs to market its international “arms open” philosophy throughout the world. Taxes should be reduced for foreign companies so that they are able to “get up on their feet.” Perhaps companies can enter into a “Memorandum of Understanding” with the State and be afforded benefits if they agree to contribute to the New Jersey tax base for a given number of years. We must view foreign investment not as “competition” but as an “addition” to our nation's infrastructure.

SCHEY: Regarding the business climate, it is no secret that the cost of doing business in New Jersey is a drag on its economy and its ability to create new jobs. New Jersey is already among the market leaders in terms of compensation which helps in attracting talent. However, when you couple the wages with other factors, like the high cost of providing health insurance, a difficult dynamic emerges. Health insurance reform must be a priority. With respect to state law, one area that needs attention is the unemployment compensation law as it pertains to striking employees. The unemployment statute itself has been on the books for years and declares strikers generally ineligible to collect unemployment benefits. Recent interpretations, however, made it easier for strikers who chose not to work to collect unemployment. The situation tips the scales in favor of organized labor and forces the state to subsidize the strike. It would be comforting to New Jersey employers, or potential employers, if NJ State Legislators amended the statute, eliminated any loop holes and restored the proper balance.

VAN DEUSEN: I have no specific laws that I would target for repeal, but the high cost of doing business in New Jersey is certainly a problem. Primarily, we're talking about taxes and wages. Hopefully, the concentration of wealth and talent that exists in this state will continue to attract business, notwithstanding these costs. ■

