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FT US INNOVATIVE LAWYERS 2012



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US INNOVATIVE LAWYERS 2012

LEADING AND LAGGING

This is the third year that the Financial Times has produced the US Innovative Lawyers special report. The report includes our unique rankings of law firms that are bringing fresh thinking and practices to solving business problems in America.

This year we have had a particularly strong set of submissions to the rankings, from more than 60 law firms and nearly half that number of in-house legal teams across the US. The submissions give an insight into some of the main business, regulatory and economic issues preoccupying America.

Some of the most dynamic areas of the economy are showing themselves by the way they are pushing and changing the law to keep up with their innovations. These sectors include technology, social media, telecommunications, pharmaceuticals and energy.

The litigation and finance sections of

the report show that some four years after the start of the financial crisis, lawyers are helping to bring resolution to some of the bitter disputes arising from the credit crunch and the finalising of significant restructurings – though a few battles are still being fought.

The increased burden of regulation on US business, notably in the anti-trust area and the Dodd-Frank Wall Street reform act, has kept lawyers busy trying to lighten the load for clients in an innovative manner.

And while Asian and South American economies present great opportunities for US businesses, they can also pose threats – from copycat manufacturers and from alleged theft of intellectual property. Lawyers have been heavily involved in these controversies, such as in the smartphone wars.

But, while the US legal profession is

moving into the 21st century in how it communicates with clients, the report suggests that, in terms of process innovation, US firms lag behind those in the UK. While there are the beginnings of change, relatively few top firms have tackled seriously their hourly fee models, despite the increasingly vociferous demands of clients. But as the in-house corporate counsel section of the report reveals, lawyers at top US companies are changing the rules of engagement.

I would like to pay particular thanks to Reena SenGupta, the inspiration for the rankings, whose RSG Consulting does the research; and to FT colleagues who have helped make the report such an annual landmark.

Martin Dickson
US Managing Editor
Financial Times

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Research methodology

The FT and its research partner RSG Consulting use a bespoke methodology to rank lawyers on innovation. For the FT US Innovative Lawyers 2012 report, 320 submissions were received and more than 400 telephone interviews with senior lawyers and C-suite executives conducted to arrive at the final rankings. The entries were scored out of 10 points on originality, rationale and impact, and benchmarked against each other to arrive at the final rankings. The research was conducted by a team of six RSG researchers between September and November 2012.

A more comprehensive version of the tables can be found at www.ft.com/innovative-lawyers-us



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INTRODUCTION



FIRMS GROW SMARTER ON STRATEGY

The top legal businesses have plotted moves that recognise the increased power – and demands – of clients, says **Reena SenGupta**

Nearly all the leaders of the firms in the 2012 FT Law 25 had the same observation this year: the market is flat so the only way to grow is to win business from competitors or to create new markets.

Most of the top US law firms have similar strategies – to focus on retaining premium work and to avoid commoditisation. To achieve this, they need continually to prove that they are ideal for handling complex, high-value matters. This is not easy in the \$240bn US legal market, which is both broad and deep. In 2010, the vast majority (78) of the top 100 most-profitable law firms globally were American.

The only way these firms can maintain their position on the value curve is to prove to clients that they are unique. This onus on differentiation may be one reason why they have been keener than ever to show the Financial Times their innovations. A flat, paralysed market has taken innovation from something that is nice to have, to being a “must-have”.

The competition in the FT report reflects the struggle for market differentiation. The rankings reveal lawyers working at the intersection of different practice areas and technologies, actively

changing their behaviours and assuming different roles.

The submission from Morrison Foerster, a firm that started on the west coast, exemplifies these trends. Its commitment to the US covered bond market in the mid-2000s broke new ground to allow institutions access to additional capital. And its ability to marry its technology expertise with its capital markets practice recently gave birth to FrankNDodd, named after the Dodd-Frank Wall Street Reform and Consumer Protection Act. This tool allows institutions to navigate the regulatory tangle of new legislation. Both innovations are ranked in the 2012 FT report.

Four years into the downturn with no sign of a boom means clients have the upper hand. Nearly all the 200 clients interviewed to compile the report wanted better fee arrangements and efficiencies from their law firms. While a few firms still feel they can sidestep client demands, most have sought to improve their process innovations and, in particular, the value proposition of their younger lawyers.

On the process innovation side, the significant trends have been a more widespread adoption of fixed and predictable fees, project managers and low-cost cen-

tres. In terms of changing the value proposition of lawyers, the trends have been subtle but more interesting.

Brad Malt, chairman of Ropes & Gray, says: “Buggy whip manufacturers went out of business as they did not adapt to the car. We are faced with a buggy whip moment. Firms can pretend that old market dynamics exist – but they don’t.” For the firms who agree with this, changing the behaviours of their lawyers to align more with clients’ demands is imperative.

‘We preach the wow factor – the idea that you have to continually impress clients’

Paul Hastings has put behaviour change at the centre of its Superior Performance and Coaching programme, designed to place the competencies most valued by clients at the core of its associate career development.

The firm analysed the behaviours of role model lawyers in the firm before building a proprietary framework around them. Although this is not new in the corporate world, the systematic and comprehensive way that the firm has sought to replicate desired lawyer behaviour is unusual for the legal profession.

Crowell & Moring realised that to get the whole firm to use professional project management techniques required behaviour change. “We started with the notion that we, not an outside consultant, had to change behaviour before an online tool would be effective,” says the firm. After putting more than 400 lawyers through the training, the firm’s project management approach is now becoming a differentiator for it in winning pitches.

However, the pace at which the US firms are adopting process innovations is much slower than in the UK. Part of the reason for this is because the financial crisis has continued to deliver a rich seam

● FT LAW 25

Rank 2012	Rank 2011	Firm	Legal expertise ¹	Business of law ²	Total ³
1	5	Latham & Watkins	133	41	174
2	2	Skadden, Arps, Slate, Meagher & Flom	162	0	162
3	7	Paul Hastings	104	42	146
4	1	Davis Polk & Wardwell	98	38	136
5	3	Cleary Gottlieb Steen & Hamilton	106	19	125
6	22	Weil, Gotshal & Manges	84	0	84
7	9	Seyfarth Shaw	60	22	82
7	14	White & Case	62	20	82
9	11	Kirkland & Ellis	81	0	81
9	10	Paul, Weiss, Rifkind, Wharton & Garrison	81	0	81
11	22	Jones Day	75	0	75
12	12	Mayer Brown	64	0	64
12	4	Orrick, Herrington & Sutcliffe	40	24	64
14	-	Cooley	61	0	61
14	8	Sullivan & Cromwell	61	0	61
16	-	Crowell & Moring	40	20	60
16	-	Ropes & Gray	60	0	60
18	-	DLA Piper	36	23	59
19	6	Cravath, Swaine & Moore	58	0	58
20	-	Debevoise & Plimpton	43	0	43
20	18	Dechert	24	19	43
20	21	Simpson Thacher & Bartlett	23	20	43
23	-	Holland & Knight	19	23	42
24	19	Morrison & Foerster	22	19	41
25	16	Cadwalader, Wickersham & Taft	40	0	40

1) Legal expertise score is the total score for all ranked entries in the Corporate, Finance, Litigation, IP, Energy and Lawyers to the innovators categories. The maximum possible score is 360.

2) Business of law score is the total score for all ranked entries in the Business of law category. The maximum possible score is 90.

3) Total is the score for all ranked entries in all categories of the report. The maximum possible total is 450.

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CORPORATE



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= INNOVATION!!!

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SWEETENING THE PILL

Law firms have skilfully identified ways to make sure that corporate mergers get the regulatory green light despite opposition, finds **David Gelles**

Any significant transaction has challenges – which may be related to regulation, competition or price. And while it is up to bankers to orchestrate the deal and the companies to reap the rewards, it is often the corporate lawyers who are left to do the dirty work of figuring out just how, exactly, to get a deal done.

When Samsung Electronics began the process of selling its hard disk drive operations to Seagate Technology, the computer storage manufacturer, for \$1.375bn, it knew obstacles lay ahead, with the market already consolidating. Then, as it was preparing the deal, rivals Western Digital and Hitachi said they wanted to cut a deal on their hard disk drive businesses as well. Taken together, the two transactions would reduce the number of big players in the market from four to

two. The law firm Paul Hastings knew that its client Samsung would face an uphill battle if it were viewed as the follower. So New York partners, including Scott Hataway, looked for ways to regain first-mover advantage. The team identified a precedent in European law that would allow the Samsung deal to be reviewed by the European Commission before the Western Digital deal, even though Samsung’s was announced later.

Standard practice is to announce the deal, then file for review with the commission. Simply putting together the filing can take months, and by the time Samsung was set to announce its deal, Western Digital still had not filed.

So Samsung worked with the commission beforehand, then filed for review within an hour of announcing the deal. Western Digital was caught off guard. And

even though it filed with the commission a day later, its deal was reviewed after the Samsung one.

“That 24-hour difference in the filing turned out to be decisive,” says Mr Hataway. “The other group was viewed to be the ‘three to two’ instead of the ‘four to three.’”

As a result, the Samsung/Seagate deal was cleared without conditions, while Western Digital and Hitachi had to agree to substantial divestitures.

“Samsung latched on to this in a way that most clients would not,” says Mr Hataway. “Doing all this work before the deal is negotiated was a bit unusual.”

An even more dramatic bout of consolidation was also going on in the US pharmacy benefits-managers (PBM) market at about the same time. In July 2011, Express Scripts, the third-largest player in the industry, said it would buy Medco Health Solutions, the second-largest, for \$29.1bn.

The industry already had only three big rivals, and this deal would reduce that number to two. As is the case with most “three to two” mergers, opposition came from all sides. The pharmaceuticals industry lobbied hard, and the Federal Trade Commission, 32 state attorneys-general and both houses of Congress held hearings.

To win over regulators, attorneys from Dechert realised they would have to make the case that market share was no proxy for market power. With a new interpretation of the recently revised merger guidelines in the US, Dechert demonstrated that

If either company wanted to continue bidding without the other, it could do so only on its own, not with a new partner

Express Scripts and Medco could were not actually close competitors. The FTC subsequently found at least 10 significant others.

“There has been a revolution in anti-trust in the last 10 years. Historically market shares ruled. Now more weight is placed on competitive effects analysis,” says Dechert partner Mike Cowie.

After an eight-month review, the work of Dechert and Express Scripts counsel Skadden, Arps, Slate, Meagher & Flom was successful and the merger was approved.

In other deals, finding the right solution was not so much about overcoming opposition as about hedging risk. When an auction for Amylin Pharmaceuticals, a biotechnology company specialising in diabetes drugs, began this year, most of the big pharmaceutical companies took note.

Kirkland & Ellis client Bristol-Myers Squibb, the pharmaceutical group, was among those interested. But the Amylin price tag, of around \$7bn, was rather too much for Bristol to tackle alone. So Kirkland helped Bristol to partner with AstraZeneca, another drug company with which it already collaborated on diabetes drugs.

Though so-called “club deals” are commonplace among private equity firms, it was unprecedented for two public companies to team up to buy another public company with the intention of jointly owning and operating it.

But because Amylin was being sold in a fast-moving auction, Kirkland had to work with Bristol and AstraZeneca to establish rules for the bidding, and a maximum price the companies were willing to pay. A stipulation was included that if either company wanted to continue bidding without the other, it could do so only on its own and not with a new partner, and that the company that did not continue would not then be able to re-emerge as a buyer. “This was particularly challenging given that we were in a competitive auction process,” says Kirkland partner Daniel Wolf.

Once Bristol and AstraZeneca won the bid, Kirkland helped the companies devise

US INNOVATIVE LAWYERS 2012

● CORPORATE			
		Score	
Standout	Dechert	24	Developed a clever agreement and “air cover” strategy to pull off client Medco’s \$29bn merger with Express Scripts.
	Mayer Brown	24	Used an innovative method of valuing contract terms to enable Cemex to identify IBM as the most suitable strategic partner.
	Skadden, Arps, Slate, Meagher & Flom	23	Acting for Express Scripts, used a new approach to merger guidelines and a “double dummy” structure to complete its \$29bn deal with Medco.
	Davis Polk & Wardwell	22	Advised Dalian Wanda in its \$2.6bn purchase of AMC, the largest ever takeover of a US company by a Chinese group.
Highly commended	Cleary Gottlieb Steen & Hamilton	21	Used a “poison pill” and an unusual board agreement to defend retailer Family Dollar against a hostile takeover bid from Trian.
	Kirkland & Ellis	21	Developed a complex merger and financing arrangement to enable three buyers to acquire shoe company Collective Brands, then split the business between them.
	Kirkland & Ellis	21	Crafted a novel indemnification structure to ensure American brewer Molson Coors’ €2.65bn (\$3.37bn) acquisition of StarBev was acceptable on both sides of the Atlantic.
	Paul Hastings	21	Secured EU competition approval for \$1.375bn sale of Samsung hard disk drive business to Seagate Technologies, paving the way for clearance in other key jurisdictions.
	Davis Polk & Wardwell	20	Employed mergers and acquisitions principles to create a flexible mechanism and bring about Delphi Automotive’s initial public offering.
	Skadden, Arps, Slate, Meagher & Flom	20	Devised a novel agreement to separate Amilyn from Eli Lilly, preserving Amilyn’s value before acquisition by Bristol-Myers Squibb and AstraZeneca.
	White & Case	20	Overcame significant hurdles to enable Industrial and Commercial Bank of China to acquire controlling stake in Bank of East Asia of the US.
	Cravath, Swaine & Moore	19	Developed a highly complex transaction to allow Pentair to merge into Tyco Flow and redomesticate the new business to Switzerland.
Commended	Latham & Watkins	19	Created a way to assure National Football League players’ incomes during a dispute with owners, helping to prevent cancellation of the 2011 season.
	Mayer Brown	19	Balanced the interests of airlines, government agencies and lenders to secure the privatisation of Luis Munoz Marin Airport in Puerto Rico.
	Skadden, Arps, Slate, Meagher & Flom	19	Took an unusual approach to Delaware law to successfully defend Cephalon against a hostile takeover bid from Valeant Pharmaceuticals.
	Sullivan & Cromwell	19	Provided multi-faceted advice on Frank McCourt’s divorce, the bankruptcy and sale of the LA Dodgers and a settlement with Major League Baseball.
	Akin Gump Strauss Hauer & Feld	18	Devised a legal structure combining non-profit services and for-profit management approaches to provide affordable healthcare in Texas.
	Kirkland & Ellis	18	Created an unusual agreement between Bristol-Myers Squibb and AstraZeneca, providing a template for collaboration in the pharmaceuticals sector.
	Sullivan & Cromwell	18	Developed a complex holding company structure to enable Chile’s LAN Airlines to merge with Brazil’s TAM, creating the leading Latin American carrier.
	Jones Day	17	Used an exchange offer to help tempt S1 shareholders away from an existing offer and accept a bid from ACI Worldwide.
	McDermott Will & Emery	17	Provided critical advice on Chinese law to enable the Fila/Mirae-led consortium to win South Korea’s largest ever outbound consumer products deal.

a structure under which Bristol assumed full ownership of Amylin. But through a new contract, AstraZeneca assumed 50 per cent ownership of the company. The unique structure protected the companies from substantial tax liabilities.

Another risky deal earlier this year came in the form of the biggest-ever acquisition of a US corporation by a Chinese company, Dalian Wanda Group. The conglomerate said in May this year that it would buy the cinema chain AMC Entertainment Holdings for \$2.6bn.

Chinese acquisitions of North American companies are viewed warily these days, and almost all such deals come under scrutiny from the Committee on Foreign Investment. “From a purely rational point of view it seemed benign, but the fact that it was a Chinese buyer made the sellers nervous,” says Philip Mills, a Davis Polk & Wardwell partner, who represented Wanda. These sensitivities led Mr Mills to exercise unusual caution while working with AMC’s private equity owners. In a move to ease the sellers’ nerves, Wanda deposited a large sum of money in a Hong Kong account that AMC would be entitled to collect even if the deal were to fall apart. Such reverse termination fees are not uncommon in deals in which private equity firms are the buyers.

“It was a sign that we had meaningful skin in the game and did not want to walk away,” says Mr Mills.

Ultimately the fee was not needed. Davis Polk was able to get the deal cleared by the regulators. Nonetheless the reverse termination fee was an innovative solution to an unusual problem – something that is so often needed to push complex deals through.

US INNOVATIVE LAWYERS 2012

INTELLECTUAL PROPERTY

PATENT LORE

Pharmaceutical groups are foremost among those that have needed help from law firms, says **Richard Waters**

Defences of essential intellectual property that featured near the top of the list of highly rated legal campaigns fought in IP cases this year sometimes involved the companies concerned themselves going on the attack. Or they combined a take-no-prisoners legal strategy with a business negotiation to reach the desired outcome.

One thread in these defensive actions was the challenges in overcoming hurdles that got in the way of countering foreign companies accused of trade secrets theft or patent infringement.

A cross-border case that tops the list of most innovative legal strategies is that of European dermatology company Galderma. It was forced to come up with a novel approach in the US courts to block US generic drugmaker Mylan.

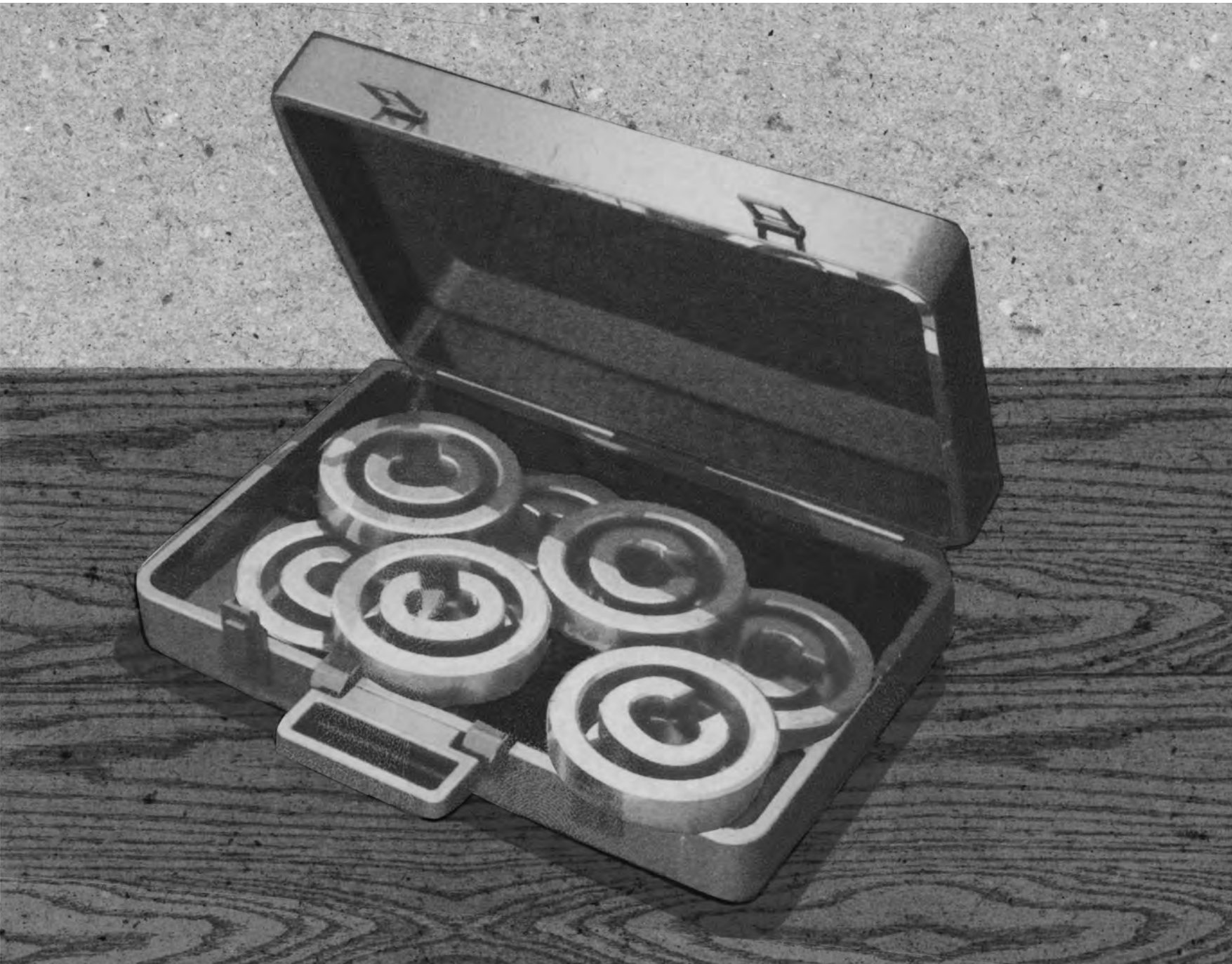
According to one analyst, Mylan was on

the brink of breaking into a market worth \$240m a year when, in 2010, the Food and Drug Administration approved its generic version of Galderma's market-leading Oracea, an oral treatment for the facial skin disease rosacea. The potential damage to the European company was immense.

"The worst-case scenario is that a branded company of a blockbuster [drug] could lose 80 per cent of profits as soon as the generic comes on market," says Gerald Flattmann, a partner at Paul Hastings, which was brought in by Galderma.

The case was brought about a patent that was awarded on Oracea only after Mylan received its FDA approval. To carry the day, Paul Hastings had to build a new legal argument with no direct precedent.

In the wake of the eBay v MercExchange case – which cast grave doubt on whether injunctive relief should be



granted as a matter of course – it has become harder to win injunctions in situations like this in the US, Mr Flattmann says. As a result, "branded [drugs] companies will increasingly pursue the statutory remedy and can now use our case as a precedent under similar circumstances", he adds.

Other cross-border IP cases have presented bigger logistical challenges for companies trying to protect their rights. DuPont, the chemicals group, last year won an eye-catching \$920m judgment against Kolon Industries, a South Korean company, for breach of trade secrets surrounding Kevlar, which is used in bullet-proof vests. Crowell & Moring, acting for DuPont, had to obtain evidence from key witnesses in South Korea and prove evidence tampering by the defendant, which was found by a US court to have destroyed documents in the case. Despite the victory, DuPont has struggled to collect damages.

Other companies that have found new ways to overcome hurdles represented by foreign defendants are Bayer, the pharmaceutical group, and Cross Match Technologies, a US biometric scanning company. Bayer, in challenging an anti-flea treatment for pets from Indian pharmaceutical company Cipla, convinced a US court that it should be allowed to serve its complaint by email and by delivering it to a US law firm that had represented Cipla in an unrelated case. The moves saved Bayer (represented by Debevoise & Plimpton) a six-month delay.

In Cross Match's patent infringement case, lawyers Latham & Watkins succeeded in serving papers on the chief executive of South Korean company Suprema while he was at a trade show in the US. Cross Match eventually prevailed in its case before the US International Trade Commission – a venue that is becoming increasingly popular among companies looking for a quick way to block offending products from entering the US.

In another prominent defensive move in the drugs industry, Onyx Pharmaceuticals went on the attack to protect its main source of revenue: its share of profits from a drug jointly developed with bigger partner Bayer. Bayer had developed its own alternative drug, almost identical to the earlier joint product, which threatened to cut off Onyx's revenue.

Suing the company's most significant partner presented its challenges: "We needed to fight and keep collaboration going at the same time," says Suzanne Shema, general counsel at Onyx. "It was a tightrope to walk."

The case was a week into trial when Bayer agreed to a settlement giving Onyx a significant share in the new drug, including 20 per cent of future net sales. Cooley, which represented Onyx, used two teams of lawyers: one to lead the court battle and one to handle simultaneous settlement discussions. Onyx could not let the legal battle threaten an essential business partnership. The aim was "to take a lawsuit – where most are zero sum games – and craft a creative solution to form a

US INNOVATIVE LAWYERS 2012

LAWYERS TO THE INNOVATORS

SPECIALIST NEEDS

Law firms are increasingly helping clients shape their businesses in areas such as digital strategy and networking, says **Sarah Murray**

When is a law firm not a law firm? When it is a corporate innovation consultant. In the US, which many see as the world's cradle of innovation, law firms have long been key collaborators with their clients – but now some are doing that by going much further than offering legal services to help their clients become more innovative.

Of course, not all lawyers are working in this way. The traditional role for a corporate lawyer is to follow, rather than lead – facilitating rather than creating new corporate structures or strengthening existing ones.

However, the world of lawyering is changing. First, competition to offer services is intensifying, particularly with the segmentation of legal work, whereby process-driven transactions are increasingly outsourced or executed by offshore or by non-traditional firms. This puts pressure on firms to keep developing the services they offer.

At the same time, as companies embark on fast growth – particularly in rapidly evolving markets such as digital media – they often need to speed through the traditional stages of corporate evolution. And this is something to which lawyers can apply their particular set of skills.

As external lawyers work ever more closely with clients, their familiarity with the businesses is deepening, giving them intimate knowledge of the workings of different business models – and a greater opportunity to make a contribution to growth, change and innovation.

This is the case at Cooley, which has offices across the US and in Shanghai. The firm has played an active role in helping new companies expand their businesses and secure investment as they evolve from inception to a sale or public listing.

For the technology start-ups among its clients, the firm's ability to create connections with others in its networks has been as important as its knowledge of the law. "We partner with business people. We understand the paradigm of the model and the businesses they are building," says Cooley partner Bo Yaghmaie.

The work of Ropes & Gray for Nova Biomedical, a biotechnology company, also demonstrates the way in which lawyers can help companies shape their businesses. By successfully defending four separate patent infringement cases on the company's test strips for diabetes brought by Abbott Laboratories, the law firm saved Nova's business, giving the company the confidence to take on similar battles in the future.

"Even though there are giants out there, we can enter into markets and compete with them," says Frank Manganaro, Nova's president and chief executive.

In the biotech sector, lawyers have been able to take different approaches to high-risk, high-value transactions. And, in some cases, they have been able to create new models for future deals.

For Gilead Sciences, for example, the \$11bn acquisition of Pharmasset, a New

Jersey-based pharmaceutical company, hinged on the success of trials for a new hepatitis C drug. Law firm Skadden, Arps, Slate, Meagher & Flom created a customised closing condition that enabled the deal to go ahead.

The ability of law firms to develop complex mechanisms for valuing pharmaceutical assets is particularly valuable to clients in the sector.

When it comes to digital media, rapidly changing business models have licensing and rights implications for companies in the sector. Here, too, lawyers have been challenging old models and contributing to the transformation of digital media markets.

In a series of recent cases that have resulted in wins for their clients, lawyers have changed the way that digital music is licensed, helping create a more competitive marketplace.

This was the case at Weil, Gotshal & Manges, which won a number of antitrust rulings for companies such as DMX Television and Sirius XM Satellite Radio.

"So much of what we're doing is extending, developing and extrapolating copyright law in new areas around digital media and technology," says Bruce Rich, a partner at the firm.

In another digital media case, lawyers at Skadden, Arps, Slate, Meagher & Flom brought a claim against Google, the internet company, for allowing the use of the name Rosetta Stone, the language software provider, without permission in its

AdWords (sponsored search results) campaigns.

A settlement was reached in November, after Skadden lawyers had argued that longstanding principles of trademark law could be applied online as well as offline.

Lawyers are also helping bring companies to market, enabling them to grow. In the case of Angie's List, the online consumer review business, the challenge was to demonstrate that a company that had invested heavily in growth could turn a profit. For law firm Davis Polk & Wardwell, an understanding of the digital media market helped the firm connect the company with potential investors during the launch of the Angie's List initial public offering.

Davis Polk also helped Yelp, the online peer-reviewed guide, in going public. After lawyers worked with Goldman Sachs underwriters to create novel investment metrics to demonstrate the value inherent in Yelp's business model and its potential for growth, the IPO was priced above its projected range.

For switched-on law firms, a grasp of new business models and an ability to carve out deeper relationships with companies helps them do more than please individual clients – it means firms can become increasingly and in some cases inextricably linked to their clients' successes by facilitating innovation.

And, of course, if innovation is good for a client's business, it is also good for law firm profits.

Standout

Highly commended

Commended

● INTELLECTUAL PROPERTY

Score		
Standout	Paul Hastings	23 Represented Galderma Laboratories in a suit that sets a precedent for the way patent infringement cases will be argued in the pharmaceutical industry.
	Cooley	22 Helped Facebook see off a claim from Yahoo through the purchase of patents and a countersuit. The action ended in strategic partnership.
	Cooley	21 Used a dual strategy of litigation and settlement talks to successfully represent Onyx Pharmaceuticals in a dispute with Bayer.
	Perkins Coie	21 Successfully defended HTC against Flashpoint Technology, an Apple subsidiary, in a dispute over smartphone patent infringement.
Highly commended	Seyfarth Shaw	21 Helped Wolverine cut the cost of maintaining its trademark portfolio by developing existing tools and a new client-firm mobile app.
	Crowell & Moring	20 Forensic discovery techniques helped the firm win \$919.9m for client DuPont in a case against Kolon Industries of South Korea.
	Debevoise & Plimpton	20 Acted for Bayer in a patent and trademark infringement case against Cipla, recovering all illegal profits made by the overseas group.
	Orrick, Herrington & Sutcliffe	20 Secured a change of trial venue to Washington to gain a victory for Nintendo in a case concerning the patent behind Wii technology.
Commended	Orrick, Herrington & Sutcliffe and O'Melveny & Meyers	20 Successfully defended Apple against HTC, setting a new precedent that patent infringement occurs at the point of importation.
	Paul, Weiss, Rifkind, Wharton & Garrison	20 Acting for Ericsson, the firm structured Rockstar, a special purpose vehicle, to buy Nortel's patent portfolio, one of the most lucrative in history.
	Global IP Law Group	19 Secured the largest patent sale in history on behalf of client Nortel, ultimately benefiting creditors and pension holders in the bankrupt company.
	Latham & Watkins	19 An original approach to analysing witness evidence helped the firm successfully defend Cross Match, the identity solutions company.
	Cleary Gottlieb Steen & Hamilton	18 Completed the \$12.5bn acquisition of Motorola Mobility on behalf of client Google, navigating a large patent portfolio acquisition.
	Jones Day	18 Successfully defended Myriad Genetics in an action by the American Civil Liberties Union, which claimed the company's human genome patents were invalid.
	Weil, Gotshal & Manges	18 Helped Yahoo sell \$7.1bn of equity it held in Alibaba back to the Chinese company, also negotiating the continuing IP terms.

● LAWYERS TO THE INNOVATORS

Score		
Standout	Ropes & Gray	21 Successfully defended Nova Biomedical in four patent infringement cases on test strips for diabetes. Ensured Nova's survival when facing a larger company.
	Weil, Gotshal & Manges	21 In a series of cases on intellectual property in digital media, lawyers are challenging business models and helping to create more competitive markets.
	Davis Polk & Wardwell	20 Advising Solazyme on its initial public offering, the firm created new metrics to demonstrate the biofuels company's value to investors.
	Latham & Watkins	19 Devised a novel structure to allow Coherus BioSciences to make the transition from a virtual company to a fully operational business.
Highly commended	Skadden, Arps, Slate, Meagher & Flom	19 Lawyers developed new closing conditions for Gilead Sciences' \$11bn acquisition of Pharmasset, creating a new model for biotechnology deals.
	Cooley	18 Helping technology and life sciences companies grow and seek investment through all stages of their lifecycle, from inception to sale or going public.
	Skadden, Arps, Slate, Meagher & Flom	18 Brought a claim against Google for allowing use of Rosetta Stone's name without permission, arguing that existing trademark principles apply on the internet.
	WilmerHale	18 The firm's Quickstart programme helps start-up companies by offering specialised legal advice with deferred, fixed, reduced and no-fee arrangements.
Commended	Davis Polk & Wardwell	17 Used expertise in the digital media market to promote Angie's List's initial public offering among investors.
	Latham & Watkins	17 Advised on the formation of the REBBL Tea social enterprise and beverage company, which helps combat child slavery and human trafficking in the Peruvian Amazon.

US INNOVATIVE LAWYERS 2012

FINANCE



From embattled firms to ailing economies, lawyers have played a critical role in restructuring, writes **Paul Solman**

Any doubts about the essential part that US lawyers play in the financial sector must surely have been laid to rest by the events of the past 12 months. Four years on from the credit crisis, lawyers are still carrying out critical work not only on troubled financial institutions but also on ailing economies.

A case in point is Greece. The country's lingering problems have occupied the minds of politicians, economists and business leaders across the globe, but it was a US law firm that was asked to undertake the country's €206bn bond exchange, the world's largest-ever sovereign debt restructuring.

The Greek government turned to Cleary Gottlieb Steen & Hamilton in July 2011, though it was a year earlier that Cleary Gottlieb partner Lee Buchheit had spelt out how it could be done, in a paper written with Mitu Gulati, a professor at Duke University.

At the time of writing the paper – which detailed the innovative use of retroactive collective action clauses – Mr Buchheit saw no sign that Greece, the European Union or the International Monetary Fund were about to take up his suggestion.

"The paper was simply a contribution to the public debate," Mr Buchheit says. "My own view was that some form of debt restructuring was inevitable. The question was when and what form it would take."

Nevertheless, when political opinion changed, Greece contacted Cleary Gottlieb. Having drawn the road map, Mr Buchheit was faced with the challenge of navigating it for real.

"Starting in May 2010, the [EU and IMF] took the view that they would give Greece all the money it needed to repay all of its bondholders in full and on time," he says. "It was in the summer of 2011 when they became fatigued with that...and began to countenance the possibility of a debt restructuring."

Even without Mr Buchheit's paper, Cleary Gottlieb was an obvious choice for the task. The firm had extensive international experience and had advised Iraq and Argentina on sovereign debt restructurings.

How closely did the final restructuring process stick to the original Buchheit/Gulati plan? "It pretty much went as I expected in the sense that it was a somewhat unique sovereign debt restructuring because it wasn't just the debtor and the creditors at the table," Mr Buchheit says. "You had on the side the official sector – the EU and the IMF – and they were...providing all the money so their voice was critically important."

"I was pretty confident from the beginning that it would inevitably get there. But it didn't surprise me that it got there only at the last moment."

In spite of the bond restructuring's success, subsequent events have shown that Greece's problems are far from over.

But what Cleary Gottlieb's efforts offered the country's faltering finances was some stability – a theme echoed across the work that American law firms have undertaken in the past year, as they have devised structures to put companies on a firmer footing and bring liquidity to weak markets.

Examples of innovative lawyering include Morrison Foerster's work for Royal Bank of Canada in bringing about the first-ever public offering of covered bonds in the US; and Simpson Thacher & Bartlett's activities for Carlyle to create a system to improve liquidity for the private equity group's investors.

Among the most significant restructuring at corporate level was the work by Weil, Gotshal & Manges to bring two of the biggest US casualties of the credit crisis out of bankruptcy.

The collapses of Lehman Brothers and Washington Mutual were an indication of the extent of the damage that the credit crisis had wrought on the global financial system, and their insolvency cases turned out to be some of the largest and most complex in history.

It is startling, then, that lawyers were able to bring the two banks out of bankruptcy in little more than three years.

"Most people, including myself, believed that had there been significant litigation the case would have gone on for a year, two years more, perhaps even longer," says Lori Fife, the Weil, Gotshal partner who led the team that worked on Lehman.

Explaining the timetable, she says: "The fact that we were able to forge a settlement among all the various diverse creditor groups was really very important, and led to the companies being able to confirm the plans and emerge from Chapter 11 [bankruptcy protection] as quickly as they did."

Ms Fife believes Weil, Gotshal's success in reaching agreement with foreign affiliates was crucial to the restructuring.

"The claims when they were originally filed by the foreign affiliates were approximately \$320bn, and so they were certainly a group of creditors that we needed to take seriously," she says.

"And through these efforts, and ultimately through bilateral settlements, we were able to reduce those claims to approximately \$60bn."

Away from the direct effects of the credit crisis, a growing number of US law firms have been looking southwards for some of their most significant work.

As well as company restructurings such as Cemex, the Mexican cement group, US firms have executed several firsts that could prove important milestones in the

● FINANCE		
		Score
Standout	Weil, Gotshal & Manges	24 Guided Lehman Brothers and Washington Mutual out of bankruptcy, resolving two of the largest and most complex insolvency cases in history.
	Cleary Gottlieb Steen & Hamilton	23 Employed retroactive collective-action clauses to enable Greece to carry out its €206bn private sector debt restructuring.
	Simpson Thacher & Bartlett	23 Advising Carlyle, the private equity group, the firm helped devise a programme to match investors with secondary buyers for Carlyle's buy-out funds.
	Morrison & Foerster	22 Secured regulatory approvals to allow Royal Bank of Canada to make the first public offer of covered bonds in the US.
	White & Case	22 Advised Anchorage Capital on the Zais restructuring, the first use of Chapter 11 to unwind a collateralised debt obligation.
Highly commended	Jones Day	21 Developed a new model for pension de-risking transactions to complete General Motors' transfer agreement with Prudential Insurance.
	Paul, Weiss, Rifkind, Wharton & Garrison	21 Acting for Barclays Bank, achieved new benchmarks in the non-traditional asset-backed securitisations of a global business and a film library.
	Cadwalader, Wickersham & Taft	20 Used legal challenges and a motion to appoint an independent examiner to force power company Dynegy to abandon its aggressive restructuring plan.
	Cleary Gottlieb Steen & Hamilton	20 Advising a group of eight lenders, the firm designed a structure to refinance \$7bn debt held in Cemex, the Mexican cement company.
	Paul Hastings	20 Worked with government and tax authorities to enable Fibra Uno to secure the first successful offering of a real estate investment trust in Latin America.
Commended	Paul, Weiss, Rifkind, Wharton & Garrison	20 Avoiding litigation, the firm negotiated terms that gave bondholders a 99 per cent recovery in Dynegy's bankruptcy restructuring.
	Arnold & Porter	19 Secured first-of-a-kind regulatory approvals to enable client Banco do Brasil to buy a distressed US-based bank.
	Davis Polk & Wardwell	19 Won approval for Green Dot's purchase of Bonneville Bancorp, the first ever acquisition of a bank by a prepaid debit card company.
	Freshfields Bruckhaus Deringer US	19 Representing FINCA International on a pro bono basis, the firm devised a new model for microfinance entities to raise equity capital.
	DLA Piper	18 Helped modernise healthcare in Peru by engineering the first public health infrastructure project financed through capital markets.
	Hogan Lovells	18 Representing the underwriters, the firm advised on a \$750m notes issuance to fund new drill ships for Petrobras in Brazil.
	Skadden, Arps, Slate, Meagher & Flom	18 Devised a secure debtor-in-possession facility for Barclays Bank, enabling mortgage group Residential Capital to continue operations and avoid a costly fire sale.

development of Latin America's emerging economies and markets.

Mexico played host to the region's first successful launch of a real estate investment trust. Paul Hastings worked on behalf of Credit Suisse and Santander, the Europe-based banks, to structure the Reit, Fibra Uno. The offering was worth \$700m and was several times subscribed. While Reits are common in the US, Paul Hastings had to negotiate numerous regulatory

and practical hurdles to introduce the investment trust in Mexico.

Further south, in Peru, DLA Piper acted for Bank of America Merrill Lynch to bring about the country's first public health infrastructure project to be financed through capital markets. The bond issue provides financing to three operators that have signed private-public partnership agreements with EsSalud, the state health organisation.

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US INNOVATIVE LAWYERS 2012

INDIVIDUALS

LEADING FROM THE FRONT

The top 10 agents for change



Mark Boling

General counsel, Southwestern Energy

Mark Boling's position at Southwestern Energy, the Houston-based group, encompasses considerably more than the work of a top in-house lawyer. As president of V+ Development Solutions, Mr Boling heads a new corporate division charged with achieving balance between the economic, environmental and social impacts of the energy company's activities. He says his new role is essentially one of proactive risk management – identifying areas and processes that could be done more efficiently and satisfying the public demand for responsible business practices. He believes this approach adds value to the company. Mr Boling trained as a geologist before becoming a lawyer, opening a private law practice specialising in the oil and gas industry in 1993. He joined Southwestern Energy in 2002 as senior vice-president, general counsel and secretary of the board of directors and added the role of president of V+ on the launch of the initiative in April 2012.



Tom Brown

Partner, Paul Hastings

In the mobile payments revolution, there are few lawyers with as much experience and credibility as Tom Brown. A degree in economics and mathematics from Columbia and a record at Visa give him the background to help innovative payment companies such as PayPal get over the regulatory hurdles preventing their development. Government agencies also utilise his insight into this rapidly developing field. Mr Brown's testimony was a key part in the hearing on safe and efficient mobile payments before the US Senate committee on banking, housing and urban affairs in the summer. He also teaches a course on law and policy of modern consumer payments at Berkeley School of Law at California university. According to academic peers, Mr Brown's innovation lies in navigating the uncharted space in the future of mobile payments. He is not afraid to "put his head in the lion's mouth" when it comes to balancing the need for guidelines with the demands of a rapidly evolving industry.

Government agencies utilise his insight



Lee Buchheit

Partner, Cleary Gottlieb Steen & Hamilton

In more than 30 years as a lawyer, Lee Buchheit has taken on many complex and challenging transactions but it is likely that his name will always be connected with one in particular: Greece's bond restructuring. Mr Buchheit led the Cleary Gottlieb Steen & Hamilton team that successfully negotiated the €206bn (\$266.6bn) bond exchange last year. His role in the world's biggest sovereign debt restructuring has given him a high profile in the financial sector, with some of the world's media lavishing praise on the "swashbuckling Robin Hood of sovereign debt" (New York Magazine). Mr Buchheit's other achievements are similarly impressive. He served as counsel during the Latin American debt crisis of the 1980s, and represented Iceland in its dispute with the UK and the Netherlands over Icesave, the online banking arm of failed Icelandic lender Landsbanki. Buchheit joined Cleary Gottlieb in 1976. He is the author of two books and many articles in the field of international law and has lectured at Harvard, Yale and London universities.



Lisa Damon

Partner, Seyfarth Shaw

Among US law firms' attempts to improve and streamline services to clients, Seyfarth Shaw's SeyfarthLean model stands out. Lisa Damon is the partner responsible for championing the programme, which combines the principles of the Lean Six Sigma management technique with technology, knowledge management, process management techniques, alternative fee structures and practical tools. Ms Damon has been the day-to-day leader of the SeyfarthLean programme since helping to launch it in 2006. Part of the difficulty of getting lawyers to adopt a Six Sigma approach lies in changing their behaviours. As an experienced teacher, with four-year stints at a high school in Wisconsin and a middle school in Harlem, Ms Damon's ability to persuade and create followings has helped her to lead dramatic change for clients. "Lisa has proven time and again how Lean Six Sigma techniques and tools can be applied to nearly every practice area of law, as well as in-house legal process," Seyfarth says. After her teaching career, Ms Damon became an employment law litigator, specialising in discrimination and harassment claims.

Her ability to persuade led to dramatic change



Mark Harris

Chief executive, Axiom

Despite an entrepreneurial background (his father founded the Red Roof Inns hotel chain), on graduation from the University of Texas law school Mark Harris began a career in "big law" in the late 1990s. At the age of 29, frustrated with the constraints of a traditional law firm and inspired by the internet revolution unfolding around him, Mr Harris went into partnership with Alec Guettel, a Stanford MBA, to create a new model for legal service provision. Mr Harris wanted Axiom to provide clients with a third way – an alternative to "mahogany-panelled offices and the partner pyramid" of private practice and the expense and investment of ever-expanding in-house legal departments. Axiom's offering has grown to encompass business analysis, technology expertise, process engineering and management modelling while retaining "super-talented" lawyers. The business model continues to develop thanks to the firm's investment in its recruitment process. Mr Harris says that taking on innovative leaders at every level is key both to "insulating against stasis" and to the firm's 62 per cent growth in 2011, which brought revenues to over \$130m 11 years after it was founded.

US INNOVATIVE LAWYERS 2012



Brad Karp

Chairman, Paul, Weiss, Rifkind, Wharton & Garrison

In a career peppered with innovations, Brad Karp considers his most innovative achievement to be the creation of the firm's financial regulatory practice from a standing start 12 years ago. With a results-focused mindset, the team quickly accumulated clients such as JPMorgan, Citigroup and Bank of America. And, more importantly, it went on to win billion-dollar cases for them. His work for Citigroup, most recently in the Court of Appeals to uphold the settlement with the Securities and Exchange Commission, along with billion-dollar jury trial wins against Terra Firma and the Abu Dhabi Investment Authority, has given Paul Weiss annual rankings in the US Innovative Lawyers report. His success as a practitioner has been replicated in his stewardship of the firm. Taking the helm in the worst financial crisis in generations, he has steered the firm to profitability and growth through new partners and an office in Toronto, opened in 2011.



Eileen Nugent

Partner, Skadden, Arps, Slate, Meagher & Flom

Eileen Nugent's role as leader of the New York office of Skadden, Arps, Slate, Meagher & Flom and co-head of the firm's private equity group sees her acting for numerous clients, including buyers, sellers, controlling stakeholders, boards of directors, leveraged buyout organisers and investment bankers. Her work has included Cephalon's \$6.8bn acquisition by Teva Pharmaceutical Industries, and her innovative approach to Burger King's acquisition by 3G Capital Management was ranked as "Standout" in last year's US Innovative Lawyers report. During the financial crisis, she represented the board of directors of Avaya, the world's largest manufacturer of corporate phone equipment, in its \$8.2bn sale to two private equity firms. Ms Nugent joined Skadden in 1986 but her path to become a leading mergers and acquisition and restructuring lawyer was unconventional. On leaving law school she went into an in-house counsel role, holding numerous positions culminating in senior corporate counsel for M&A and finance.

Her path to a leading M&A career was unconventional



Kathy Patrick

Partner, Gibbs & Bruns

Kathy Patrick is Wall Street's new nightmare, Forbes magazine claimed, after she secured an \$8.5bn settlement with Bank of America last year on behalf of residential mortgage-backed securities (RMBS) investors. The litigation, in which Ms Patrick and her team represented 22 institutional investors, including Pimco, BlackRock, MetLife and Federal Reserve Bank of New York, resulted in one of the largest settlements in Wall Street's struggle with the fallout from the credit crisis. For Ms Patrick, a partner at Houston-based firm Gibbs & Bruns, the RMBS litigation added to an impressive portfolio of successes on behalf of investors, though her work has also included acting for former outside directors of Enron, the failed energy group, in more than 100 securities, investigative and regulatory actions pending against them from 2001 to 2007. Before joining Gibbs & Bruns, Ms Patrick was a law clerk to Judge John R. Brown, US Court of Appeals.



Brad Peterson

Partner, Mayer Brown

Before attending law school at Harvard, Brad Peterson studied computer science at Northwestern University, picked up an MBA from the University of Chicago and worked at IBM. This multidisciplinary background has enabled him to have a significantly different approach to his legal work on business process and information technology outsourcing. This approach showed in the Cemex-IBM outsourcing agreement, where he looked at contractual terms through the perspective of value to the parties, rather than risk. Mr Peterson has developed a theory and language to describe value in long-term strategic arrangements which has changed the nature of commercial negotiations for his clients. The Cemex-IBM agreement is set to deliver savings of \$1bn over its 10-year term. The ramifications of this economic evaluation of legal clauses for commercial contracts could be game-changing. Mr Peterson says: "Clients want to pay for value. We're no longer able to just say what we do is essential. We have to articulate the value of what we do."

Developing a language to describe value has changed the nature of negotiations



Joseph Shenker

Chairman, Sullivan & Cromwell

Joseph Shenker has been described as the archetypal Wall Street lawyer: he presides over one of the most respected firms in the US. He has advised many of the world's most influential business leaders across a wide range of sectors and has extensive experience in commercial real estate, mergers and acquisitions, joint ventures, representing private equity investors, securities offerings, financing, tax and estate planning. Recent transactions include representing Frank McCourt, the owner of the Los Angeles Dodgers, in the \$2bn sale of the baseball team to a consortium led by Earvin "Magic" Johnson, the basketball star. The price was a record for a sports team. Mr Shenker is also one of the rare lawyers who can turn his hand to many legal disciplines. He handled Mr McCourt's divorce as well. Mr Shenker joined S&C in 1980 and co-ordinated the firm's global commercial real estate practice for more than 20 years. He was named vice-chairman in 2006, becoming chairman in 2010.

US INNOVATIVE LAWYERS 2012

BUSINESS OF LAW



● BUSINESS OF LAW		
		Score
Standout	Axiom	24 The Managed Services business draws on teams of different professionals to enable corporate counsel to outsource functions and increase its value to business.
	Orrick, Herrington & Sutcliffe	24 From its Global Corporate Solutions initiative to its M&A integration service, the firm continues to create innovative support for its clients.
	DLA Piper	23 The Venture Pipeline initiative provides a free, value-added service to companies in need of funding if they sign up as clients.
	Holland & Knight	23 A system that replaces the billable hour in fixed-fee matters as the unit by which to measure the value of the fee, through allocating percentages of the fee to tasks.
	Littler Mendelson	23 The CaseSmart service re-engineers defence and management of administrative agency charges to make cost savings for clients in employment work.
Highly commended	Latham & Watkins	22 A national centre that centralises knowhow and expertise on securities law.
	Paul Hastings	22 Reinvented its secondment programme to include partner-level secondees, resulting in better relationships and broader instructions.
	Seyfarth Shaw	22 The SeyfarthLean Consulting business helps in-house legal teams become more efficient through a holistic approach to workflow management and resourcing.
	Bracewell & Giuliani	20 The Policy Resolution Group combines legal, government relations and communications advice for clients with flexible billing arrangements.
	Crowell & Moring	20 Used an original approach to project management to change behaviour first, then introduced new technologies and institute training.
	Paul Hastings	20 A talent management programme that focuses associates on the career goals and skills that are valued by clients, through analysing role model behaviours.
	Simpson Thacher & Bartlett	20 The firm's Public Company Advisory Practice focuses on issues such as executive compensation, succession and corporate governance.
	White & Case	20 An associate development curriculum encompasses competency models for business skills, delivered online across the firm's global offices.
Commended	Arent Fox	19 New products designed to create value by providing a meaningful and measurable approach to selling and providing legal services.
	Cleary Gottlieb Steen & Hamilton	19 Invested \$2m in giving first-year lawyers business training that amounts to a two-week MBA. The course is both practical and theoretical.
	Davis Polk & Wardwell	19 First to market with interactive tools that explain the Volcker Rule, the firm won a favourable response from financial institutions.
	Davis Polk & Wardwell	19 A comprehensive career development programme for summer interns and associates has pushed up productivity and client satisfaction levels.
	Dechert	19 Client collaboration on project management has led to a replicable matter-value prediction model.
	Latham & Watkins	19 A centralised strategy has enhanced the working environment for attorneys and streamlined the firm's real estate portfolio.
	Morrison & Foerster	19 The FrankNDodd™ resource – free for clients – is essentially a regulatory tool that revolves around a comprehensive and interactive database.
	Rimon	19 Used cloud technology to create a virtual law firm that carries out top-tier work and has grown to 32 attorney across 10 offices.
	WilmerHale	19 WilmerHale Discovery Solutions provides efficient and cost-effective electronic document discovery and review. Includes a team of 70 specialist attorneys.

FIRMS FILL GAP IN KNOWLEDGE

Training and secondment are helping to keep lawyers off the rocks of uncertainty, says **Caroline Bingham**

In the year that the world experienced the biggest collapse of a law firm on any measure, how firms run themselves has taken on new significance and greater scrutiny.

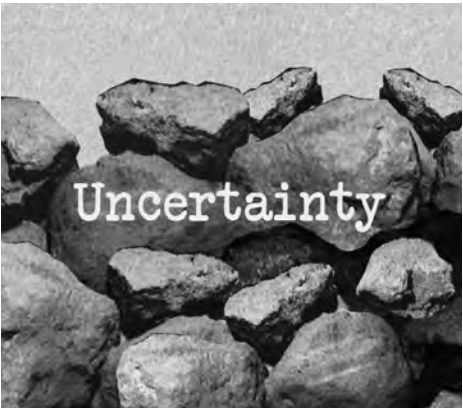
The scandal of New York-headquartered Dewey & LeBoeuf, which entered Chapter 11 bankruptcy protection in May with \$315m of liabilities after a fatal partner exodus and a criminal investigation into its former chairman, brought several salutary lessons trailing in its wake.

Key among them is that it is no longer acceptable to run a multinational, multi-million dollar business as a fiefdom, where a small and unaccountable cabal decides the financial fate of thousands.

If the continuing economic gloom and its dearth of deals contributed to the undoing of Dewey – whose forebear firm survived the Great Depression of the 1930s – then it is also the catalyst for greater efficiency and corporate professionalism among law firms more widely, as general counsel demand more for less.

The old practice of “leveraging” client matters – commonplace during the mergers and acquisitions mania, and while appetite for new exotic financial instruments remained insatiable – whereby one partner may supervise a small army of inexperienced junior associates, is being re-examined as general counsel have made it clear they will not pay for on-the-job training for fledgling lawyers.

But the fact remains that even the brightest graduates of US law schools may not be fully prepared for Big Law. Firms will have to fill the knowledge gap.



US INNOVATIVE LAWYERS 2012

The days of the billable hour may be as numbered as those of the green associate

lawyers as long as two years to settle on a practice area.

Secondments can be a valuable way to win client loyalty, particularly in these straitened times, and for junior lawyers to better understand business – the classic lament of general counsel everywhere. But Paul Hastings understood that it is not just at the junior level where improvements can be made, and won plaudits for overhauling its secondment programme to include more senior lawyers, including counsel and partners; its first seconded partner went to UBS.

While improving lawyers’ commercial instinct makes for better-quality service, attorneys must still come at a discount in order for them to be palatable to today’s general counsel.

The days of the billable hour may be as numbered as those of the green associate. Holland & Knight’s public policy and regulation group previously moved to a hybrid model where the team charged clients a monthly fixed fee but continued to calculate hours worked on a project to reconcile at the end of the year. This method still incurred an administrative burden if not much end benefit to the client.

Instead, the team devised a more efficient system that simply measures output rather than time. Clients are still billed on a fixed monthly fee, and receive monthly or quarterly progress reports on what tasks have been fulfilled. The team, meanwhile, cut \$500,000 in administrative costs alone.

“No significant practice group in any Am

Law 100 law firm had abandoned the use of billable hours for an entire category of work, as Holland & Knight was contemplating,” the firm claims, referring to the top 100 US firms ranked by revenue by the American Lawyer magazine.

As a result of the billing change, the team was able to improve recruitment because Holland & Knight became known as “the law firm where you did not have to do hours”, the firm reports.

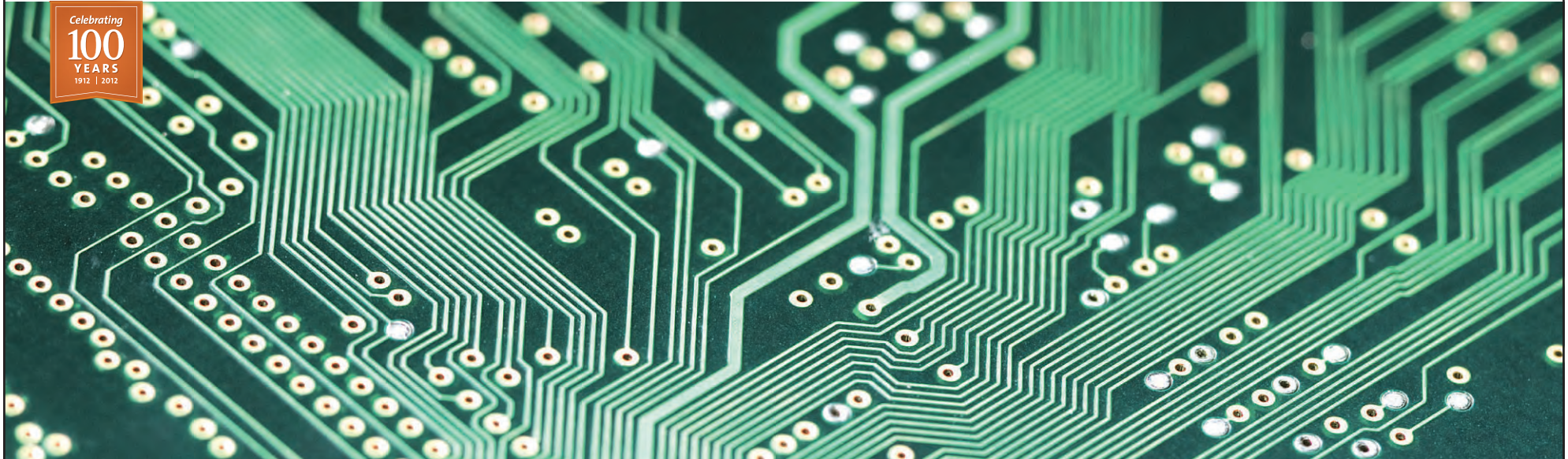
WilmerHale was able to save one client more than 50 per cent of its typical litigation fee, and reduce the documents it received by 87 per cent, through a tactical attack on the familiar bugbear of disclosure in litigation. Disclosure in the era of email can potentially run into the many

thousands, or even hundreds of thousands, of documents in any matter.

The firm has deployed 70 of its attorneys in Ohio (a lower-cost centre than its east coast offices) and is using a sophisticated form of document-review technology that goes beyond the word-recognition software frequently used in legal-process outsourcing. The technology it employs, designed by Recommend, uses concept searches to group documents together into bundles that are then reviewed by experts in a particular area before being filtered to the client.

A general counsel who is saved both money and time, especially in these days of austerity, must surely be satisfied with the service.

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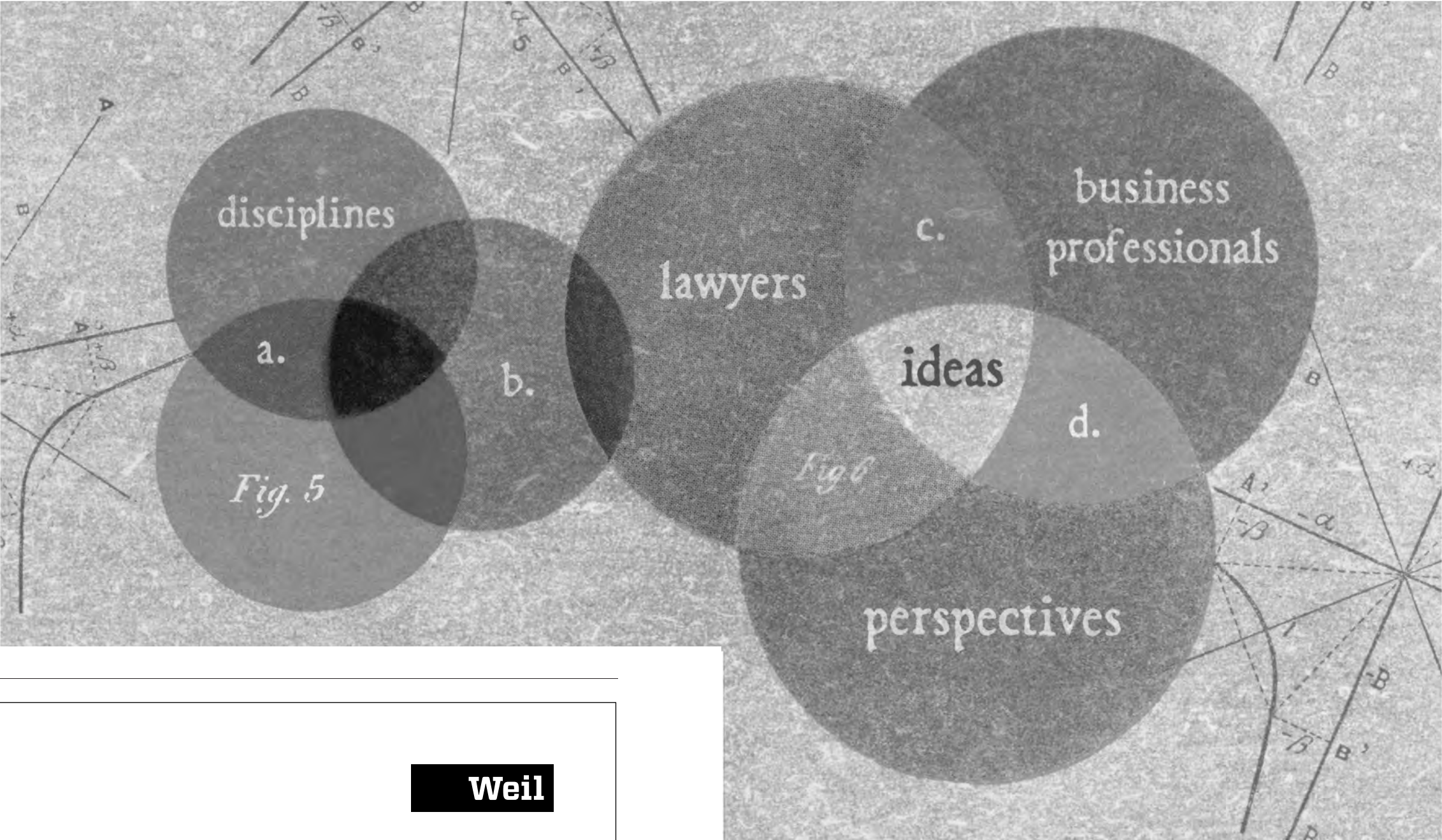
IN-HOUSE

OVERLAPPING SPHERES

Cross-functional groups and cost efficiencies are transforming legal teams, reports Reena SenGupta

Within four years of being set up in 2004, Facebook realised that, although it was a young company, it needed a grown-up legal team. With more than its fair share of litigation, controversy and the largest initial public offering in internet history, the challenges facing its legal team are broad and diverse. When the social media site notched up more than 1bn users in October, a sixth of the world's population was officially on

Facebook, and those legal challenges became even more complex. Ted Ulyot, Facebook's general counsel, says: "We have one site that has a lot of languages on it but freedom of speech is different around the world. For example, if someone says something in Sweden, we may get complaints from Pakistan or Germany, claiming legal violations." Besides defending the company, the Facebook legal team has to be active in



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US INNOVATIVE LAWYERS 2012

● IN-HOUSE					
	Company	General counsel name	Total size of legal department	Title	Description
Winner	Qualcomm	Don Rosenberg	450	Strategic IP Department	A multidisciplinary approach to intellectual property has seen the legal team play a critical role in the company's success.
	Cisco	Steve Harmon	300	Driving internal legal efficiency through inventions	Big cost efficiencies have been gained through the creation of internal legal process outsourcing and a fully digitised contract management system.
	GlaxoSmithKline	Dan Troy	600	Electronic reverse auction system	Dramatically reducing external legal spend through AFAs and the development and implementation of an electronic reverse auction system.
Standout	United Technologies Corporation (Litigation)	Steven Greenspan	300	Comprehensive AFA adoption	Process management and a comprehensive approach to alternative fee arrangements has created large cost savings.
	Facebook	Ted Ulyot	65	An aggressive defence of a young business	Strategic litigation approaches, smart fee arrangements and helping to create new laws around privacy and freedom of speech have helped Facebook thrive.
	Zynga	Reggie Davis	31	An inventive, aligned team	A strongly aligned team at the online games company that invented the game Privacyville to educate users about privacy issues.
Highly commended	Bank of America Corporation	Isvara Wilson	15	Embracing financial regulation	Helping the bank navigate new regulations so as to remain commercial and viable.
	IBM	Robert Weber	550	Internal talent development	Developing internal talent rotation across businesses and geographies, facilitated by training and global support teams.
	Rockwell Collins	Gary Chadick	25	Driving efficiency	Driving efficiencies and cost savings. Nearly half of the work is done under alternative fee arrangements.
	Southwestern Energy - V+ Division	Mark Boling	10	Shaping regulation for the energy sector	Proactively forming regulations around well integrity, water efficiency and air emissions that change the way in which the energy sector is perceived.
Commended	Altria	Denise Keane	47	Diversity requirements for outside counsel	Creating comprehensive diversity initiatives that monitor outside counsel statistics and allow internal talent to develop further into the business.
	Bristol-Myers Squibb	Sandra Leung	115	Developing internal experts	Developing internal expertise through smart training schemes that enable the team to deal with complex transactions.
	Caterpillar - Commercial Section	Michael Sposato	90	Lane strategy for cost management	Creation of a contract management process that allows the team to handle an increased workload while delivering significant cost savings.
	Monsanto	David F. Snively	153	Virtual litigation teams	A track record of dealing with high-stake litigation through creation of virtual law firms.

alternative fee arrangements made up 3 per cent of the company's legal spend. Now they comprise two-thirds. Steve Greenspan at United Technologies, the defence and technology company, runs 70 per cent of all his litigation on an alternative fee arrangement. "I completely disagree that bet-the-company work has to be done on an hourly rate," he says. "In future, even Am Law 20 firms will need to adopt widespread use of alternative billing arrangements."

TRIMMING BACK THE CLASS ACTION MONOLITH

Creative work is reversing a sharp rise in the scope of joint cases, finds **Tracy Alloway**

Four years on from the nadir of the financial crisis, the effects of the downturn, and its legal ramifications, continue to play out in the US courts. As high-profile claims slowly make their way through the judicial system, lawyers for financial institutions are trialling ever-more innovative arguments in their submissions. With many billions of dollars in liabilities at stake, the battle lines between defendants and plaintiffs are deepening. Nowhere is this more apparent than in the sphere of class actions – lawsuits brought on behalf of a group of similarly situated plaintiffs. The stakes are high, particularly when it comes to class action disputes over the multitude of mortgage-backed securities sold by the banks before the crisis.

Rather than simply restricting the pool of claimants – a common procedural method that the courts employ to restrict the scope of class action lawsuits – judges have recently thrown out a number of high-profile cases, suggesting they are less willing to accommodate the sweeping class action claims that have become a hallmark of post-crisis litigation.

Here, the work of one creative team of lawyers can cut a company's potential exposure to class action suits by billions of dollars.

Lawyers at Cravath, Swaine & Moore, for instance, scored a significant victory when they successfully argued, on behalf of JPMorgan Chase, that a judge should break up the classes in one mortgage securities action. The decision removed as much as \$8bn worth of securities from the scope of a single class action suit.

As co-ordinating counsel to the US bank, which bought much of the collapsed mortgage giant Washington Mutual in 2008, Cravath argued that would-be plaintiffs should be limited to those that actually bought specific tranches of the sliced-and-diced securities sold by WaMu.

Previous MBS law suits had created classes based on the so-called shelf registrations filed with the US Securities and

Exchange Commission – effectively encompassing all the mortgage securities issued under a “shelf”, rather than singling out particular securities or tranches.

“We were the first to have ever actually asked for judgment on this tranche-based argument and won,” says Daniel Slifkin, a partner in Cravath's litigation department. “We encouraged all the lawyers we're working with to pursue these same arguments.”

That tranche-based argument is likely to receive another high-profile airing after Goldman Sachs asked the Supreme Court to dismiss a class action suit from an electricians' fund that bought mortgage certificates from the investment bank just before the financial crisis. Goldman is arguing that a New York appeals court decision to allow the suit to go ahead conflicts with the earlier judgment made in the WaMu case.

“The Supreme Court, in particular, has tried to restrict the scope of class actions. They also started to put limits on the scope of securities fraud claims,” says Mr Slifkin. “The message has started coming down from the Supreme Court that we need some limits to these unfettered and massive potential liabilities.”

‘In my corner of the world it’s not overstating to call what’s happened over the past few years an explosion of shareholder litigation’



The Supreme Court decision will be closely watched by litigation lawyers and bankers, as it has the potential to reduce investment banks' mortgage litigation liabilities by billions of dollars as it filters down to the lower courts.

Another Supreme Court decision related to class action suits has already been cited by the lower courts hundreds of times. Seyfarth Shaw became the first law firm to file a successful motion to dismiss a class action based on a Supreme Court ruling in *Dukes vs Walmart Stores*. Here the court's decision to dismiss the biggest gender bias class action lawsuit in US history paved the way for Seyfarth lawyers to apply similar principles to a wage-and-hours case involving Farmers Insurance.

In that case, a trio of property claims adjusters alleged that they and thousands of their counterparts nationwide had not been paid for overtime work. Seyfarth used the decision in *Dukes* to highlight the role of Farmers' individual supervisors – successfully arguing that the insurance company did not have a uniform overtime standard and therefore could not be held responsible for unpaid work.

“We hope our decision will start a trend among the lower courts to push back and create a bulkhead against the incoming tide of cases,” says Andrew Paley, partner at Seyfarth Shaw.

Elsewhere in the litigation sphere, however, class action suits have been increasing. “In my corner of the world it's not overstating to call what's happened over the past few years an explosion of shareholder litigation,” says Bill Savitt, a partner at Wachtell, Lipton, Rosen & Katz who specialises in litigation related to mergers and acquisitions.

Some 96 per cent of announced M&A deals worth more than \$500m were challenged in court last year, according to Cornerstone Research. That is up from just over half in 2007. Filing such suits can be lucrative for shareholders and their lawyers – more than two-thirds of the M&A-related suits filed last year settled out of court.

The explosion in M&A litigation has triggered an evolution in the plaintiffs bar – with some litigation lawyers likening the development of a group of highly specialised and experienced plaintiff-side legal firms to the evolution of the “Magic Circle”; the small group of London-based leading global law firms.

They point to San Diego-based Robbins Geller Rudman as an example of an emerging plaintiff-side powerhouse. Grant & Eisenhofer, headquartered in Delaware, historically a hotbed for class action suits against the many companies incorporated there, is another.

Gibbs & Bruns, the top-ranked firm in the FT list, manages to straddle both the plaintiff and defendant bar.

“It's interesting to think of them as like the ‘Magic Circle’,” says one litigation lawyer. “I think you're going to see firms that aren't centred around just one or two guys, and in that way they are resembling defence firms rather than just plaintiff firms.”

Standout

Highly commended

Commended

● LITIGATION

	Score	
Gibbs & Bruns	25	Played a key role in resolving claims relating to residential mortgage-backed securities arising from the 2008 credit crisis.
Cleary Gottlieb Steen & Hamilton	24	Devised an effective strategy to challenge claims and defend financial institutions in the fall-out from the Madoff fraud.
Debevoise & Plimpton	23	Led negotiations between federal and state attorneys and banks over housing foreclosure errors, helping to bring about a settlement in 49 states.
Skadden, Arps, Slate, Meagher & Flom	23	Brought a private challenge on behalf of client Sprint to stop the \$39bn merger of AT&T and T-Mobile, reshaping the telecoms industry.
Wachtell, Lipton, Rosen & Katz	23	Acting for Vulcan Materials, the firm used a contract to stop a hostile bid, the first time this had been done in the US.
Kirkland & Ellis	21	Secured a Supreme Court ruling for generic drug manufacturers that will effectively limit their product liability in the future.
Mayer Brown	21	In pro bono work for National Day Laborer Organising Network, secured an order that will extend boundaries of the Freedom of Information Act.
Cravath, Swaine & Moore	20	Acting for JP Morgan, devised and implemented a strategy to restrict claims under residential mortgage-backed securities litigation.
Crowell & Moring	20	Created an original pricing model for complex litigation that marries attorneys' judgments with data and analytics tools.
Paul Hastings	20	Successfully defended client GlaxoSmithKline in an action over overtime pay in the pharmaceuticals sector, redefining a key aspect of administrative law.
Paul Hastings	20	Protected its client in the Homestore.com federal securities class action case that established new standards for how juries should assess individual liability.
Paul, Weiss, Rifkind, Wharton & Garrison	20	Successfully defended Citigroup's settlement with the Securities and Exchange Commission against a challenge from the court of Judge Rakoff.
Ropes & Gray	20	Defended Heartland Payment Systems against legal claims arising from an attack on its systems, devising a unique settlement method and fending off further litigation.
Seyfarth Shaw	20	Developed specialised tools for United Technologies, capturing and analysing employment law data to help mitigate risk, avoid litigation and cut costs.
White & Case	20	Defending Toshiba in antitrust litigation, the firm's strategy addresses uncertainty about how far US law applies to overseas conduct.
Cravath, Swaine & Moore	19	Devised a way to relieve its client of more than \$100m of liability in an important case concerning river pollution.
Edwards Wildman Palmer	19	Successfully defended Mark Philip, former president of Stryker Biotech, against Federal Drug Administration charges that included wire fraud.
Gibson, Dunn & Crutcher	19	Secured an important ruling that its client could not be held responsible for the contents of its mutual funds' prospectuses.
Holland & Knight	19	Used a project management approach to re-engineer Deutsche Bank's legal process, increasing efficiency and cutting costs.
Jones Day	19	Successfully defended a client charged with falsely claiming payments from the US government. The decision could change the way similar cases are handled.
Latham & Watkins	19	Achieved a notable victory in "say-on-pay" litigation, obtaining a dismissal of claims against client BioMed Realty Trust.
McDermott Will & Emery	19	Settled insurance claims relating to those injured cleaning up the aftermath of the 2001 attacks on the World Trade Center in New York.
Ropes & Gray	19	Successfully defended TPG Capital against litigation arising from the company's \$3bn acquisition of retailer J. Crew.
Seyfarth Shaw	19	Acting for Farmers Insurance in a wage and hour case, the firm successfully applied a new Supreme Court ruling on labour standards.

US INNOVATIVE LAWYERS 2012

ENERGY

THE NEXT BIG IDEA

Novice global powers and the shale revolution are changing the energy landscape, says **Ed Crooks**

Entries for the energy section of this year's US Innovative Lawyers ranking speak volumes about the way the industry is changing. The countries involved in the deals entered include Brazil, China, India and Venezuela – rising or potential powers in global energy. Deals in the US reflect the way the shale revolution is transforming oil and gas production, leaving other emerging energy technologies fighting for space. The landscape of 20 years ago has been trans-

formed. Mature oilfields in places such as Alaska and the North Sea are in decline, and the large western groups that traditionally dominated those areas are struggling to find growth. Now, these groups are looking to new frontiers in Africa, Latin America and Asia, and investing in “unconventional” resources not previously accessible on commercially attractive terms, which have been opened up by improvements in production techniques. They face challenges from rising compa-



Legal structures move with evolving markets and technologies

nies in the emerging economies. Such companies are appearing as significant forces in world markets, often helped by cheap capital or large domestic resource bases, or both. At the same time, governments in most developed countries, as well as in some emerging economies, are backing investment in renewable energy sources, such as solar and wind power, in a bid to strengthen energy security and cut pollution, including greenhouse gas emissions that contribute to climate change. As markets and technologies evolve, legal and financing structures are moving with them. New participants and new types of business are creating new challenges. One striking example among this year's entries is a “south-south” deal between PDVSA, the Venezuelan state oil company, and Industrial and Commercial Bank of China. PDVSA, advised by Hogan Lovells lawyers from its Beijing, Caracas, Washington, London and Amsterdam offices, wanted to borrow against future revenues. ICBC was willing to lend but there was little precedent for the transaction: a Chinese bank had completed an oil pre-payment financing only once before, and never in Latin America. The solution involved setting up a special purpose company in the Netherlands, owned by an orphan trust, as the route for the oil sales, giving ICBC the security it required. Meeting the particular requirements of the Venezuelan and Chinese parties required what the firm describes as a “complex three-tiered structure”. In another transaction involving two companies from emerging economies, Michael Bolton of DLA Piper led a team working for TNK-BP, the Russian joint venture 50-per-cent-owned at the time by BP of the UK. The \$1bn deal with HRT Oil and Gas, a Brazilian independent company, gave TNK-BP a 45 per cent interest in 21 oil and gas exploration blocks covering 48,500 square kilometres in Amazon's Solimões Basin in northern Brazil. As with the PDVSA/ICBC financing, the

US INNOVATIVE LAWYERS 2012

Governments in most developed countries back investment in renewable energy sources

alignment of two companies from very different cultures and systems was the greatest challenge. TNK-BP has in the past concentrated almost exclusively on its Russian home territory and is having to build its understanding of international dealmaking. Inside the US, the issues are different. One key factor in many deals is the existence of the master limited partnership: a tax-privileged structure, protected under 1987 legislation that allows its use for companies in a handful of industries, including natural resources. The MLP has been a favoured model in the “midstream” pipeline business, where relatively stable revenues allow for high rates of dividend distribution, but it is also increasingly used for oil and gas production. The restrictions attached to these structures mean that deals are often more complex than transactions involving registered corporations. For example, in the \$2.9bn sale of the propane operations of Energy Transfer Partners to AmeriGas Partners, two MLPs, the two parties wanted a deal structure that would deliver ETP a significant amount of cash upfront but also allow it to defer the tax. Shearman & Sterling, working for AmeriGas, helped to come up with a rarely used structure, in which ETP provided a contingent residual guarantee for the \$1.5bn cash component of the deal paid by AmeriGas, enabling it to defer the capital gains tax liability from the sale. Vinson & Elkins, ETP's legal adviser on that deal, also worked on the creation of a new variety of MLP – one with a stated intention of paying variable dividends over time, depending on its performance. (The standard MLP aims to have steadily rising distributions, if all goes well.) The importance of the innovation is that it allows companies in cyclical industries to benefit from the tax advantages of the MLP structure. It was used for a company that focuses mainly on making fertiliser, which had an initial public offering in April 2011. As the US frets about the approach of the fiscal cliff, there has been speculation that MLPs' tax-favoured status could be under threat. Changes in tax and regulation are an ever-present hazard in the energy business, as are upheavals in technology and markets. Right now, the industry is evolving particularly rapidly. Lawyers will need to continue to innovate in order to keep up.



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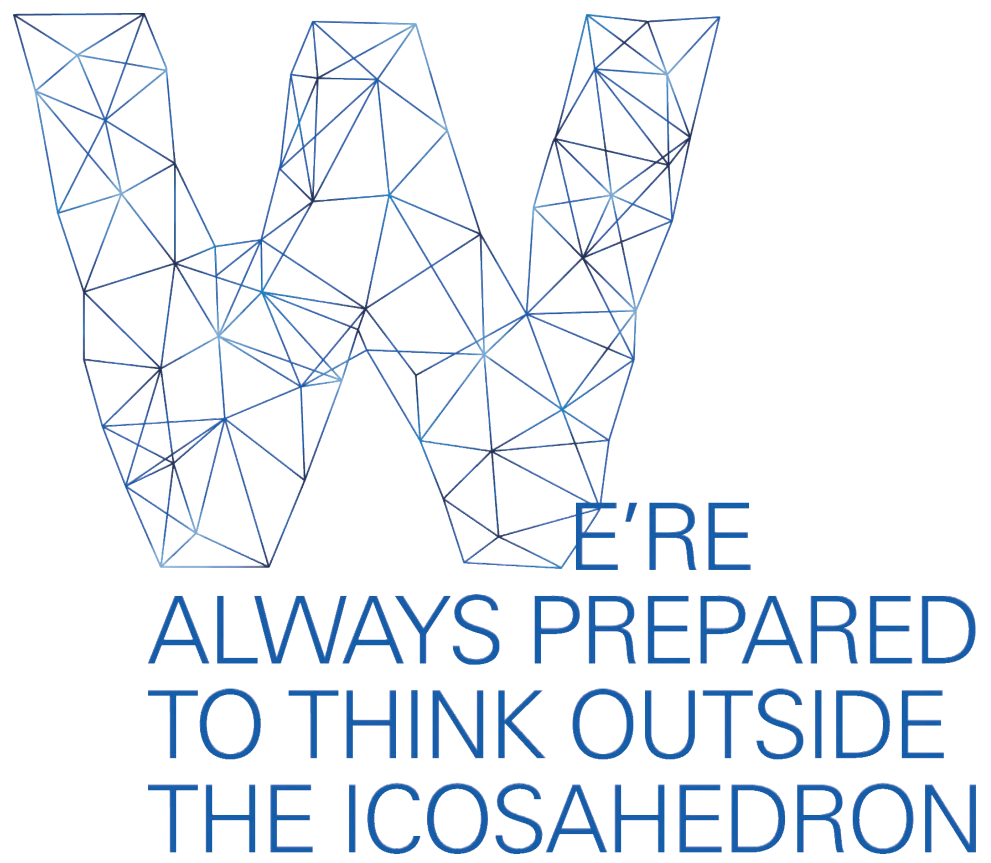
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● ENERGY

		Score	
Standout	{	Sullivan & Cromwell	24 Created a \$8.5bn financing structure for Asia Pacific Liquefied Natural Gas in Queensland, Australia, in a model for unconventional LNG projects.
		Skadden, Arps, Slate, Meagher & Flom	22 Used a flexible but standardised blueprint to help SolarCity, the energy services provider, achieve private market financing.
Highly commended	{	Latham & Watkins	21 Completed the first master limited partnership purchase of an unaffiliated public C-corp with Energy Transfer Equity's \$9bn acquisition of Southern Union.
		Weil, Gotshal & Manges	21 Devised a complex deal to allow Kinder Morgan's \$38bn acquisition of El Paso, creating the fourth largest energy company in the US.
		Cadwalader, Wickersham & Taft	20 Created an innovative long-term power purchase agreement to secure Advised American Renewables' \$500m financing of Gainesville Renewable Energy Center in Florida.
		Winston & Strawn	20 Devised a legal structure that helps create a new approach to the development and operation of combined-heat-and-power facilities in California.
Commended	{	Hogan Lovells	19 Used a three-tiered financing structure to enable Industrial and Commercial Bank of China to lend to PDVSA, the Venezuelan oil company.
		Latham & Watkins	19 Developed a new type of deal, including four separate tranches of debt financing, for the Arlington Valley Solar Energy II project.
		Shearman & Sterling	19 Employed a leveraged partnership structure to defer gain to help AmeriGas Partners in its \$2.9bn acquisition of Heritage Propane.
		Vinson & Elkins	19 Advised Reliance on its sale of oil and gas exploration plots to BP, in one of the largest foreign direct investments into India.
	{	DLA Piper	18 Structured a deal to allow TNK-BP of Russia to buy a stake in 21 oil and gas exploration blocks in the Amazon basin.
		Vinson & Elkins	18 Worked with a master limited partnership to complete an initial public offering with a stated variable distribution structure.



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