Paradigm

FALL 2010

The New Primerus: Built on Integrity. Driven by Innovation.

Moving into an exciting future for Primerus

2010 Membership Directory

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President's Podium

John C. Buchanan

Moving into an exciting future for Primerus

Throughout its history, Primerus has marked many important milestones that have played a critical role in forming the thriving organization we all enjoy today.

In 1994, we held our first annual conference. In 2003, Primerus created three practice groups designed for business firms, plaintiff and consumer firms and insurance defense firms. Also in 2004, we organized our current licensing and charter structure. In 2005, the Primerus Defense Institute (PDI) held its first Convocation, and in 2008, the PDI's transportation specialty group held its first client event.

As I look back on each of those milestones, and many others, I see the ways each prepared us for the success Primerus is now experiencing – and for the hopes and dreams I have for the Primerus of the future. At that first annual conference in 1994, we filled a small boardroom in Scottsdale, Arizona. Many of the people in that room are still actively involved in Primerus. This year, the Primerus Annual Conference will fill an entire resort – The Villagio Inn & Spa in California's Napa Valley.

As I look back on each of those milestones, and many others, I see the ways each prepared us for the success Primerus is now experiencing – and for the hopes and dreams I have for the Primerus of the future.

When we formed three practice groups in 2004 – the Primerus Defense Institute, Business/Corporate/International and Plaintiff/Consumer – we were laying the framework for what has now evolved into our four main institutes – the Primerus Business Law Institute, the Primerus Consumer Law Institute, the Primerus Defense Institute and the Primerus International Business Law Institute. This allows us to further build Primerus around institutes of learning, which provide wonderful opportunities to educate both our lawyers and our clients, and to build strong relationships among them.

And what was once our sole specialty group, the PDI's transportation group, is now one of 14 practice groups affiliated with the four institutes. These practice groups will form the foundation for Primerus moving forward – allowing us to ensure every Primerus lawyer is highly qualified in practicing specific areas of the law, and ultimately allowing us to better meet our clients' needs.

In 2009 and so far in 2010, Primerus has grown exponentially. This year has marked our increased global expansion, with Primerus adding six new European firms, as well as a firm from Puerto Rico, with more to come. We have taken this time of explosive growth as the perfect opportunity to revisit and revamp our brand, develop a new logo and redesign our website.

All of these efforts will come together to make 2011 another milestone year in our history. I'm eager for this year's annual conference, where I plan to unveil the exciting new Primerus to all of you during the keynote presentation. I hope you're planning to join me at this world class resort during the wine harvesting season in order to catch the vision of Primerus' future. You also can read more about our plans for the future of Primerus in this issue of *The Primerus Paradigm*, beginning on page 4.

Thanks to all of us working together, following the Six Pillars and believing in the vision, Primerus has become much more than a network, or even an alliance, of law firms. We are a world class organization that represents a unique, and very appealing, concept in the delivery of legal services. As we move ahead, it's going to take every one of us for Primerus to continue its journey to global prominence. Please join me in what I'm sure will be an exciting journey filled with many more milestones.

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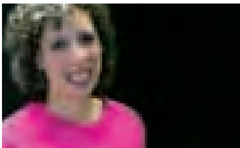

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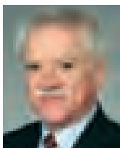

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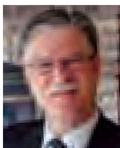

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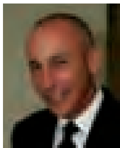

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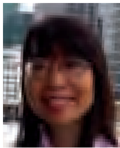

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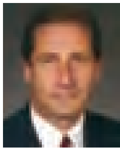

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About our cover

Lindy Bishop is an artist and the owner of Seed Studio Gallery in Elk Rapids, Michigan. Bishop moved from Chicago to return to her hometown of Elk Rapids in 2009 and opened the gallery, which focuses on the agriculture so prevalent in the Northern Michigan area.

To celebrate Primerus' international growth and promising future, she tapped into inspiration through nature to paint the cover image, showing a butterfly spreading its wings into the four corners of the globe. The butterfly represents the re-emergence, or rebirth, of something new.

Bishop said the years since her return to her Michigan roots has been a time of great personal growth, as an artist, a mother of three and a business owner. The concept for the gallery, and thus its name, came from not only the idea of planting a seed in beginning a new business and chapter of her life, but also her love of agriculture and her desire to support local farms and products.

For more information about the gallery, visit seedstudiogallery.com.

Publisher & Editor in Chief: **John C. Buchanan**
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The New Primerus: Built on Integrity. Driven by Innovation.

You don't have to be in the presence of Primerus President John C. "Jack" Buchanan for long to catch his excitement about the future of Primerus.

And it's easy to see why.

Following the trend of 2009, which was Primerus' most successful year of growth ever, 2010 has already brought tremendous growth, and the coming months hold many exciting new developments:

- the continued global expansion of Primerus with six new European firms, one new Puerto Rican firm, and more firms around the world joining soon
- the organization of a new institute-based structure including several new practice groups
- and a new logo, branding strategy and redesigned website.

"During the rest of 2010 and the year of 2011, we will see efforts on many fronts coming together as we continue to build Primerus into one of the most respected legal industry brands in the world," Buchanan said.

Moving forward with integrity and innovation

The foundation for Primerus' direction moving forward lies in its new brand strategy – "Built on Integrity. Driven by Innovation." Primerus worked with Marc Romano of Ignyte, a Rochester, N.Y.-based firm specializing in branding for the legal services industry. (To read an article about law firm branding written by Romano, see page 18.)

The values of integrity and innovation are a perfect fit for Primerus – both in

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its past and its future, Buchanan said. "Integrity is the rock upon which we built Primerus from the beginning," he said. "Innovation is to reinvent the practice of law in a very positive way and to continually create new solutions for our clients around the world."

In his brand strategy document prepared for Primerus, Romano writes: "'Built on Integrity' grounds the brand in the strong culture of the company, remembers its reason for being and reestablishes its commitment to the single most important quality that must embody a law firm and its practice. 'Driven by Innovation' brings the brand to the present and creates a platform for the future that is timeless. It speaks to the ability to develop new, more productive, more efficient and more effective ways of practicing law. It makes a commitment in the form of an industry leader, to continually reexamine the market and develop market-leading practices that will meet the most important needs of our key constituencies."

Buchanan points to Primerus' innovation in several arenas. First, in a world in which the legal services industry has become very commodity-driven, Primerus represents an innovative approach – one in which the attorney acts as a strategic partner, trusted advisor and good friend, helping the client to meet his or her overall business objective(s), Buchanan said.

Second, the Primerus structure creates a new concept in the delivery of high quality legal services – the law firm of the 21st century, he said. Primerus brings together independent law firms from around the world, creating, in effect, one of the world's largest law firms with about 2,500 attorneys. But unlike large law firms, Primerus isn't managed with a top-down hierarchy and large financial structure, but rather by individual firms at the grass roots level. And that allows Primerus firms around the world to work together providing clients high quality legal services at reasonable fees, wherever their legal needs may be.

Third, the formation of Primerus in 1992 represented innovation in its truest form as law firms came together with the goal of reforming the practice of law through the common values of integrity, trust and quality.

With its new brand strategy in place, Primerus set out to update its logo and website. Those attending the 2010 Primerus Annual Conference in Napa Valley, California, October 14-16 will see the new logo and website unveiled for the first time during Buchanan's keynote address.

Achieving global prominence

In May 2010, Primerus hosted 19 firms from Europe, India and Nigeria at a meeting in Paris, France. Six of those firms have since joined Primerus, as well as an additional firm from Puerto Rico. In July 2010, Primerus returned to Europe for a meeting in Zurich, Switzerland, this time hosting 17 firms predominantly from Eastern Europe. Applications from several of those firms have either been submitted or are expected shortly, according to Scott Roland, Primerus Senior Vice President of Membership Development.

Primerus' international expansion has exceeded expectations. "It's been a revelation," Roland said. In 2011, Primerus will not only continue its European expansion but will also focus on China and the Asia Pacific region.

One of Primerus' new member firms is Vatier & Associés, a 29-lawyer firm located in Paris, France, offering a broad range of legal services to French and international clients.

According to Ann V. Creelman, a partner in the firm, "Vatier & Associés is a medium-sized independent French firm, and although we feel it is important to have an international presence, as a matter of firm culture we wish to maintain that size and independence. Primerus provides us with an opportunity to be part of an international network of firms with similar standards of competence, client care and independence."

Creelman also said she is impressed by the Primerus selection process. "In the past we have participated in networks where the quality of the firms involved was mixed. A chain is only as strong as its weakest link, and the participation of lesser firms weakens the organization as a whole," she said. "We are also impressed by the strong Primerus organization and expertise in making this type of network work for its members. Adaptation of that expertise to Europe will be Primerus' next challenge, and I hope to be able to be of assistance as part of the solution."

Creelman said her firm's membership in Primerus will help them to better meet the needs of their clients. "Our clients live and work in a global market, and more and more they require assistance in jurisdictions worldwide. A worldwide network of selected law firms, subscribing to the same ethical and professional standards as ours, is a big plus for our clients. When we introduce a law firm to one of our clients, we need to know that we can rely on that firm to perform as we ourselves would."

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Buchanan said the Primerus model is based on the assumption that any client can contact any Primerus firm anywhere in the world and know without doubt that they will receive a high quality product for a reasonable fee. "You can depend on it," he said. "Any Primerus law firm is now networked with all kinds of specialists in cities around the world and can bring that expertise to meet clients' needs. We can provide the same services of any of the world's largest law firms."

Primerus goes a step further to ensure that a client is placed in the best possible hands, Buchanan said. "Primerus members and staff work together to help clients find just the right lawyer to meet their needs through our internal resources," he said. "You can talk to any Primerus lawyer and if they do not have the expertise you need, they will find someone who does."

Building institutes and practice groups

In 2004, Primerus introduced the concept of practice groups as a way to organize the membership around business development – to focus members' skills, efforts and other resources on a particular group of clients, to enhance the size and quality of the client base, and to improve client service. Each of the three original practice groups – Business/Corporate/International, Plaintiff/Consumer, and Defense Litigation – thrived under this model. In time, the members of the defense litigation group rallied around the formation of the Primerus Defense Institute (PDI), a collaborative effort engaging members and corporate clients. In 2005, the PDI held its first convocation, an event where Primerus lawyers and clients met to explore, discuss and share best practices for reducing risk, handling claims and defending lawsuits. The members of the PDI were positioned as an excellent alternative to hiring a big law firm.

Since the formation of these original practice groups, each has continued to specialize to further meet the needs of clients. This process began with the PDI's transportation group, which organized to focus on assisting the transportation and trucking industry in the defense of wrongful death, personal injury, property damage and cargo claims. This group has the ability to assist with accident investigations on an immediate basis across the United States. Since inception of the transportation group, 14 other groups have also formed.

Because of this growth, Primerus has evolved into a new model, with four main institutes – the Primerus Business Law Institute, the Primerus Consumer Law Institute, the Primerus Defense Institute and the Primerus International Business

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Law Institute. Each institute includes several practice groups, with some practice groups including members from two institutes.

The "institute of learning" model is based upon the premise of education of both members and clients, Buchanan said. "Events like the PDI Convocation, the Primerus Business Law Symposium, the Primerus Consumer Law Institute Winter Conference, and our various webinars are wonderful opportunities to educate lawyers and to bring clients into the family in a low-pressure, education-focused environment," Buchanan said. "The most effective way to bring lawyers and clients together is to host these high-quality educational events and begin the process of learning together. That can then lead to working together, as well as socializing together in recreational settings with a round of golf, a Jeep ride through the desert or a game of tennis."

Primerus hopes to expand upon this model with a web-based Primerus University offering continuing legal education credits in various areas of the law, Buchanan added.

Developing new licensing requirements

As part of the new structure, Primerus eventually will shift to new licensing requirements, Buchanan said. Each practice group either has defined or is currently in the process of developing standards for admission for individual attorneys. For instance, in order for an attorney to join the bankruptcy practice group, he or she must currently have a minimum of 10 years of practice in bankruptcy, must spend at least 800 hours per year in the practice of bankruptcy and must obtain eight hours per year of continuing legal education in the area of bankruptcy.

Buchanan said that in the future, in addition to joining a practice group, a member may go a step further to seek certification based on specific criteria. That certification would then allow the firm to get a Primerus license for that specialty.

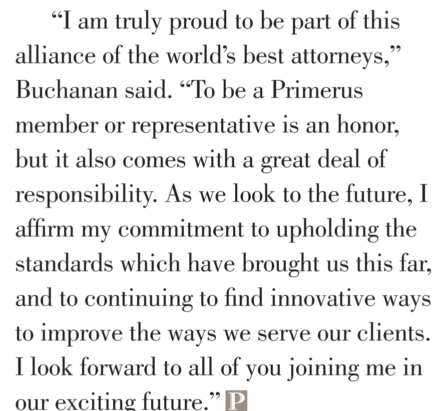
"We are moving away from simply a PBLI (formerly BCI) license, to a PBLI license with specific certified specialties," he said. "We are attempting to identify for a number of reasons the true experti[illegible] every lawyer in Primerus, moving fr[illegible] the broad spectrum to what it is that each attorney really does."

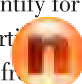
This will allow Primerus to more effectively use its website and search engine optimization to help clients find Primerus attorneys through Google, he said.

Breaking new ground

With these developments and what's sure to be more in the future, Primerus continues its tradition of focusing on the highest of standards. In order to continue its growth and success, everyone associated with Primerus must never lose sight of those standards – with integrity leading the way, Buchanan said.

"I am truly proud to be part of this alliance of the world's best attorneys," Buchanan said. "To be a Primerus member or representative is an honor, but it also comes with a great deal of responsibility. As we look to the future, I affirm my commitment to upholding the standards which have brought us this far, and to continuing to find innovative ways to improve the ways we serve our clients. I look forward to all of you joining me in our exciting future." P





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Ruth E. Martin
Senior Vice President of Services & General Counsel

Ruth Martin is Senior Vice President of Services & General Counsel for Primerus. She praticed law in Ohio for 15 years, is licensed to practice law in Michigan, and worked as a law firm consultant for LexisNexis before joining the Primerus staff in 2003. Ruth resides with her family in Grand Rapids, Michigan.

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A Conversation with In-House Counsel about Working with Outside Counsel

In my role with Primerus, I have the privilege of speaking with general counsel from time to time about the qualities they're looking for in outside counsel – which inevitably leads to a discussion regarding our members' commitment to providing high quality legal services for a reasonable price. Some general counsel share stories of very positive experiences in which they've worked together with outside counsel, as a team, for the benefit of the company. On occasion, however, I hear about problems that are encountered with outside counsel, such as: not working efficiently or in a cost-effective manner; overbilling; not being trustworthy; failing to appreciate the in-house counsel's knowledge and experience; communicating poorly or too infrequently; attempting to circumvent in-house counsel by communicating directly with management; etc.

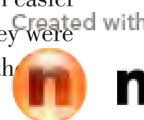
Below are some guidelines the general counsel of a large North American company passed on to me recently. I am sharing them here because I believe they offer valuable insights for lawyers who want to make sure that their in-house clients are pleased with the services and value they provide.

1. Do what the company hired you to do – no more, and no less.

General counsel are regularly asked by management to justify the need to use outside counsel and the expense that goes along with it. Outside counsel can make in-house counsel's job much easier by limiting work to those areas they were hired to do and carrying it out in th cost-efficient manner possible. Along with receiving the legal services that the client needs and wants, it is very important that in-house counsel never feel the need to question whether the outside counsel's work is of the highest caliber and ethical.

2. Bill fairly.

While a non-lawyer within a company may believe it is okay to be charged for legal research on a particular topic, in-house counsel is acutely aware of what outside counsel should already know in his/her own area of expertise. Holding him or herself out as an expert in a given area of the law implies and includes having basic knowledge in that area. Companies do not want to pay for "on-the-job training."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It is an integral part of an in-house attorney's duties to carefully scrutinize outside legal fees, and it is very common for them to have to defend those legal fees to upper management. Furthermore, when an in-house lawyer hires an outside lawyer who is a senior attorney in a corner office, they understandably assume that the attorney who they met will be the one personally handling their case or working on their matter. Of course, there are times when a less senior attorney is acceptable and probably desirable because their hourly fees will be less. However, if other attorneys (and/or paralegals) will be working for the senior attorney, it's best to discuss this with the in-house lawyer, early on, and offer to introduce them to the others at the law firm who will be working on their file.

Remember, as a team, inside and outside counsel should both want litigation to be resolved as quickly as possible. Attorneys will get more kudos from a company if a legal matter is resolved early and for as little expense as possible.

3. If outside counsel proves to be trustworthy, their relationship with general counsel could last a long time.

Finding outside counsel who can be trusted and who appreciate and acknowledge a company's culture and organizational philosophy is a top priority. Once a satisfying relationship has been established, it is very likely that company will keep coming to you for legal services for many years to come.

4. Remember general counsel (and other in-house counsel) are lawyers, too!

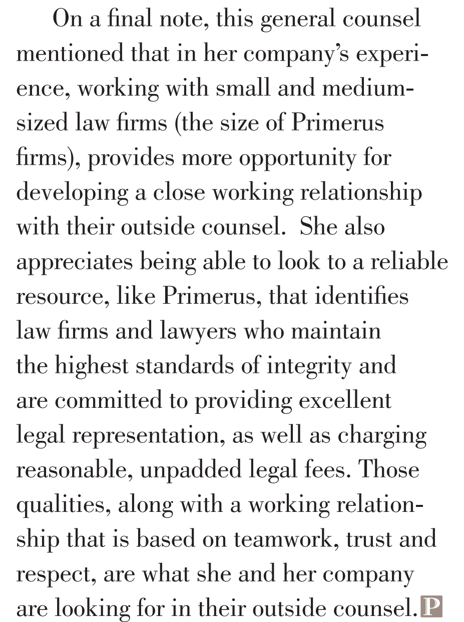
Most in-house counsel would agree that they want to be treated as part of the legal team – not as a lay business person who does not understand how the legal system works. Don't "talk down to" in-house counsel. Keep them informed about all legal proceedings, strategies, etc. That special bond of teamwork is what will help them remember who they want to retain the next time litigation arises.

5. Communicate openly with general counsel.

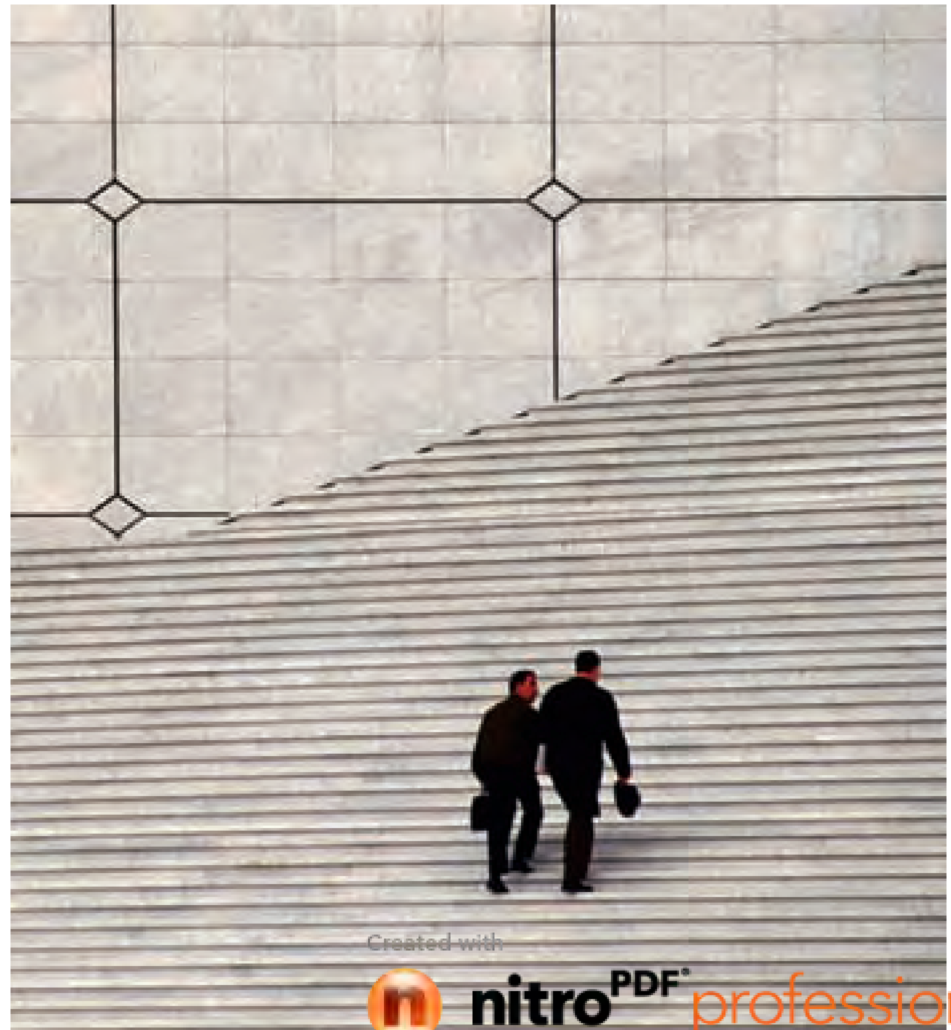
With many cases, it seems there is a rush of activity in the beginning and then there is a lull. During that time, general counsel may get inquiries from management about what is happening with the case. It is important that they be kept informed of developments, on a regular basis, so they can pass that along to company management. This communication can be as informal as an email from an administrative assistant telling them what is happening (or not) and an approximate time when you may know more.

* * *

I'm grateful, and so are our members, when in-house lawyers agree to talk about what they expect from their outside law firms – whether it is during a Primerus conference, in an article for *The Primerus Paradigm* or during a one-on-one conversation. The problems that were shared with me, by this general counsel, are avoidable. Positive relationships based on mutual respect and trust between in-house and outside counsel should always be an important goal for both "parts" of the legal team. I hope these insights help Primerus lawyers consistently achieve that goal with all of their clients.



On a final note, this general counsel mentioned that in her company's experience, working with small and medium-sized law firms (the size of Primerus firms), provides more opportunity for developing a close working relationship with their outside counsel. She also appreciates being able to look to a reliable resource, like Primerus, that identifies law firms and lawyers who maintain the highest standards of integrity and are committed to providing excellent legal representation, as well as charging reasonable, unpadded legal fees. Those qualities, along with a working relationship that is based on teamwork, trust and respect, are what she and her company are looking for in their outside counsel.



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A House Divided: Walking the Fine Line between Promotion and Production

"We all walk a fine line between promotion and production," said a now-deceased lawyer friend of mine who for many years ran his own small firm. In his case, being self-employed, the truth of the proposition was obvious: if he didn't attract clients, then he had no cases on which to work, and if he didn't work on the cases that he had, then he made no money. So he truly walked a fine line between business promotion and production (working on cases).

In the early years of his practice, no doubt, my friend spent more time in the library or in the courtroom than on the golf course or in the boardroom, but by the time I met him he would take off every winter for Southern California, working the phones for a few hours each morning before heading to the golf course. Most of the actual work he would leave to associates. In short, over time, he drew the line between promotion and production differently.

The Way It Was

The same is true of most attorneys in private practice: unless we are born into the family law firm, we must first learn the law, then the nature of the practice, and only last, if at all, how to attract and retain clients. Early in most of our careers the line is much closer to production, and later it is closer to promotion. But at every stage we walk that fine line.

For many years, law firm compensation systems recognized and accepted this linear progression, giving rise to the traditional attorney categories of associates, partners and "of counsel." Associates were mostly younger attorneys, hired chiefly for their education, training [illegible] willingness to work hard for the cli[illegible] whose business the partners had already attracted or were trying to attract. Partners were the owners of the firm, responsible for attracting clients, running the office and managing the practice. Partners shared in the profits (and occasional losses) of the firm. "Of counsel" was then typically a term of honor and distinction conferred upon older firm lawyers whose longevity or infirmity either prevented them – or earned them respite from – assuming the full responsibilities of partnership and entitled them to an office and at least token remuneration in their sunset years.

Like everything else in the past three decades, this linear progression in the practice of law has changed dramatically. Today the law, like much of life, has been turned both upside down and inside out.

The Way It Is

With few exceptions, law firms rarely organize as partnerships today, preferring instead the limited liability protections of Ltd.s, LLPs and LLCs. Having assumed corporate form, larger firms are now run by "managing partners," CEOs and COOs, or executive committees that report to the principals or shareholders from time to time without the shareholders' direct engagement. Partners remain partners in name only, and for purposes of payroll, pension and anti-discrimination laws, are treated as employees – which they largely are. Partners without business are often called "Counsel," "Special Counsel," "Of Counsel" or unemployed.

Graduated compensation schemes based on experience and service to the firm were long ago replaced by incentive-based compensation schemes that reward business generation über alles. The former editor-in-chief of the Harvard Law Review with 30 years' experience but few clients makes less – sometimes dramatically less – than the up-and-comer from the home state school whose friends and contacts send millions of dollars of business a year to the firm.

Inexperienced law school graduates with stellar credentials move from judicial clerkships to law firm positions that within a year or two pay them more than the judges for whom they clerked (although without the lifetime tenure and benefits), while older lawyers with the same credentials and greater experience are sometimes drummed out of the very same firms because their "book of business" is too small. But even lockstep compensation for associates, based on number of years in practice plus judicial clerkship experience, has been replaced by pay for performance – which means hours billed and collected, plus business brought in – often with a significant portion coming in the form of year-end bonuses.

The large law firm of today is therefore a simulacrum of a shopping mall: a few anchor tenants plus many small boutiques

that operate independently and tend to come and go. Law firms raid one another for profitable practice groups, and an individual lawyer's allegiance to a firm may be as thin as the paper on which the bonus check is written. Partners within the same firm may refuse to share client contacts or to participate in joint marketing efforts because each wants sole credit for any resulting business. Both the firm and the profession are poorer for it – and that is the danger of focusing on business generation as the be-all and end-all of law firm compensation.

The Way It Should Be

Just as retailers stay in business only so long as they have customers, law firms cannot survive without clients. But from the receptionist who answers the telephone in friendly fashion, to the office services staff who ensure that documents are properly copied and delivered, to the attorneys who provide superior service, get superior results, and train others how to do so, every person in the firm contributes to client development, both directly and indirectly.

An optimum compensation system would properly recognize and reward this, not drive the firm's attorneys to compete with one another for "client credit." Other things of value that successful law firm compensation systems should reward are, quite simply, associate training and mentoring and plain old "good lawyering" – getting good results for clients at reasonable cost. It does little good to bill clients millions in legal fees if those clients never come back. The quest for the bottom line should not be a race to the bottom. With proper focus and attention, it need not be. P

Morgan A. Godfrey

Morgan Godfrey leads Johnson & Condon's employment law section. Mr. Godfrey provides legal counsel to both private and public employers for everything from day-to-day employment decisions, investigation of claims of discrimination and harassment, to representation before state and federal administrative agencies, to litigation in state and federal courts. He is licensed to practice before the state and federal courts of Minnesota and Wisconsin. In addition to authoring articles on employment law, Mr. Godfrey regularly provides seminar instruction on such matters as federal rights of public employees, federal law updates, supervisor training to avoid harassment claims, and claims of retaliation.

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Best Practices

ADA Amendments Act of 2008 Brings Renewed Focus on the Interactive Process[1]

The Americans with Disabilities Act Amendments Act of 2008 has impacted employers ranging from small-sized law firms with 15 or more employees, to large corporations employing tens of thousands. With the broadening of disability coverage, the major battles in defense of claims of disability discrimination are now fought over whether the employer and employee have engaged in what is termed the "interactive process," whether the employee is qualified to perform the essential functions of available jobs, and whether the employee's disability can be accommodated without undue hardship. This article will focus on the interactive process, including what it means, when the requirement to engage in the process has been triggered, and how the employer may know in general terms that it has undertaken enough effort to meet its legal obligations.

Though the term "interactive process" is not contained in the Americans with Disabilities Act (ADA)[2], it has its genesis there. An employer unlawfully discriminates under the ADA if the employer does "not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business of [the employer]."[3]

The interactive process is the step employers take after they learn that an employee with a disability may need accommodation, but before a decision is made concerning what reasonable accommodation[4], if any, may be provided. The ADA's regulations state:

> To determine the appropriate rea[…] able accommodation it may be […]sary for the [employer] to initiate an informal, interactive process with the [employee] with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.[5]

The Equal Employment Opportunity Commission's (EEOC) interpretive guidelines shed some light regarding when the interactive process is triggered: "Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive

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process that involves both the employer and the [employee] with a disability."[6]

In general, the process is triggered when the employer learns of the employee's possible disability and receives a request for accommodation.[7] Several courts have held that the notice of disability and need for accommodation may not only come from the employee, but also third parties. Examples of the latter include requests for accommodation from a union representative, a psychiatrist, or an employee's family member.[8]

What happens if the employer fails to engage in the interactive process? Some circuits hold that employers have a duty to act in good faith and assist in the search for appropriate reasonable accommodations; breach of this duty results in liability when a reasonable accommodation could have been made.[9] Other circuits have held that there is no per se violation of the ADA for an employer's failure to interact in light of the ADA regulation's discretionary language.[10] However, these courts have further held that this same failure to interact can be evidence of bad faith. "An employer fails to participate in an interactive process if the employer knew of the employee's disability, the employee requested a reasonable accommodation, the employer did not make a good faith effort to assist the employee in seeking accommodations and the employee could have been reasonably accommodated but for the employer's lack of good faith."[11]

The ADA regulations beg the question of what an employer must do to prove sufficient engagement in the interactive process. "Employers may demonstrate a good faith attempt to find a reasonable accommodation for a disabled employee in many ways, such as meeting with the employee, requesting limitations, asking the employee what he wants for a specific accommodation, showing some sign of considering the employee's request and offering and discussing available alternatives when the employee's request is too burdensome."[12]

The ADA regulations and case law establish that the responsibility to engage in the interactive process is a shared between employee and employer. As with employers, employees who fail to participate in the interactive process do so at their peril. An employee may not be heard to cry foul for the employer's failure to reasonably accommodate if the employer either did not know of the employee's disability or the employee refused to participate in the interactive process. P

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2 42 U.S.C. § 12101 et seq.

3 42 U.S.C. § 12112(b)(5)(A).

4 A "reasonable accommodation" can include, among other things, such actions as "job restructuring, part-time or modified work schedules", "reassignment to a vacant position," or "acquisition or modification of equipment or devices". 42 U.S.C. § 12111(9). The ADA does not require an employer to create a new position to accommodate a disability or to shift the essential functions of the current position to other employees. 29 C.F.R. § 1630, App. § 1630.2(o).

5 29 C.F.R. § 1630.2(o)(3). (emphasis added).

6 29 C.F.R. Pt. 1630, App. § 1630.9.

7 *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir. 2000), *vacated on other grounds*, 535 U.S. 391, 122 S.Ct. 1516 (2002). However, courts have recognized that the employer may be required to institute the interactive process in situations in which the employer is aware of the disability and its impact on performance, and the disability prevents the employee from requesting accommodation. *Id.; Bultemeyer v. Fort Wayne Community Sch.*, 100 F.3d 1281, 1285 (7th Cir. 1996).

8 *See e.g. Barnett*, 228 F.3d at 1114 (interactive process triggered by employee or employee's representative giving notice of disability and desire for accommodation); *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999) (trigger by request for accommodation from family member or doctor); *Bultemeyer,* 100 F.3d at 1285-86 (request for accommodation from employee's psychiatrist).

9 *See e.g. Taylor v. Phoenixville Sch. Dist.*, 174 F.3d at 157; *Beck v. University of Wisconsin Bd. Of Regents,* 75 F.3d 1130, 1135 (7th Cir. 1996); *Taylor v. Principal Fin. Group, Inc.*, 93 F.3d 155, 165 (5th Cir. 1996).

10 *Fjellestad v. Pizza Hut of Am., Inc.*, 188 F.3d 944 (8th Cir. 1999); *Willis v. Conopco, Inc.*, 108 F.3d 282, 285 (11th Cir. 1997); *White v. York Int'l Corp.*, 45 F.3d 357, 363 (10th Cir. 1995).

11 *Barnes v. City of Coon Rapids*, 2009 WL 1178555 (D.Minn. April 30, 2009) (citing *Canny v. Dr. Pepper/Seven-Up Bottling Group, Inc.*, 439 F.3d 894, 902 (8th Cir. 2006); *Fjellestad*, 188 F.3d at 952)).

12 Id. (citing *Fjellestad*, 188 F.3d at 953 n. 7).

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Steve Kailas
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Steve Kailas is President of Kohner, Mann & Kailas, S.C., a business transactions, commercial finance and litigation law firm based in Milwaukee, Wisconsin. Under Steve's leadership, the firm has championed the rights of business creditors in court, across negotiating tables and through leadership in state and national organizations devoted to upholding the rights of business creditors. As a result, Kohner, Mann & Kailas, S.C. has secured an industry-wide reputation as a leader in the field of liquidation of business-to-business debt on behalf of a national client base.

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You Don't Have To "Eat" Attorney Fees

The distressed economic posture throughout the United States and other parts of the world has done much to expose the poor practices of law firms to protect the collection of their delinquent attorneys' fees. Because the economy had been good for the past many years, lawyers could afford not to "chase" bill payment. We are so busy representing our clients and winning our cases that unfortunately, we assume that the billing for all of our time, effort, overhead and expense in representing our client will be fully paid in due course.

This presumption is the initial mistake made by many law firms in the handling of their delinquent attorney fee receivables. Only good habits will ensure payment of delinquent receivables. A well written Fee Agreement should be executed by the parties, providing the terms and conditions of the engagement. The agreement should account for the recovery of interest, attorneys' fees and collection expenses upon default, so that the law firm will be made whole should the client become an adversary because of the need to commence legal action to make recovery.

Another good habit is to ensure that delinquent accounts are regularly policed by appropriate personnel in the law firm who can exercise the necessary degree of objectivity whenever it is evident that an account has become seriously overdue. The recovery of a delinquent account becomes less and less likely with the passage of each month of delinquency. Certainly, after delinquency of 90 days, there should be concern. After 120 days of delinquency, there should be a serious determination to insist on payment. Commencement of legal action is required in the event a delinquent client fails to cooperate amicably or establish the clear intent and ability to make payment. Time is the single most important factor in protecting the collectability of a delinquent fee. Recovery can only be accomplished if in fact the delinquent client is still viable enough to provide the success of involuntary enforcement. Whether a delinquent fee is large or small, it will become worthless and uncollectible if undue delay destroys the opportunity for successful collection.

One must be careful to avoid the weekly or monthly small payment program against a sizeable fee delinquency. More often than not, the delinquent client may

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not be solvent long enough in which to complete payment. It is a mistake to rely on small payments, which carry the strong risk that with time, the major portion of the delinquent attorneys' fees will be lost because of the client's ultimate inability to provide full payment before bankruptcy or insolvency.

If your firm is not experienced in or comfortable with the collection of a delinquent receivable, or it's time is better spent in other pursuits, consider engaging the services of a commercial law firm which is sophisticated in the recovery of delinquent accounts. Such firms will often provide the services on a contingent fee arrangement, thereby taking on the risk of collection and providing for payment of the services from recoveries made. Lay collection agencies are available, but they do not have the legal sophistication, experience and persuasion of a commercial law firm, which will generally provide a contingent fee that is competitive with any collection agency. There is also the strong concern that a lay collection agency, in the hopes of collecting the claim itself without sharing any fee with a law firm, will hold an account too long before engaging a law firm to start legal action to force payment. This delay can often deny successful recovery of the delinquent receivable.

Keep in mind that Primerus has a large number of commercial law firms with the expertise and experience to provide assistance and representation in the recovery of delinquent attorneys' fees. This representation is available throughout the 50 states and most parts of the world. The timely utilization of a local Primerus law firm or a Primerus law firm which handles liquidation of debt on a national and international basis should provide successful collection. With a proper Retainer Agreement and the engagement of a Primerus commercial law firm engaged to liquidate the delinquent legal fee, and **most importantly**, the timely placement of the claim for collection services, the creditor law firm can expect handsome results including recovery of the full amount of the delinquent legal fee, collection costs and attorneys' fees, and return of disbursements relating to any required legal action to enforce payment. Though the contingent fee will be deducted from the recovery, there will be a strong economic return to the law firm in question, rather than the serious and complete loss of a receivable represented by the unpaid and uncollected attorneys' fees. The net recovery is **all profit**.

The formula is simple: good habits in processing the delinquent client's fee receivable, **plus** early and **timely placement** for collection **equals** positive liquidation of the delinquent attorneys' fees and **successful collection**. With this formula in place, there should be few instances when the law firm must "eat" all of the time, effort, overhead and expense invested in the delinquent account. P

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Best Practices

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Cash Flow Management for Solo and Small Firm Attorneys

Most solo and small firm attorneys will tell you that their biggest challenge is not practicing law, it's managing their practice. No matter how good the attorney, failure to appreciate the basics of cash flow management can lead to frustration and even death of a law practice. Following these basics, however, should help ease your pain.

Always keep in mind the fundamentals: cash flow management, in its simplest form, involves the movement of cash in and out of a business.

1. Keep overhead to a minimum – reduce the movement of cash out of your business.

The first and probably best advice I received from other attorneys when I stepped out from the relative comfort of a national firm to my new practice was "keep your overhead low." Save your pennies when you can in the early stages of your firm's life until you know what your monthly income will likely be and can plan accordingly. One of the luxuries of being a lawyer today is that you really can operate without support staff. Even filing in most Texas courts can be performed online – often at the same or less cost than a courier.

2. Keep your reserves fully funded – manage the movement of cash in and out of your business.

Every business cycle has its slow periods. "Big" firms can usually compensate for these because the slow period for various practice groups and offices will occur at different intervals during the year (e.g., the transactional group can send work to the litigators and vice versa at different times of the year). Not so for and small firm attorneys. Consequently, a solo/small firm must plan for its down time. One way is to operate on a monthly draw and to keep a cash reserve equal to 45 to 60 days of operating expenses. This should allow you to weather the down time in your practice.

In this regard, if you operate on retainer, include in your agreement the right to issue an invoice when your combined accounts receivable and work in progress equals 75 percent of your retainer. If executed properly, you can replenish the retainer before it reaches zero and can avoid the scenario where you are essentially advancing fees to your client by working without any reserves. The goal here is to maintain cash reserve; if your billings surpass the retainer it will be extremely difficult to recover the advance position a retainer is intended to create.

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3. Have a budget – manage the movement of cash out of your business.

It sounds simple – it is. Your budget should include projected revenues and expenses. A sample budget for expenses might include the following: rent, salaries/wages, payroll expenses, equipment leases (copier, telephone system, etc.), furniture, supplies, marketing, utilities, bar dues, insurance, accounting fees, etc.

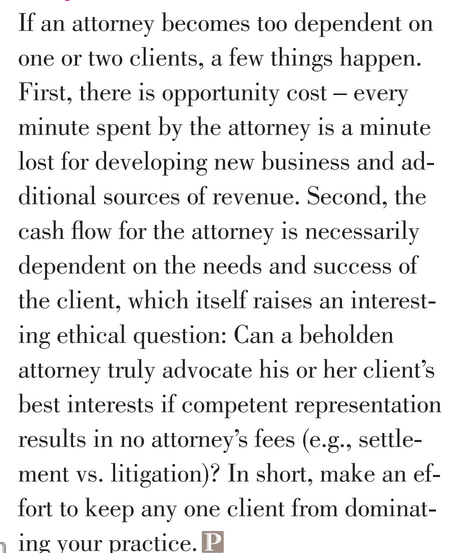
Smart business owners prepare and use budgets and cash flow statements not only to plan expenses for the future, but also to understand how they used money in the past. For example, review your client development budget and actual expenses annually, monthly, or even weekly, to evaluate your return on investment. Are the marketing dollars you spend generating any billable income? Minimal or no return on your investment should cause you to revisit your budget and spend your marketing dollars differently.

4. Prompt billing – manage the movement of cash into your business.

The chances of collecting a bill in full and maintaining your cash reserves are greatly increased by prompt billing. I make it a practice to send clients an invoice before the first of each month. This way my clients expect to receive an invoice on a regular basis and can budget accordingly. If your fees are included in your client's budget, you are a long way not only to getting paid in full and on time, but also to managing the flow of cash into your business. Additionally, include the statement that the invoice is due, depending on the terms of your fee agreement, either on receipt or wit[illegible] 10 days of the invoice date.

5. Do not allow one client to dominate your practice – manage the movement of cash into your business.

If an attorney becomes too dependent on one or two clients, a few things happen. First, there is opportunity cost – every minute spent by the attorney is a minute lost for developing new business and additional sources of revenue. Second, the cash flow for the attorney is necessarily dependent on the needs and success of the client, which itself raises an interesting ethical question: Can a beholden attorney truly advocate his or her client's best interests if competent representation results in no attorney's fees (e.g., settlement vs. litigation)? In short, make an effort to keep any one client from dominating your practice. P



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Marc Romano is the founder and president of Ignyte, a brand strategy firm focused in the legal industry. The company works primarily with small and middle market law firms to fuse market insight with brand strategy and innovative practices, helping firms develop and implement a sound strategic vision to close the change gap and drive innovation and growth.

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Change: Driving Law Firm Growth in a Changed Industry

Let's start from the proposition that the legal industry is experiencing revolutionary change. In the next few years, the industry will look nothing like it did just 10 years ago. Such is the pace and degree of change in the industry. Change to this degree is largely driven by one or a combination of two business critical dynamics – the changed priorities of the market and new, innovative ideas that disrupt markets and make existing solutions undesirable, ineffective and/or obsolete. In the case of the legal industry, the traditional firm-centric business and value model is in direct conflict with the changed and high value needs of business and corporate clients. That market has decided that the current business/economic relationship between it and the legal profession needs to change. And so it will.

Should law firms worry? The only firms who should are those that do not recognize change as the fundamental nature of reality and do not adopt a new business and value model to respond. Industry change breeds winners and losers. The firms that will benefit most are the small to middle market firms with practice specialization and the desire and flexibility to change their business and value models to accommodate the changed market. These firms are liberated from the unnecessary overhead and inefficiency one typically associates with "big law." For these firms, this is a period of great opportunity. But only if they can adopt a meaningful value model and separate themselves from the majority of generalist, look-alike firms who are, at best, viewed by the market as a commodity.

Like it or not, formal research has shown that to a large degree, legal intellect is viewed by the market as a commodity with little or no meaningful differentiation among most law firms. Yet meaningful, sustainable differentiation is the key driver of growth. To achieve it, the focus must be on two business critical dynamics: ongoing innovation – the development of new ideas to solve new and existing problems, and strategic positioning of the brand.

These are the key drivers of differentiation and sustainable growth in nearly every industry.

Change in business environments is healthy. It is the burning of the forest that in time stimulates new, stronger and healthier growth. It has impacted nearly every major industry in the world today,

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including publishing, automotive, investment management, retail and travel. And it has reached the legal industry.

The call for ongoing innovation

As markets continuously evolve, so too do the needs, applications and priorities of customers. Consequently, the companies serving those markets and their business and value models must evolve to accommodate change and be considered as viable, relevant solutions. If a company fails to evolve its offerings, it becomes disconnected from the realities of the market. Its value becomes irrelevant to high value customer need and it is effectively removed from consideration by the market.

Innovation, driven by market insight and creative thinking inside the organization, is the single biggest initiative for building and sustaining growth. Seventy-five percent of CEOs of the fastest growing companies claim their strongest competitive advantage is unique ideas manifested through products and services and the distinct human and non-human processes that power them to market. That's innovation by another name. Boston Consulting Group reported that 90 percent of organizations believe innovation is a strategic, ongoing priority.

How does innovation apply to the legal industry?

Smart law firms are creating increasingly inventive client-centric business models. They view change as opportunity and they reap financial benefits by redefining how legal intellect and solutions are delivered. Their business and value models revolve around the needs of the market. They solve problems more efficiently and effectively, they create market confidence and as a result, they are safe to believe in. They are the new competitive force in the industry driven largely by an innovative culture.

Innovation results from the planned, organized, collaborative and deliberate efforts of people inside the organization that spark sought-after service concepts and effective business and value models. To stand as valuable innovations, new services must be grounded in high value customer need and must be cost efficient. The process encompasses coordinated and ongoing internal collaboration – a component of the internal branding process – supporting an initiative that hones ideas that create market-leading solutions to problems. The ultimate objective of the initiative is converting them into developments – value for the market – that boost the bottom line of the firm.

Strategic positioning of the law firm brand

To a law firm, a brand is the sum of all the behaviors, ideas, communication, actions, inactions, conversations, values, visual expressions and differences that collectively create a feeling of either confidence and belief or lack of confidence and belief in the firm. A brand establishes the firm's strategic direction and creates the platform for expression of the firm's real value to the market.

There are two components to branding; one is directed to the external market. It is the purposeful communication of the brand values to the outside world. The other is directed to the internal organization. Internal branding is focused primarily on people. The brand is inextricably linked to each individual in the company. Internal branding creates clarity, identifies priorities and unites people in purpose. It is critical to brand success. Brand positioning once seen as unnecessary, has become critically important to counter perceived or real parity and a key competitive growth tool.

Galt Advisory, ALM Research, Greenfield Belser and Core Brands have each conducted formal research on the impact of branding among law firms. Key findings in these studies showed that brand positioning is now a major contributor to a firm's overall growth and market presence and a strong unifying force internally. It sends the message about who the firm is and drives how the market and clients perceive the firm. Internally, it sets the agenda and creates a common purpose behind strategy.

A key finding from ALM's research shows investment in brand strategy and competitive positioning with law firms is #2 in importance among the top five strategic initiatives for driving growth. Attempting to identify the variables that made a difference between law firms that failed and those that succeeded, Core Brands found that successful firms had a "we" culture vs. a "me" culture driven by strong brand identity and a common vision. Galt's findings identified four key benefits to branding in a law firm environment:

1. Style, clarity and reputation
2. Superior business development and client relationship opportunities
3. A clearer positioning platform to drive marketing strategy
4. Enhanced ability to attract and retain people

An Altman Weil study determined that branding has doubled in importance over the past two years. Respondents confirmed that brand positioning and reputation are the most important reasons corporate clients choose law firms. The study showed that clients know little about the differences among firms and view most as providing like services, intellectual strength and results. Brand characteristics define the differences and create the distinction.

In summary, the key dynamics that drive profitability in the changed legal environment are brand strength, client-centered differentiation drivers and innovative practice.

Although success hinges largely on the behaviors of people, a law firm's single most important asset is not its work or its people. It's the confidence that the market places in the firm – the extent to which the firm inspires continuing untroubled assumption that this collection of talent and commitment is safe to believe in.

Everything else is details.

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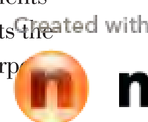
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Lessons Learned on My Journey to Primerus

My legal career thus far has been a series of adventures, each with its own set of challenges, satisfactions and lessons. Because I have worked in a variety of legal environments and jurisdictions, I have been able to compare different ways of practicing law, and different environments in which to practice law.

New York

As a first-year associate in a 44th floor office of a prestigious New York corporate law firm, I was impressed by my plush surroundings, the high academic caliber of my colleagues and the well-developed training program. I was assigned to the banking group, and my work consisted primarily of drafting credit agreements for syndicated loan facilities, amendments to credit agreements and closing documents for credit agreements. We almost always represented the same client in all the transactions, a venerable New York bank which served as administrative agent for the loan facilities. This was an institutional client who had been with the firm for years and was unlikely to go anywhere. Although associates rotate through various corporate practice areas, they end up in one practice area, concentrating on a fairly narrow slice of the law. There was a certain formality in the hierarchy of the firm, with the partners eating their lunch in their own dining area, separate from the associates' cafeteria. The rumor was that the partners even had better food than the associates.

I learned some valuable skills. First was a zero tolerance for typos. We were all smart and capable of being good lawyers, but what separated the wheat from the chaff, the polished from the sloppy, was typos. In letters, memos, contracts, emails, wherever, we learned to develop an eagle eye for spotting typos.

I learned not to be afraid of paperwork – reams of paper and documents. That comes with the territory. I learned to get used to scrambling to meet client deadlines. And I learned clients are people too; they like to be reassured. Treat them like you want to be treated. Keep them informed just as you like to be kept informed.

I also learned that law is not rocket science. A large part of being a good lawyer is careful reading and attention to detail – and being resourceful. Not knowing

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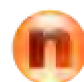
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very much as a junior associate, I would frequently go to the partner I worked with to ask him questions. At one point, he suggested that I try to figure out the answer to my question, before asking him the question. And if I still couldn't figure it out, then I could ask my question. Many times I would be able to answer my own question. I learned the important skill of "being able to figure things out" – essential to being a good corporate lawyer.

I also learned to develop confidence in myself and not be so intimidated by more senior attorneys. Instead of knocking on the door and saying, "Can I bother you for five minutes?" or "Sorry to disturb you," which suggested that I was a bother and a disturbance, I learned to say "Can I have five minutes of your time?" or "Is this a good time for us to go over X"?

Finally, I learned an important lesson from a wise senior associate I worked with. I was starting a 401(k) investment plan for the first time and was overwhelmed by all the different investment options. I went to the senior associate and asked his advice on how to maximize my investment return, which funds should I choose. He responded, "The best advice I can give you is to develop yourself, your own talents, skills, knowledge and experience. The best investment you can make is to invest in your own human capital." Interesting. I didn't fully appreciate what he was saying then, but I understand it more now. Investments rise and fall in value, but your own human capital can never be taken away.

Paris

I was then recruited to the Paris office of another preeminent New York law firm. Having been a Francophile for years, my dream had finally come true, I was able to use my French language skills in a business setting and be a working member of French society, not just a student on a junior year abroad. There were multiple nationalities represented in the office: American, Canadian, French, British, Greek. My practice area was again fairly specialized in securities transactions relating to foreign private issuers. Clients again tended to be large institutional investment banks and companies who had used the firm for many years.

Although English was generally spoken in the office, I spoke French with all our French clients, and they appreciated it. My ability to communicate with French clients and colleagues helped me develop a closer relationship with them, and helped me to better understand them and how they think and express themselves. Certain expressions or ideas exist in one language but not in another, they cannot easily be translated, and the ability to understand such unique expressions goes a long way toward building rapport.

I noticed that French (and other continental European) law contracts tended to be much shorter than U.S. law contracts. There's none of the overlawyering you sometimes find with U.S. contracts, no providing for every contingency, however remote. No sentences that run on for the length of a paragraph. This may have something to do with the more litigious nature of U.S. parties.

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London

My next adventure was in the London office of a major California law firm. All of the support staff was British, although the lawyers were primarily American. Because the firm was based in California, the office was more laid back and less formal and departmentalized than the New York firms I had been accustomed to. I had a larger variety of work as it was a small office, we had to deal with whatever came in the door.

I remember one incident that brought home the difference in communication style between the Brits and the Americans. A lawyer in our New York office frequently called the managing partner of our office, also a New Yorker, as they worked on several matters together. When the managing partner's English secretary answered, "Mr. X's office," the New York lawyer asked simply, "Is he there?" This was seen as the height of rudeness by the English secretary, who would have expected the polite response to be, "Good morning, may I please speak with Mr. X?"

Emails of British lawyers also tended to have more niceties than U.S. lawyers' emails, which were more direct and to the point. U.S. lawyer: "Please send us the documents." British lawyer: "Perhaps you would be so kind as to send me X, Y, Z documents." It was like a different language. To many Brits, the niceties were an essential part of business communication.

Negotiating English law contracts was very similar to negotiating U.S. law contracts due to shared common law roots. In fact, as I learned when I took the Qualified Lawyers' Transfer Test to qualify as an English solicitor, many aspects of U.S. and English law are very similar. Becoming an English solicitor after working as a U.S. lawyer was an easy transition, and allowed me to move smoothly into the role of General Counsel of a U.K. company, where I practiced primarily English law. During my time in London I also worked on the U.S. securities law team of a large U.K. law firm, where I often worked on big deals with a large team of lawyers from our firm, each with a different area of specialty,

Why Small is Beautiful

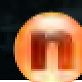
I end my journey to Primerus in a seven-lawyer San Francisco business law firm with a diverse transactional and litigation practice. Having spent most of my career in fairly specialized practice areas of large firms, I was looking for a more generalist role. In the three and a half years I have been with this small firm, I have worked in a far wider range of legal areas than in the big firms: not just securities and financing work, but commercial contracts, employment law, intellectual property, company formation, corporate governance, nonprofit companies. I've developed familiarity with diverse issues. Like with an in-house practice, I have a better work-life balance than in a big law firm. And the small firm environment seems more relaxed and flexible, without the strict hierarchy and formal structures of many big firms.

How can I serve my clients better in a small firm? I am able to provide more cost effective services because I can service a variety of my client's needs, rather than having to outsource different needs to different attorneys, ending up with a team of 20 lawyers who all rack up billable hours getting up to speed. You don't tend to find the arrogance in small firm lawyers that you sometimes find in big firm lawyers, who have institutional clients passed down over generations, and who may not be as incentivized to focus on client service. I have heard of some big firm lawyers who refuse to stand behind their mistakes and correct them, perhaps because of this arrogance. This would never happen in a small firm like ours.

Conclusion

What do lawyers need to practice in a global economy? Foreign language skills are a definite plus, as it creates bonds with our foreign colleagues and helps us understand them better. An openness to other ways of doing business, and an awareness of differences in etiquette, business practices, negotiation techniques and business protocol are also important.

How do small and mid-sized firms attract quality attorneys? Give them all the reasons I have enjoyed coming to work in a small firm: highly varied work, more relaxed and friendly atmosphere, more flexible structures, less formal and rigid. And actually being able to make social plans on a weeknight evening is a plus!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Henry Sneath is a trial attorney specializing in business, intellectual property, pharmaceutical and products liability, toxic torts, insurance coverage and tort litigation matters. He is listed in Best Lawyers in America for Commercial Litigation and has been designated by his peers as a Pennsylvania Super Lawyer in the field of Business Litigation. He is also currently the First Vice President of DRI.

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Best Practices

The Litigation Boutique: Managing Complex Litigation

Here's the challenge. Your law firm has 12 lawyers, two paralegals, four legal assistants, one firm administrator and one "runner." You get a call from a potential client asking whether you can competently staff a large, complex, commercial lawsuit representing a relatively small, somewhat cash-strapped company against a large multi-national corporation. You determine that the issues may involve unfair competition and false advertising claims under the Lanham Act, Sherman Anti-Trust Claims and other potential business-to-business type litigation claims. There is a potential that the E-discovery issues will involve 20 to 30 million pages of documents, with complicated privilege issues, and the need to code, sort, store and produce many millions of documents with varying levels of confidentiality restrictions. The matter will involve complex databasing arrangements for those documents, such that potential experts and consultants may see documents at one level of confidentiality, clients another, and lawyers still another.

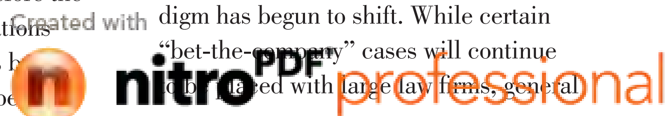
Your decision as to whether or not to accept the representation must focus on a host of factors relating to costs, staffing, document databasing, use of technology and the capability of your firm's attorneys to deal with the complex legal issues. You can accept the representation if you have followed a long-term plan to build competence, agility, technology, financial stability and a sense of teamwork in your law firm.

Industry Issues

There is no secret that even before the downturn in the economy, corporations were seeking new ways to address burgeoning legal and E-discovery expenses. Companies with extensive litigation portfolios were adopting the "DuPont" model for reducing the number of "panel" firms to a minimum. Insurance companies had long ago perfected the art of controlling legal costs, but nonetheless, they faced additional pressure from their corporate officers to further reduce legal expense, without sacrificing quality of representation. Corporations which faced business-to-business commercial claims for patent infringement, breach of contract or employment claims also faced pressure to reduce legal expenditures.

The Paradigm Shift

For many decades, the legal industry paradigm was clear. Only large law firms could handle large litigation. That paradigm has begun to shift. While certain "bet-the-company" cases will continue to be placed with large law firms, general



counsels are increasingly finding a new way. Competent, well-managed and appropriately staffed litigation boutique law firms are entirely capable of handling complex commercial and intellectual property litigation. In the example given at the outset of this article, our firm was able to say "yes we can handle that litigation." Here are the tools that would allow a small firm to take on that significant representation.

1. The Competency Factor:

In the last decade, small law firms have had the luxury of hiring away from large firms, lateral associates and partners with considerable academic pedigree, solid trial experience and good existing client relationships. A host of factors have driven such lawyers from large firms to smaller ones, and they bring with them all of the talents which originally served as the reason why the large firms recruited them in the first place. Small law firms further develop their trial lawyers' skills by providing regular courtroom experience. Trial lawyers see how a case might end, at a jury or bench trial verdict, without which it is difficult to develop a strategic plan, budget and theme for handling complex litigation. Many small litigation boutiques have trial lawyers who have taken 50 or more cases to verdict. There is no substitute for being able to "see that possible end game" before meeting with a client to develop a litigation strategy and plan. Litigation boutiques frequently have a mix of lawyers with high-end academic and federal court clerking experience, along with seasoned trial lawyers who can help fashion a small, efficient team of lawyers and paraprofessionals to navigate the difficult issues of complex commercial litigation.

2. Human Capacity:

The successful boutique firms are not afraid to hire the "best athlete in the draft" lawyer, even if they cannot immediately fill that lawyer with billable work. It is critical that small law firms retain enough extra "human capacity" to staff large matters when they come in the door with little or no notice. There is no time to hire new lawyers to respond to complex cases where parties have filed motions for preliminary injunction or sought expedited discovery and hearings. When the client calls with a case like the one above, the firm needs to have enough capacity to immediately respond, despite the risk of fronting the cost of that extra capacity.

3. Technological Capacity:

In responding to requests for representation in the case set forth above, most boutique law firms (and in fact many large law firms) cannot promise to manage 20 to 30 million pages of documents on an in-house database. Even with tools like Summation or Concordance, most law firms have limited server capacity and limited IT department capacity such that the only reasonable solution is to have a strong partnership with an outside vendor. This outside vendor relationship needs to be firmly established on a long-term basis, so that again, the call for emergency response to large litigation can be answered with an immediate plan for managing large scale discovery and E-discovery issues.

Databasing costs can be billed directly to clients, or done on a pass-through basis, with no markup by the law firm, and no anticipation of profit by the law firm for providing outside document hosting services by a competent vendor. In the case above, the complex document coding project, which would allow firm lawyers to find documents at a moment's notice, to review them for privilege and to generate exhibits for deposition and trial, was handled by a team of contract lawyers whose services were pass-through billed to the client, with again, no markup and no profit to the law firm. All of these costs were budgeted, projected and done on a direct billing basis with the law firm reviewing the bills for propriety and compliance with budget and litigation handling guidelines. At $30 to $40 per hour in many jurisdictions, contract lawyers provide a substantial cost savings to clients, and allow for the boutique law firm lawyers to focus not on coding documents, but rather on how to manage the information that is garnered from those documents. Many of the complaints that are

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heard from lawyers leaving large law firms is that after 10 or 12 years of practice, they are still functioning essentially as document managers or document coders, and are not being given a chance to see the inside of a courtroom. Their services are being billed at rates in excess of $400 or $500 an hour, and yet they remain on the lower end of a heavily tiered structure of lawyers, "staffing" large litigation.

4. Intellectual Property (IP) Expertise:

Many Primerus law firms have substantial competency in the various Intellectual Property and Technology disciplines. This includes the so-called "hard" IP like patent prosecution, trademark prosecution, intellectual property opinions, evaluations and audits, and management of corporate intellectual property portfolios. On the other hand, many Primerus firms also handle litigation on issues of patent, trademark and copyright infringement, breach of licensing deals, trade secrets, false advertising, unfair competition and a host of IP issues relating to employment termination matters. Like many Primerus firms, ours has the capability to draft patents and trademarks, to guide the applications through the prosecution in the USPTO, and to enforce those IP rights when necessary. This capability also provides litigation strength to a boutique when some of the firms' lawyers have strong technical and computer backgrounds, and are admitted to practice before the USPTO. They serve, in a sense, as in-house consultants on technology, E-discovery, software and other issues that arise in complex business litigation.

5. Fee and Expense Control and Management:

Smaller law firms generally have far more flexibility with regard to the structuring of fees and expenses than large firms. Many mega law firms dictate billing rates to their partners and associates, and refuse to allow flexibility or creative billing arrangements. Boutique firms can be more creative, and for example, in the case referenced above, the firm was able to accept representation on a partial contingent fee basis. The plaintiff/client was able to afford the litigation based on legal fees being billed at one-half the normal rate, in exchange for paying a percentage of any recovery. As mentioned, all outside vendor costs and costs for contract lawyers were billed to the client with no markup, no income to the law firm. Even without a contingent arrangement, there is no secret to the fact that small law firm billing rates can be a fraction of those in large law firms in the same market.

6. Additional Strength Through Primerus

An additional strength to small firms comes from an international alliance with other firms that pledge to uphold the Six Pillar philosophy. Much of what I wrote above reflects that commitment. Primerus firms can joint-venture with each other, or refer matters to find the best possible representation for any client faced with complex litigation issues. Cross discipline referrals and alliances between Primerus business firms and Primerus litigation firms will also help build a strong litigation team capable of handling even the most sophisticated matters. P

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Member Spotlight

Robin Lewis is a commercial real estate attorney and a partner at Mandelbaum, Salsburg, Gold, Lazris & Discenza, a 60-lawyer full-service law firm in West Orange, New Jersey. This year, she was named in *New York Magazine* as one of the New York metropolitan area's best attorneys in her specialty.

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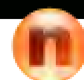

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Lewis's comedy career began about 14 years ago, when the acting school where her husband, Bob (a professional actor) taught needed to lease a new space. They asked Robin to negotiate the lease. As a fledgling organization, they couldn't offer her much money, but they could trade her services for free acting lessons.

Robin Lewis is a commercial real estate attorney by day, but at night, you might find her on stage with a face full of whipped cream or her body twisted like a pretzel.

A member of Nutty By Nature, a professional improvisational comedy troupe based at the New Jersey School of Performing Arts in Bloomfield, New Jersey, Lewis spends her free time entertaining audiences with short form improv similar to that of the television show "Whose Line Is It, Anyway?"

And despite her skill and wit, sometimes that means a face full of whipped cream in the troupe's act called "Story, Story, Pie." Each performer comes on stage carrying a whipped cream pie. The audience picks a story genre, and the performers must tell a coherent story, speaking only when the director points at them. As the finger moves faster, more performers stumble. And when they do, they must hit themselves in the face with a pie and leave. In the end, only one actor remains, untouched by the pie, to finish the story.

"That's a game I like to win," Robin joked.

Lewis's comedy career began about 14 years ago, when the acting school where her husband, Bob (a professional actor) taught needed to lease a new space. They asked Robin to negotiate the lease. As a fledgling organization, they couldn't offer her much money, but they could trade her services for free acting lessons. She accepted the offer, and it didn't take long before she was hooked. She completed the school's three levels of acting classes, then three levels of improvisation classes (taught by her husband). Soon it was time for her and her classmates to take their act in front of a real audience, so they formed Nutty By Nature.

Over the years, the group has performed at The New Jersey Performing Arts Center, the South Street Seaport, bookstores, corporate training events, private parties, universities, schools and other venues. The first Saturday of every month, the 10-member group performs in a local cabaret room.

Robin loves the creativity, spontaneity and interaction with the audience.

"I have always loved the arts and theater," Robin said. "So I guess this fed right into my frustrated artist personality."

Aside from making people laugh, the art of improvisation also has a lot to teach, including communication and listening skills and how to think on your feet. For Lewis, being a good negotiator is essential as she works daily with developers, banks and businesses in acquisitions or sales, leasing and financing transactions. "Improv is a wonderful way to keep things fresh and keep your mind sharp, and I think that these are the skills that I carry back into my practice," she said. ■

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Community Service Feature

The Florida Bar Foundation presented Joseph Milton with the Medal of Honor Award earlier this year for his leadership in promoting professionalism and ethics to members of The Florida Bar.

When Joseph P. Milton was awarded the highest honor given to an attorney by the legal profession in Florida, he responded with the same humility and graciousness that have earned him great respect in his profession.

"I was truly humbled," Milton said in a recent phone conversation. "Some of the past recipients are real legends, and it seems to me like they did a lot more than I have ever done. Out of 88,000 lawyers, that I would get this Medal of Honor, it was certainly appreciated."

The Florida Bar Foundation presented Milton with the Medal of Honor Award earlier this year for his leadership in promoting professionalism and ethics to members of The Florida Bar. Milton is a senior partner with Primerus member firm Milton, Leach, Whitman, D'Andrea & Milton, P.A. in Jacksonville, Florida.

"I have always felt that in addition to helping our clients solve their problems, we should also do whatever we can to help our communities and our profession improve," Milton said. "Early on in law school, we learned to be problem solvers. Who better is there to improve the legal profession than people who have an aptitude to solve problems?"

When Milton was chairman of the Fourth Judicial Circuit Professionalism Committee, the circuit and the Jacksonville Bar Association were jointly recognized not only for creating the outstanding professionalism program of The Florida Bar in 1999, but also as the outstanding professional program in the United States by the American Bar Association in 2001.

As part of the professionalism program, a plaque was displayed in the judges' chambers stating, "Professionalism and Civility: Anything less will not be tolerated." Milton said, "It's a solid reminder when lawyers get a little carried away. A lot of judges would say, 'Don't forget the sign.'"

In a video tribute to Milton posted on the Florida Bar Foundation website, the Hon. Donald Moran Jr., Chief Judge of the Fourth Circuit, said the professionalism programs started by Milton set a tone that endures today.

Milton also has worked throughout his career as a strong advocate for the legal needs of the poor. He was recognized in 1981 with the Outstanding Service Award of the Jacksonville Area Clients Council for Individual Contribution in Support of Legal Services for the Poor. He still serves on the board of Jacksonville Area Legal Aid.

"He is a person of humanity and a person of feelings, and he shows those through his actions," Rutledge Liles, President of The Florida Bar in 1988, said in the tribute. He credited Milton's work for Legal Aid, as well as large capital contributions from his firm, [illegible] helping to ensure the organization could provide outreach to the less fortunate.

Joshua Whitman, partner at Milton, Leach, Whitman, D'Andrea & Milton, P.A., said of his colleague: "One of the remarkable things about Joe is his willingness to give to public service with the same intensity and commitment as he practices law."

As president of the Foundation of the American Board of Trial Advocates, Whitman said Milton was responsible for creating Justice by the People, a video curriculum that has taught 50 million school children across the country about what lawyers do for the civil justice system and what the system does for the people.

The values of professionalism and community service must be upheld in the legal profession today, according to Milton. That's one of the reasons he was attracted to Primerus and the Six Pillars. "If I need a lawyer in another city, the first source I go to now is the Primerus website. You can assume Primerus lawyers are a cut above the rest in providing quality legal services and professionalism." P

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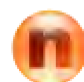
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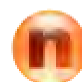
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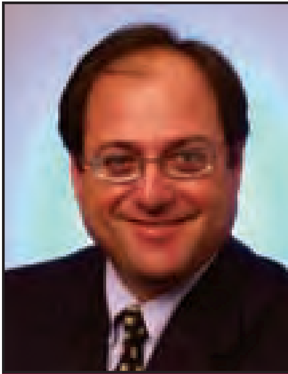

Primerus Business Law Institute

Michael R. Weinstein, PBLI Chair

In the last issue of Paradigm, our President, John C. "Jack" Buchanan, stressed that the uniqueness of Primerus firms goes beyond the high standards articulated in the Six Pillars. Primerus firms build relationships with their clients as strategic partners, trusted advisors and good friends. Relationship building is certainly not limited, however, to our client relationships. As we manage our law firms, building relationships with fellow Primerus law firms and attorneys is the critical element in maximizing the opportunities and added value afforded by the Primerus alliance. That can most effectively be accomplished by weaving Primerus into the culture of your firm by encouraging and, dare I say it, insisting on participation in Primerus events and activities by multiple attorneys. As you peruse the update below describing the activities of the institute since the last issue of Paradigm was published last May, I encourage you to consider and commit to more widespread participation within your firms. Participation by many is the key to building the relationships that allow our firms to most quickly and effectively leverage our opportunities as members of this terrific alliance.

In May, I proudly reported that the first quarter 2010 started with a bang! I am pleased to report that the reverberations have not subsided; we have truly capitalized on that inertia over the last five months as we approach our Annual Meeting in October.

In May, 13 members from the Real Estate and Commercial Law practice groups took advantage of the opportunity to promote the Primerus alliance to retail estate professionals, developers, retailers, lenders, brokers, public officials, executives and in-house counsel that comprised the more than 30,000 attendees of the International Council of Shopping Centers (ICSC) in Las Vegas.

In June, participation by 45 member attorneys and 19 clients ensured the tremendous success of our inaugural Primerus Law Institute (PBLI) Symposium in Chicago. Attendees benefited from substantive CLE programs put on by our specialty groups and a lively panel discussion concerning the ACC Value Challenge. Participants also took advantage of the tremendous networking opportunities afforded at the Thursday evening reception and throughout the Friday program. Participation surpassed that experienced several years ago at the first Client Convocation put on by our sister Primerus Defense Institute, and we expect to match their successes in the coming years. At our Annual Meeting in October we will discuss combining the annual PBLI Symposium with our Winter Networking Meeting as a way to further leverage this opportunity for our member firms.

Our practice groups have continued to meet monthly by teleconference and continue to ramp up their activities. In June, the Labor & Employment Group continued its series of seminars, presenting its webinar, "Navigating Uncharted Waters: Protection of Confidential Information in a Mobile Society." And in July, the Bankruptcy Practice Group followed suit, presenting its webinar, "Landlord Rights in Bankruptcy," focusing on what commercial landlords need to know when their tenants file for Chapter 11 bankruptcy. The response to these webinars continues to grow by leaps and bounds. By way of example, more than 70 cl[illegible] and 40 Primerus attorneys attended Labor & Employment webinar; the clients participating included HR managers, IT managers, claims managers, and in-house counsel from a myriad of companies, both small and large, and including but not limited to several Fortune 500 companies.

We look forward to a productive meeting and wonderful time at the Primerus Annual Meeting on October 14-16 in Napa Valley. Primerus will unveil exciting new changes. Attendance at the Annual Meeting is critical to leveraging the benefits of Primerus for your firm and presents an invaluable opportunity to network with your fellow Primerus attorneys.

Immediately following the Annual Conference, on October 24-27, Primerus is co-sponsoring and exhibiting for the second straight year at the Association of Corporate Counsel (ACC) National Meeting in San Antonio. Several PBLI firms will be attending the meeting along with Primerus staff, and the Executive Committee is hard at work planning for that event. At that meeting we expect to build upon the inroads made last year with the ACC and its members.

See you in Napa!

Michael R. Weinstein

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Primerus Consumer Law Institute

Donald J. Winder, PCLI Chair

Through my connection with Primerus at large, and particularly with the Primerus Consumer Law Institute, I have had the pleasure of developing relationships amongst fellow members. These relationships can lead to case referrals. But we should also consider the referral of case issues and expertise.

One of my favorite examples of this highlights former Primerus member Roger Evans from Houston, who's now teaching at a law school. It involves the referral of an issue within a case, and the use of our extranet. The issue was whether an illegal alien plaintiff may recover economic damages based upon a U.S. wage loss. The year was 2003, and the cases we found on Westlaw were split.

Roger, however, pointed out the seminal case of Hoffman Plastic Compounds, Inc. v. NLRB, 122 S. Ct. 1275 (2002). Hoffman was not a personal injury case. It involved the interpretation of the Immigration Reform and Control Act of 1968 ("the IRCA"). The Court held the IRCA foreclosed the National Labor Relations Board from awarding back pay to the undocumented aliens not legally authorized to work in the United States. Hoffman acknowledged the purpose of the IRCA is to enact a comprehensive scheme prohibiting employment of illegal aliens in the United States.

Not exactly the result you might want from the plaintiff side, but a case you must know. I gladly paid Roger for his time (which was modest). The point is, we can retain each other for expertise on issues in cases. Taking advantage of, and actually using, the knowledge and expertise of the more than 2,000 attorneys within Primerus only adds to the value of your membership.

We'll have further opportunities to develop relationships with fellow members at the 2010 Primerus Annual Conference October 14-17 in Napa Valley. The PCLI Executive Committee and I have been hard at work planning excellent substantive sessions for our Group.

The theme for this year's conference is "Positioning Your Firm in a Changed Economy." Plenary sessions include presentations by Jack Roberts (Peak Positions), Fred Dirkse (OIC Group) and Marc Romano (Ignyte) on Search Engine Optimization, Website Design and Branding, respectively. Additionally, we will be introduced to our new firms overseas, including Canada, China, England, France, Germany, Greece, Hungary, Mexico, Netherlands and Switzerland.

On Saturday, our Insitute will breakout into sessions on Lien Reimbursements and Exhibits. The featured presenter on Lien Reimbursement will be Russell Boman, Esq. with Lien Negotiation Counsel. We will learn the practical aspects and considerations of Self-Funded/ERISA Plans, Fully Insured Plans, Government (Medicare/Medicaid) Liens, Special Needs Trusts and Asset Preservation.

Lastly, we will have a presentation from High Impact Graphics, a company dedicated to adding clarity and value to legal cases through the use of demonstrative evidence.

I strongly encourage you to attend this year's conference. One of the greatest benefits of your Primerus membership is the fellowship and relationships in our Institute and the membership as a whole. The Annual Conference is one of the best avenues we have to facilitate and develop these relationships.

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Primerus Defense Institute

Bradley C. Nahrstadt, PDI Chair

A lot has been happening in the Primerus Defense Institute since we concluded our most successful convocation ever in April. First and foremost, we welcomed two new members to the PDI Client Advisory Board – Phillip Bond from FFE Transportation and Colleen Taylor from Werner Company. We look forward to receiving their wise counsel and steady leadership in the years to come.

There are now several active Practice Groups within the PDI. The Insurance Coverage and Bad Faith group has planned a not-to-be-missed seminar concerning insurance coverage and bad faith issues September 23-24 in Chicago. That group is also completing work on a compendium of bad faith law in all 50 states. The Products Liability group is planning a series of webinars regarding issues frequently encountered in products cases and is also planning a standalone seminar for 2011. The Trucking and Transportation group is updating its "quick response" guide and is planning the next stand-alone seminar.

Two new Practice Groups have formed since the PDI Convocation: Professional Liability and Retail/Hospitality/Entertainment Liability. The Professional Liability group has already met several times via conference call and has been instrumental in securing Primerus as a sponsor at the Professional Liability Underwriting Society annual meeting in the fall. Plans are underway for a professional liability seminar in 2011. The Retail/Hospitality/Entertainment Liability group has also been hard at work, establishing membership requirements, forming substantive subcommittees and discussing continuing legal education opportunities for its members.

As you can see, the Practice Groups provide you with plenty of opportunities to get more involved in Primerus. I urge you to contact Ruth Martin or Vanessa Crocetto and tell them how you would like to get involved.

Finally, let me end with a few words about the Primerus Annual Conference, to be held October 14-17 in Napa Valley, California. This is the one time during the year when all Primerus lawyers have an opportunity to spend time together and learn from one another. This meeting is a great opportunity to rekindle old friendships and make new ones.

There are several important items of business that we will discuss during the PDI business meeting at the conference. There will be a comprehensive discussion of what transpired at the PDI Convocation, as well as a report on the pertinent comments contained in the client surveys. Duncan Manley will lead a discussion regarding the benefits of Primerus membership. Tim Sullivan will discuss a revised letter to be sent to clients informing them of Primerus and the benefits Primerus can offer them. The chairs of the Practice Groups will report on the activities of their groups and discuss ways for members to get more involved. Marc Dedman will provide an update on the continuing legal education program for the 2011 Convocation. There will also be a discussion regarding the size of future Convocations and the current structure and make-up of the PDI leadership and Practice Group committees.

Remember, Primerus is your organization. I cannot stress enough how important it is for you to get involved with the work that is taking place – to attend and, if possible, speak at the regional seminars and webinars that are sponsored by the Practice Groups, to write for the *Paradigm* or *Defensively Speaking* and, most importantly, to attend and actively participate in the Convocation and the Annual Conference.

I look forward to seeing you all at an event real soon!

Bradley C. Nahrstadt

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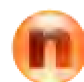
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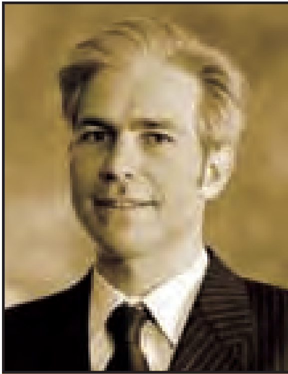

International Business Law Institute Canada

Michael R. Henry

Good news from Ontario

Canada's economy continues to flourish, despite the strong dollar. Employment rose by 93,000 in June, pushing the unemployment rate down to 7.9 percent. Virtually all of June's employment gains were in Ontario (+60,000) and Quebec (+30,000). For more, see the Statistics Canada site at www.statcan.gc.ca.

In this issue: Ontario has created a revenue opportunity for owners of warehouses and large retail stores. The Ontario and Canadian governments have eased existing or planned regulations in the areas of privacy, eco-fees and foreign ownership.

Ontario rooftops generate new revenues

Ontario's new solar energy incentives have created revenue opportunities for owners of warehouses and large retail stores in the province.

The Feed-in Tariff (FIT) Program provides for attractively priced long-term contracts from Ontario's power authority for green energy sources. In response, several energy developers are offering programs to lease rooftops for solar installations. Ideal rooftops are flat, on low-rise buildings and 50,000 square feet or more in area.

Businesses interested in leasing rooftops to solar developers should review any existing lease or mortgage agreements and the developer's rooftop lease contract.

Building owners can also develop and own a solar installation themselves. Those choosing this option will face a longer list of project items, many of which will benefit from legal advice. For more on the FIT program, go to http://fit.powerauthority.on.ca/. For advice on specific client requirements, please contact us.

Amendments to privacy legislation

The federal government is amending the Personal Information Protection and Electronic Documents Act, ("PIPEDA"), first introduced in 2001. Included is a new provision clarifying the right of a business to share personal information on its clients as part of the due diligence process in a proposed sale or merger. We recommend that companies with Canadian operations ensure their policies and procedures comply with privacy legislation. For more information, please contact us.

Eco-fee expansion nixed

Ontario-resident companies with revenues over $2 million that are brand owners or first importers are responsible for registering with Stewardship Ontario and for paying fees towards the safe recycling of their products.

Stewardship Ontario recognizes two broad categories of waste for recycling: general and hazardous or special waste. The special waste category contains nine materials. Stewardship Ontario had sought to increase that number to 22.

Under pressure from retailers and consumers, the planned expansion was abandoned in July. For more, see www.stewardshipontario.ca

Foreign ownership update:

In the last issue we noted Government of Canada moves to ease foreign ownership rules. Since then, Amazon.com has received permission to set up a distribution center in Canada, and the government has released a consultation paper: *Opening Canada's Doors to Foreign Investment in Telecommunications: Options for Reform*. For a PDF of the consultation paper, please email me at MHenry@houserhenry.com.

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International Business Law Institute Europe

Keith Hearn

Primerus International Business Law Institute is now a reality and will become a major resource for Primerus lawyers.

The Institute already has members from China, Cyprus, England & Wales, France, Germany, Greece, Hungary, Switzerland, and The Netherlands. We can rapidly expect new members from other European Union and European Economic Area members states. Interest has also been shown from Asia and Africa. Once we count in the firms from Canada, Mexico and Puerto Rico, this represents a powerful, and growing, force outside of the United States.

International Business

What is "international legal business" and how does a firm address its position in that market place? The phrase means different things to different people:

- there is a type of business which requires knowledge of international law and conventions, because the substance of the problem is such a specialized field of law – not too many of us are intimately acquainted with the General Agreement on Tariffs and Trade (but there are those in Primerus who are)
- there is a type of business which is not so much international as "cross border" - the client is from another jurisdiction but the substantive law of the problem in hand is going to be the law of your own state
- there are also various hybrid conditions: the governing law across borders is the same (say, for Europe, a European Directive applying to all member states) but where there are subtle and difficult problems of jurisdictional application of that commonality of law

Positioning a Law Firm in International Business

If we take the first mode – international law and conventions – there was a time when a lot of firms, including ours, would run a mile from this. A key problem was that it was difficult to get hold of the information. Without access to the right specialized library, you were pretty well stumped. Well, the internet has reduced the size of that obstacle because – maybe for a fee – that library can probably now be readily accessible.

If I take the second mode – cross border work, most firms can develop greater opportunities there if it wishes to.

First, you may be a referrer of work to a lawyer in another jurisdiction. However, that does not always mean that you refer the job and it disappears from your view. Sometimes it will, because your client will deal with that lawyer in that other jurisdiction direct. However, a surprising number of clients do not always want that. They may well want you to be the interface with that other lawyer because that adds value and comfort for them. You need to ensure what the rules and responsibilities of the relationship are, but then it works for both lawyers.

A referring lawyer should always benefit from a job well done and a happy client. But they can benefit much more tangibly. Local regulators have different rules, but, for instance, the English Law Society permits a UK lawyer referring a personal injury claimant to a US lawyer to take a share of any contingency fee (a practice forbidden in the UK itself). That provides a potential fee way in excess of what could be expected in the UK for the same type of case.

Second, you win more local business in your own jurisdiction simply because you have the international network and accompanying credibility which your client wants. Every reader of this column will know how difficult it is to get clients to switch loyalties. Clients have loyalty inertia. In a survey which we conducted about 80% of clients reported that they moved to us because three things happened at the same time:

- because they were dissatisfied with their current situation, and
- they had "heard of us" although many could not say how or where, and
- they had a recommendation from someone whom they trusted

That is why practice building can take much longer than we might hope for. Here's hoping that you rapidly become an expert in international business.

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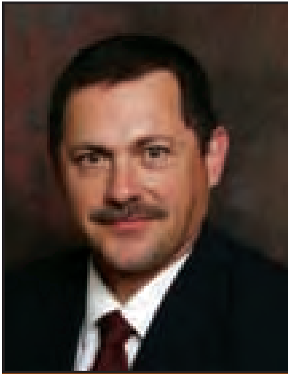

International Business Law Institute Mexico

Rene Cacheaux

How to Hire Mexican Legal Counsel

With cross-border trade in the NAFTA region continuing its rapid growth, it is increasingly common for business people and companies to require the services of competent legal counsel in Mexico. The process of hiring an attorney or law firm in Mexico may seem to be a fairly simple matter, but for many, reality and experience show this is not the case.

Press 1 for English

The first problem encountered by many clients involves communication and language issues. In Mexico, few attorneys are able to effectively communicate in English. Knowing the language is not the only requirement; it is also indispensable for the Mexican attorney to have at least a working knowledge of legal system and culture of the international client's home country. This enables the Mexican attorney to "translate" and explain Mexican legal concepts to those of the legal system from which the client originates, which allows the international client to make informed decisions.

In the case of U.S. clients, being able to compare and explain the difference between legal systems is especially important because of numerous procedural and substantive law differences that exist within their respective legal systems. While legal concepts and terms may often appear to be the same or similar, in reality such concepts are completely opposite.

What's a billable hour?

The structure and operation of law firms in Mexico, and how attorney fees are charged, are also different from systems used in other countries. For example, in Mexico it is quite common for attorneys to charge a fixed fee per matter, or a percentage fee based on the successful result that may be obtained in a given case. Very few attorneys and firms in Mexico charge fees based on hourly services provided or specific time periods. Further, it is still somewhat difficult to find attorneys and firms that provide detailed descriptions of their billing and professional activities showing exactly how their services were provided.

Mexico does not have the level of specialization in its legal system and professional practice as other countries such as the United States, where professionals tend to specialize in very specific areas. Mexican attorneys have broader experience and capacity over a wide array of areas.

Oops…

In some countries attorneys maintain professional malpractice insurance, thus protecting clients in cases of attorney errors or omissions. Unfortunately, such professional insurance is practically non-existent in Mexico, and any attempt to successfully lodge a claim for professional malpractice is very difficult and costly with little chance of obtaining damages or other results. Similarly, obtaining revocation of an attorney's license for malpractice is virtually non-existent in Mexico.

Fighting like gatos and perros

Finally, with respect to litigation in Mexico, it is important to note that high-level Mexican litigators often do not work within large law firms. In reality, it is likely more difficult to locate and hire a good litigation attorney who is able to communicate well in a foreign language. In many cases, attorneys who are not litigation specialists become intermediaries in order to provide an acceptable level of communications and understanding in a given litigation case

CCN and Primerus

Cacheaux, Cavazos & Newton offers its clients a different alternative. All of our attorneys are bilingual, speaking English and Spanish, and are able to bridge the gap between the U.S. and Mexican legal systems. The firm adheres to standards of ethics and professional conduct that apply in the U.S., including maintaining professional responsibility insurance.

CCN concentrates on NAFTA business and litigation matters, which continue to increase throughout the U.S., Canada and Mexico. The firm is proud to serve as Primerus' representative member firm in Mexico.

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Primerus Practice Groups

Fall 2010

In addition to its four main institutes – Primerus Business Law Institute (PBLI), Primerus Consumer Law Institute (PCLI), Primerus Defense Institute (PDI) and Primerus International Business Law Institute (PIBLI) – Primerus also has organized several practice groups to allow members to better serve clients. Each practice group is further organizing executive committees to include a chair, vice chair, immediate past chair and two members at large.

Bankruptcy

Institute: PBLI

Summary:

The Bankruptcy group is comprised of bankruptcy specialists from across the country who have represented the various interests in bankruptcy cases, including debtors, creditors, vendors and purchasers of assets.

Membership Criteria:

1. Minimum of 10 years of practice in bankruptcy.
2. The attorney spends at least 800 hours per year in the practice of bankruptcy.
3. The attorney obtains eight hours per year of continuing legal education in the area of bankruptcy.
4. Membership in organizations that focus on bankruptcy.
5. The attorney has published books or articles on the topic of bankruptcy. (Items 1, 2 and 3 are mandatory and 4 and 5 preferable.)

Events and Projects:

- Hosted a March 4, 2010, webinar entitled "Doing Business with Chapter 11 Debtors" presentead by Bruce Lawrence, Boylan Brown Code Vigdor & Wilson, LLP (Rochester, NY); Howard Meyers, Burch & Cracchiolo, P.A. (Phoenix, AZ); and Taft McKinstry, Fowler Measle & Bell PLLC (Lexington, KY).
- Hosted a July 15, 2010, webinar entitled "Landlord Rights in Bankruptcy" presented by Brian Davidoff of Rutter Hobbs & Davidoff (Los Angeles, CA) and Rick Miller of Ferry Joseph & Pearce (Wilmington, DE), which attracted over 40 member and corporate client representatives.
- Planning a November webinar, topic to be announced.

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Commercial Law

Institute: PBLI and PDI

Summary:

The Commercial Law group includes seasoned attorneys who devote a significant portion of their practices to one or more areas of business law.

The overarching goal of the group is to harness the collective expertise of its member attorneys in a collaborative effort to reach and serve corporate clients and their in-house counsel. With the collective resources of the group and the support and cross-selling power of Primerus, we plan to reach out collectively to prospective regional and national clients who might otherwise be inaccessible to individual Primerus member firms, with a view toward serving their commercial law needs without the large law firm price tag.

Membership Criteria:

1. Minimum of five years of practice in commercial law.
2. Attorney spends a significant amount of time practicing in the commercial law area.
3. In addition, the majority of the members obtain substantial continuing legal education (CLE) training, belong to numerous commercial law organizations and publish articles regularly.

Events and Projects:

- Committee is working on a newsletter, which will be sent to members and corporate clients offering information related to Commercial Law.
- Planning an October webinar on the topic of "Commercial Lien and Bonds".
- Planning a December webinar on the topic of "Commercial Litigation Best Practices".

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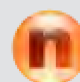
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Energy and Environmental Law

Institute: PBLI

Summary:

The Primerus Business Law Institute is pleased to announce the formation of the Energy and Environmental Law Practice Group. Although the various areas of energy practice are flexible at this time, the initial emphasis will be on the topics of oil and natural gas law and practice, as well as alternative energy sources such as nuclear, wind, and hydroelectric. With the recent addition of a number of overseas law firms as Primerus members, we hope the creation of the Energy and Environmental Law Practice Group at this time will not only allow collaboration among Primerus attorneys practicing in the United States but also create a broader based network of Primerus law firms working not only in the United States but also in global oil and gas exploration, production, transportation and delivery.

Membership Criteria:

1. A minimum of five years of practice in the area of mineral law.
2. That mineral law represents a substantial focus of their practice.

Events and Projects:

No events planned at this time.

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Family and Matrimonial Law

Institute: All

Summary:

Primerus announces the formation of its Family and Matrimonial Law practice group, chaired by Madeline Marzano-Lesnevich of Lesnevich & Marzano-Lesnevich, LLC, in Hackensack, New Jersey, and vice-chair Paul Milligan of Ford & Warren in Leeds, England. This group will serve the interest of its members by providing a forum for discussion of family law issues, including by listserv (fml@primerus.com) as well as a quarterly e-newsletter concerning family law issues that cross jurisdictional boundaries. All Primerus members will receive the e-newsletter, coordinated by Ryan Nowlin of Schneider, Smeltz, Ranney & LaFond P.L.L. in Cleveland, Ohio, and have the opportunity to become more familiar with the group.

Membership Criteria:

to be determined

Events and Projects:

At the 2011 Primerus Annual Conference, the Family and Matrimonial Law practice group hopes to present a CLE program. Like the e-newsletter, the educational program will focus upon family law issues common throughout all jurisdictions. Sara Epler of Beresford Booth PLLC in Edmonds, Washington, chairs the CLE program. Similarly, in light of valuable resources represented by the expert witnesses who participate in family law cases, the group will form a database of experts recommended by Primerus members. Ms. Epler also will coordinate this effort.

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Insurance Coverage and Bad Faith

Institute: PDI

Summary:

The Insurance Coverage and Bad Faith Practice Group consists of PDI attorneys with established insurance coverage and bad faith litigation practices who are interested in sharing their experience with other PDI firms and clients. We have members in the practice group representing 36 states, the District of Columbia, and three Canadian provinces, thus assuring our ability to provide clients with quality services throughout the United States and Canada. Our goals are to develop the equivalent of a strong and cohesive international law firm for insurance coverage and bad faith matters, and to educate clients about the group and its capabilities.

Membership Criteria:

1. Actively practice law for a minimum of seven years.
2. Significant portion of practice dedicated to Insurance Coverage & Bad Faith work within the last two years.
3. Minimum of five years experience in the practice area of Insurance Coverage & Bad Faith.
4. Actively pursuing CLE education in the practice area of Insurance Coverage & Bad Faith.
5. Significant trial experience in defense litigation .

Events and Projects:

- Creating a national compendium.
- Hosted the Insurance Coverage and Bad Faith Seminar September 23-24, 2010, at the Sutton Place in Chicago.

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Intellectual Property

Institute: PBLI and PDI

Summary:

In today's complex technological world, intellectual property portfolios are increasingly valuable assets and are critical to ongoing business success. Whether the IP is protected by patents, trademarks, copyrights or trade secrets, attorneys in the Primerus Intellectual Property (IP) group provide sophisticated consulting, prosecution and litigation services to our clients to protect their valuable intellectual property. The Primerus IP group includes both business attorneys and trial lawyers who offer the full breadth and depth of IP legal services to our clients. On the business side, we provide consulting and agreements regarding licensing, non-disclosure, non-competition, websites, advertising and copyright registration, as well as patent and trademark prosecution with the USPTO and under the Madrid Protocol. Our litigators have extensive experience in prosecuting and defending claims of patent, trademark and copyright infringement, false advertising, unfair competition, cybersquatting and claims under the Computer Fraud and Abuse Act.

Membership Criteria:

1. At least five years of experience and spend a significant amount of their legal practice in their IP practice area.
2. Attend ongoing continuing legal education in their IP practice area, and often speak and publish books and articles on various IP topics.

Events and Projects:

- Planning a Fall webinar; topic to be announced.
- Creating a Client Advisory Board.

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Labor and Employment

Institute: PBLI and PDI

Summary:

Most Primerus clients are employers who need advice and representation on issues relating to their workforce. The Labor & Employment group has excellent coverage of states across the country, which is important due to significant differences in state law and the need to have local counsel in many employment litigation matters. This coverage helps Primerus firms compete against the large national firms that have labor and employment lawyers in multiple states.

Membership Criteria:

1. Minimum of five years of practice in labor and employment.
2. Labor and employment is a substantial focus of the attorney's practice.
3. Obtain substantial CLE training, belong to numerous labor and employment organizations and publish articles regularly.

Events and Projects:

- Planning an October webinar on the topic of "Social Media and Employment Law," date to be announced.
- Planning a November or December webinar, topic to be announced.
- Organizing a 2011 calendar of events.

Contact Person:

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Liquidation of Commercial Debt

Institute: PBLI and PDI

Summary:

The Commercial Debt Liquidation Group (CDLG) represents an alternative to traditional collection of commercial (business-to-business) debt. Comprised of independent law firms located throughout North America and Europe, CDLG members are prime examples of lawyers who have traditionally been sub-contracted by lay (non-lawyer) collectors when non-legal methods have failed and have a demonstrable record of recovering millions of dollars of commercial debt, throughout North America and beyond.

CDLG services cover the entire range of business-to-business collection activities, and typically cost no more, and often less, than non-lawyer collection. We also offer success-based payment options comparable to those typically offered by non-lawyer collectors.

Referring delinquent accounts to lawyers creates an opportunity to increase collection percentages. Your debtors are dealing with a law firm and legal letterhead from the outset. It is common sense that a debtor's decision as to whether and when to pay will be strongly influenced by the perceived risk of immediate suit. CDLG lawyers also offer more sophisticated advantages. From the moment of receipt, your claims are in the hands of attorneys with the experience to identify potential problems and to determine how to best protect your interests. We continually secure out-of-court solutions, often reinforced by additional contractual guarantees. If suit does become necessary, CDLG lawyers have the experience to give candid legal assessments and to identify the methods and locations most likely to deliver the most-cost effective recovery.

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Membership Criteria:

1. A minimum of five years of practice in Liquidation of Corporate Debt, including trial practice.
2. That Liquidation of Corporate Debt and commercial law represents a substantial focus of their practice.
3. A commitment to substantial continuing education in the fields of creditors' rights, ancillary commercial law and bankruptcy.
4. Most members belong to other legal and business groups that also advance or address the issues of creditors' rights and debt or asset recovery—many are regular speakers and writers on effective business practice and legal developments that affect creditor's rights and the successful enforcement of them.

Events and Projects:

- Hosted a "Liquidation of Commercial Debt Webinar – Overview of Practice Group Capability" on September 16, 2010.

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Product Liability

Institute: PDI

Summary:

The Product Liability practice group consists of attorneys with established product liability defense practices who are interested in sharing their proficiency with other firms and clients. We have members representing 36 states, the District of Columbia, and three Canadian provinces, thus assuring our ability to provide clients with quality services throughout the United States and Canada. Our goals are to develop the equivalent of a strong and cohesive national law firm for product liability defense matters, and to educate clients about the group and its capabilities.

Membership Criteria:

1. Actively practice law for a minimum of 10 years.
2. Significant portion of practice dedicated to Product Liability defense work in the last two years.
3. Minimum of five years experience in the practice area of Product Liability.
4. Actively pursuing CLE education in the practice area of Product Liability.
5. Significant trial experience in defense litigation.

Events and Projects:

- Quarterly webinars presented to both PDI member firms and clients/prospective clients.
- Creating a National Compendium.
- Planning a stand-alone seminar in 2012.

Contact People:

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Professional Liability

Institute: PDI

Summary:

The Professional Liability group includes attorneys and clients who work in professional liability, including the defense of directors and officers, accountants, architects, engineers, lawyers, medical professionals, real estate agents, insurance brokers and agents, public officials, home inspectors and the defense of employment practices liability matters, including, but not limited to, wage and hour and ADA matters.

Anyone who works in this field knows the special challenges these cases present. You need to understand the technical or scientific issues involved. You need to be an experienced trial lawyer. You need to have judgment and empathy to help another professional through one of the most difficult experiences they will have. You need to be efficient. Your representation must also be cost effective. We believe active involvement in this group will help us all give better service to our clients.

Membership Criteria:

To be determined.

Events and Projects:

- Active participation on a national basis with PLUS (Professional Liability Underwriting Society)
- Quarterly webinars
- Newsletters
- Regional seminars throughout the country

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Real Estate
Institute: PBLI

Summary:
The Real Estate Group offers experienced real estate lawyers to meet clients' needs in the U.S. and other countries. These lawyers can handle a wide variety of real estate transactions and litigation, including purchases and sales, Section 1031 exchanges, leases, development agreements, construction contracts, real estate financing, tax credits, loan workouts and land use issues. Many of our firms also have expertise in specific types of real estate projects, such as multi-family housing, condominiums and cooperatives, office buildings, shopping centers, or hotels. Unique local issues are also covered, such as condominiums and cooperatives in New York or oil and gas issues in Oklahoma and Louisiana.

Membership Criteria:
1. Each attorney in the Real Estate Group must have a minimum of five years of experience in real estate law and devote at least 800 hours per year to real estate practice.
2. Most of our real estate practitioners exceed those standards and are recognized in their jurisdictions as top real estate advisors.

Events and Projects:
The Real Estate Group is making the real estate community aware of its services through the Primerus web site and marketing materials. Primerus was an exhibitor at the annual meeting of the International Council of Shopping Centers in Las Vegas from May 22 through 25, 2010. Several members of the Real Estate Group attended the event to promote the Primerus alliance and meet prospective clients. We plan to attend again in 2011.

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Retail, Hospitality, Entertainment Liability
Institute: PDI

Summary:
In the United States, our economy is largely built upon the buying and selling of consumer goods and services. The companies that sell these goods and services include retailers, hotels and restaurants and clubs. In addition, these entities deal with a multitude of vendors to help them deliver what they are selling. Many of the firms belonging to the PDI have active practices in these sectors. In an effort to leverage this experience and know-how, Primerus has created the Retail/Hospitality/Entertainment Liability Group.

The practice group will center completely upon litigation. The mission of the group will be: (1) to provide firms who practice in this area with a platform to share best practices regarding both litigation management and risk reduction/prevention; and (2) enable clients of these firms to meet and get to know other PDI firms that practice in the jurisdictions in which they operate. Prospective opportunities for these firms include periodic newsletters/e-blasts and conferences dedicated exclusively to retail/hospitality/entertainment liability issues.

Membership Criteria:
To be determined.

Events and Projects:
To be determined.

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Transportation
Institute: PDI

Summary:
The Transportation group focuses on assisting the transportation and trucking industry in the defense of wrongful death, personal injury, property damage and cargo claims. Member firms are prepared to assist with accident investigations and assessment on an immediate basis. The group has the ability to perform these tasks all over the United States.

Membership Criteria:
To be determined.

Events and Projects:
To be determined.

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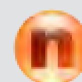

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Workers' Compensation

Institute: PDI

Summary:

No two states share the same workers' compensation law. Such diversity is a challenge to insurance carriers and employers alike. Lawmakers and regulators must balance stakeholder interests. States act as laboratories experimenting with new cost containment strategies in an attempt to protect employers and their injured workers. Employers demand quality medical care so their employees can return to work as soon as they can. Employees seek adequate income replacement and medical benefits. Insurance carriers seek predictability and lower costs. Jurisdictional diversity and competing interests require advice from legal counsel intimately familiar with the individual jurisdiction.

The Primerus Workers' Compensation group is uniquely situated to provide legal advice to our clients from legal experts across the United States. Primerus serves our clients by providing sound legal advice, vigorous defense, referrals to outstanding attorneys and lobbying to state legislators.

Membership Criteria:

To be determined.

Events and Projects:

To be determined.

Contact Person:

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Young Lawyers Section

Institute: All Institutes

Summary:

As the newest section within Primerus, the Young Lawyers Section (YLS) aims to provide young lawyers with the tools and opportunities for professional and personal success. The goals of the YLS are to: facilitate and offer increased networking opportunities among the Young Lawyers of Primerus, act as an avenue for the exchange of expert witness information and legal research, and develop the Young Lawyers into the future leaders of Primerus. The YLS believes that active involvement will help each of its members in their professional growth as well as give better service to their clients.

Membership Criteria:

1. Attorneys under the age of 40, or
2. Admitted to practice for seven years or less.

Events and Projects:

The Young Lawyers Section is hosting the Opening Cocktail Reception at the 2010 Primerus Annual Conference. Additionally, an informal "happy hour" meeting of the Young Lawyers has been planned for the Annual Conference.

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Calendar of Events

2010 and 2011

October 11-12, 2010 – Cottingham & Butler Mock Trial
Dubuque, Iowa
Six Primerus transportation defense attorneys are participating in an in-house mock trial for Cottingham & Butler insured motor carriers.

October 14-17, 2010 – Primerus Annual Conference
The Villagio Inn & Spa, Napa Valley, California

October 20, 2010 – Professional Liability Practice Group - Medical Malpractice Webinar
Noon Eastern, 9:00 AM Pacific

October 24-27, 2010 – Association of Corporate Counsel (ACC) Annual Meeting
San Antonio, Texas
Primerus is an exhibitor and sponsor for 2010 ACC Annual Meeting.

November 3-4, 2010 – Cottingham & Butler Mock Trial
Charlotte, North Carolina
Six Primerus transportation defense attorneys are participating in an in-house mock trial for Cottingham & Butler insured motor carriers.

November 3-5, 2010 – American Bar Association (ABA) International Section Meeting
Paris, France
Primerus is an exhibitor and sponsor at the 2010 ABA International Section meeting.

November 10-12, 2010 – Professional Liability Underwriting Society (PLUS) International Conference
San Antonio, Texas
Primerus is a sponsor at the 2010 PLUS International Conference.

January 11-14, 2011 – AM&AA Winter Conference
New Orleans, Louisiana
Primerus is a sponsor at the 2011 AM&AA Winter Conference.

February 10-11, 2011 – Primerus Defense Institute (PDI) Transportation Seminar
Gaylord Texan Resort, Dallas, Texas

March 2-6, 2011 – Primerus Consumer Law Institute Winter Conference
Costa Rica

April 7-10, 2011 – Primerus Defense Institute (PDI) Convocation
Ritz Carlton Hotel, Naples, Florida

May 10-12, 2011 - Third Global M&A Symposium
London, England
Primerus and the Alliance of Merger & Acquisition Advisors (AM&AA) are co-hosting this event.

For additional information, please contact Chad Sluss, Primerus Director of Services, at 800.968.2211 or csluss@primerus.com.

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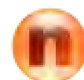
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