

LITIGATION BOUTIQUES

| A SPECIAL REPORT

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Steady business puts boutiques in the bull's eye

Bigger firms see litigation shops as ripe for acquisition, but the attraction isn't always mutual.

BY EMILY HELLER

Despite a down economy, many litigation boutiques are busily chugging along—and that security in tough times makes them prime merger targets.

Although recent surveys—including some from Hildebrandt International, BTI Consulting Group and Altman Weil—point to lower budgets for in-house counsel to spend on litigation, the practice area largely has remained

steady while others have suffered amid the recession. Compared to law firms with cyclical business, like real estate, corporate and transactional work, litigation firms remain relatively stable, said Peter A. Giuliani, a law firm consultant with Smock Sterling. Litigation happens in both good times and bad.

Bill Brennan, a consultant with Altman Weil, said that litigators are “extremely busy” these days. “Litigation doesn’t seem to be abating,” he said.

And while megamergers among law firms have slowed during the downturn,

there still is interest in acquiring litigation boutiques, particularly those that focus on intellectual property or commercial cases, Brennan said.

Merging with litigation boutiques can present special challenges because of potential conflicts of interest with a big firm’s clients. The marriage has to fit just so. Still, litigation boutiques are finding merger partners. When mergers happen among this specialized set of free-spirited practitioners, they are only partly driven by economics. Litigation boutique lawyers have their own myriad reasons for joining forces with other firms.

And then, there are those boutique litigators for whom merger is a dirty word. It is no understatement to say that these litigation boutique lawyers have a pronounced independence streak, spurning overtures and scorning colleagues who trade away their freedom. For them, the

benefits of self-government far outweigh any advantage of joining a larger firm.

Boutique mergers are not typically lifesaving maneuvers, said consultant Giuliani.

“It’s not that a small firm can’t make it,” he said. More often, boutique lawyers are seeking a competitive advantage or dealing with issues of succession. “It’s not merge or close the door.”

WHY MERGE?

Successful litigation boutiques can be courted by numerous firms—particularly big firms seeking to bolster their litigation firepower, boost their presence in a particular area or enter a new market.

John Shaeffer, whose former Los Angeles trial firm Spillane Shaeffer Aronoff Bandlow merged with Kansas City-based Lathrop & Gage in January, said that he had received overtures from four national firms wanting to bump up their L.A. profile.

That angle didn’t interest him, but there was a different approach to consider, he said.

Lathrop & Gage brought him in to try a Los Angeles trademark case, then did it again on another case in Oregon. The 300-lawyer firm wasn’t interested in upping its L.A. visibility, Shaeffer said, only in working with lawyers who shared the same values. “Their philosophy is ‘bring in lawyers that fit.’” he said.

The seven boutique lawyers haven’t
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—BILL BRENNAN

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given up their autonomy, Shaeffer said. Now they can go after much bigger cases, offering billing rates at a fraction charged by big firms.

In Denver, Gordon "Skip" Netzorg, whose six-lawyer firm Netzorg McKeever Koclanes & Bernhardt merged with Sherman & Howard in January, also had been courted by big firms but wasn't impressed.

"We have been very fortunate," he said about his firm, which handles complex commercial, securities, corporate governance and banking litigation. "We have been very busy."

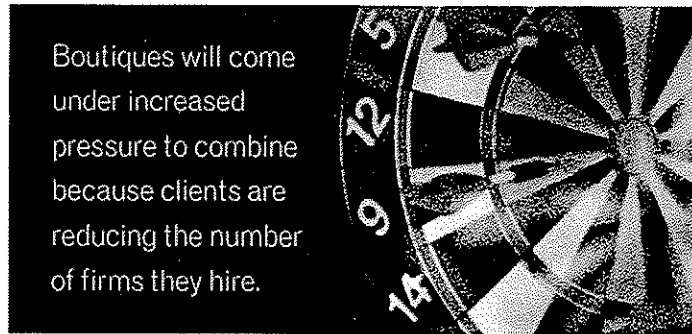
A proposal by 160-lawyer Sherman & Howard caught his attention, however. "This one is the first one I've been interested in," Netzorg said.

The bigger firm had a similar compensation and ownership program that rewards for success, he said. "There is no other standard in a small firm," he said. Plus, the larger firm was supportive about expanding his firm's work.

Netzorg wasn't seeking a merger but had a difficult time with hiring and training and, as a result, he and his partners were overworked. "We needed some relief," he said.

What about boutique lawyers who say they'll never relinquish their independence? "I can relate to that," Netzorg said. "I was like that for many, many years." After 33 years of practicing, however, "I really wanted the help."

He found that he has more time to work on a national task force looking at



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streamlining discovery rules. "Now I've got a bigger group I can call on, which is very comforting. I've got a lot of talent to call on."

In mergers, "Economics are important, but they are not the No. 1 factor," he said. The No. 1 factor is to "do the best job you can do for your client and be as happy as you can be doing it."

SEEING THE RIGHT MOMENT

In Chicago last April, Tom Crisham merged his 10-lawyer, defense-oriented civil litigation boutique with 40-lawyer Schuyler Roche, a multidisciplinary firm.

Crisham had turned away overtures from out-of-state firms to open its Chicago offices—as had Schuyler Roche. However, Crisham said, his office space lease was up and didn't want to sign a 10-year renewal. He knew the Schuyler Roche folks well—both its leaders and its executive director, who had worked at

Crisham's previous firm.

Under the circumstances, a merger "made a lot of sense," he said. "You do things when the time is appropriate."

Timing and career planning can play a significant role in litigation boutique mergers. In 2006, Phoenix lawyer Don Bivens was in his mid-50s, contemplating the last quarter of his career at the litigation boutique where he had been a primary rainmaker for complex business, securities, tort and other civil litigation.

"It's good to be king," Bivens said, adding that he wasn't sure he wanted to spend the rest of his career in that role. "My professional output had a disproportionate impact on the success of the enterprise, he said.

His four-lawyer boutique joined 400-lawyer Snell & Wilmer. Since then, he has sought to expand his practice beyond litigation and is the chairman of the Arizona Democratic Party.

"No question I could not have contemplated that position in an entrepreneurial environment," he said. His reduced role will affect the firm's bottom line, but the results will be diluted among hundreds of lawyers.

There always will be a niche for entrepreneurial litigation boutiques, Bivens said, but they will come under increased pressure to combine with larger firms because clients are trying to reduce the number of firms they hire.

No merger offer could tempt the litigators at 65-lawyer Kecker & Van Nest in San Francisco, said managing partner Christopher C. Kearney.

"We value our independence, and we value the collegiality that comes with everyone doing the same thing in a single office," he said. "It's a great way to practice law—all under one roof. We can all sit in one room together." Kecker & Van Nest gets merger offers "from time to time," he said, and it politely, and sometimes not so politely, declines.

Merger once seemed an attractive option, said Paul D. Murphy of Murphy Rosen & Meylan, a Santa Monica, Calif., litigation boutique. The lawyers spun off on their own in 2003, as their previous firm merged with Jones Day. "A lot of us were not all that excited about going to a big firm," he said.

Since then, "the temptation to merge has gotten less every year," he said. During the first couple of years, the lawyers worried about whether they could bring in enough business.

"We like the independence and control and benefits of having our own shop," he said. "People would tell me, 'You're going to have to merge at some point.'" But that hasn't happened. "There is a place for these types of firms," he insisted.

Boutique litigators sometimes contemplate mergers to gain access to resources, but one organization seeks to provide that help so they don't have to join a larger firm. Through the New York-based International Network of Boutique Law Firms, lawyers from 300 firms across multiple specialties, including litigation, share and collaborate without big-firm bureaucracy, said Steven Spielvogel, the network's president.

Spielvogel, a former Sullivan & Cromwell lawyer who has his own business litigation boutique in New York, Gallion & Spielvogel, understands how boutiques might be drawn to a merger.

"I could see how the temptation is there. They offer you a lot more money and maybe give you greater resources," he said. Still, he said, "We like being our own bosses. We've resisted the temptation to merge with other firms mostly because we love our freedom. No amount of money can buy freedom."

Emily Heller is a regular contributor to The National Law Journal.

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Merging a band of warriors

When litigation-firm mergers are proposed, dealing with the personalities can be really challenging, said law firm consultant Bill Brennan at Altman Weil.

Litigators, by their very nature, are like warriors, he said.

"They tend to be more suspicious and contentious. They are always looking to stab holes in proposals and attack," Brennan said. "There is a greater likelihood problems will arise that will kill the deal."

Another merger-killer is lawyer compatibility, said Joel Rose, a New Jersey law firm consultant.

One large insurance defense firm

recently tried to acquire a smaller litigation boutique, but the deal fell through, Rose said, because the work cultures weren't compatible.

The insurance defense firm, which billed high hours at lower rates, was high-production oriented, he said. The boutique, which billed fewer hours yet was much more profitable, was apprehensive. "There has to be compatibility," Rose said.

The economics of a proposed law firm merger are "really the easiest thing to identify," he said. They are a screening device to determine whether mergers should be seriously considered in detail, he said. "The subjective information is the real bug-a-boo." —EMILY HELLER