

Making Rain in a Drought: What it takes for small firms to thrive in tough times.
May 19, 2009

By Rene Ciria-Cruz

Believe it or not, for some law firms the worst of times can be the best of times. Or at least they're not so bad.

"We're in a growth mode right now," Stuart A. Liner says matter of factly. Liner is the founding and managing partner of what was Liner, Yankelevitz, Sunshine & Regenstreif in Los Angeles. It's now Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor. His firm just acquired two partners, five associates, and their books of business from the ill-fated Dreier LLP, which disintegrated in December when Marc Dreier, the firm's New York-based principal and only equity partner, was indicted for securities and wire fraud.

Liner is expanding at the same time larger firms are laying off scores of associates and staff. The firm has grown to 75 lawyers, handling a full-service menu that includes complex commercial litigation, corporate transactions, product liability, real estate, and entertainment.

"We're in a sweet spot for opportunities," Liner says. "The out-of-state firms operating in Los Angeles often go for bet-the-company cases that are too hard for smaller law firms with limited resources to handle."

Jeffrey Nussbaum, a litigation partner in Liner's San Francisco office, adds that larger firms sometimes even refer cases that aren't cost-effective for them to pursue—matters, say, worth less than \$2 million. "Regional firms can do well because of such opportunities," Nussbaum says.

In a dry season, small and midsize law firms often are better able to adapt quickly, given their lower overhead and less-specialized partners. At the same time, more corporate clients are moving legal work to boutiques that offer leaner staffing and lower rates. "Some general counsel say they don't mind the \$1,000 partner hour, but they do sometimes mind the \$350 first-year associate hour," says Natasha Innocenti, chair of Major, Lindsey & Africa's Partner Practice Group in San Francisco and Palo Alto.

In general, "[s]ure, boutique firms can weather the downturn much better," she says. "But it depends on your niche. Have the wrong niche, and you're in trouble like the rest."

Interviews with principals at a dozen midsize firms in California reveal a number of innovative tactics for making rain in a drought. Here's a rundown of what's working.

The Right Niche

At least two of Liner's practice areas have proved durable in the recession: bankruptcy, and litigation of all kinds—from professional malpractice to real property and contract disputes. As the housing bubble collapsed and unemployment began to rise, for instance, personal bankruptcy filings in Los Angeles, Orange, and Riverside counties doubled from 2007 to 2008.

"Let's face it, Southern California is really a mid-market economy—real estate and entertainment," Liner

says. He is pushing aggressively for new business "not with the powerful film studios but the people who sue them—actors, directors, producers, distributors. It has been very lucrative." The Liner firm's clients have included television producer-writer Steven Bochco and actress Kate Hudson.

Greines, Martin, Stein & Richland, an appellate boutique in Los Angeles, has also thrived during the economic crisis. "The recession has made the value of judgments rise even higher," says Timothy T. Coates, managing partner of the 25-lawyer firm. "When money is tight, people tend to fight over it." Coates says that last year was one of the firm's best. Business didn't drop at all; the firm distributed bonuses and is hiring another attorney. Its mixed clientele of individuals, public entities, corporations, and insurance carriers provides both stability and occasional surges in caseloads. "We have core clients, such as the County of Los Angeles, Farmers Insurance, and the University of California Regents," Coates says. "But we've also represented prominent individuals, like former Attorney General John Van de Kamp and Anna Nicole Smith, all the way to the U.S. Supreme Court."

Marc N. Bernstein, founder and principal of the Bernstein Law Group in San Francisco, says his five-lawyer commercial and high-tech litigation boutique has noticed no difference in its caseload. "We've been fortunate so far, doing mostly commercial and IP litigation, with clients from Asia, Latin America, and Australia coming to us by word of mouth," Bernstein says. His selling point: "We provide big-firm experience in a more nimble boutique package."

After leaving Morrison & Foerster in 1992 and working elsewhere for several years, Bernstein created his own firm in 2000. He says he wanted to replicate "MoFo quality" in an informal environment. "It's not true that you always need large resources to pursue complex litigation," he contends. "With the talent and technological resources available, we find that we can compete very effectively in large cases."

Although in tough times some people won't sue because they don't have the money, Bernstein says some plaintiffs sue precisely because they need it. "There are litigation opportunities for both plaintiff and defense work," he says. To generate extra revenues these days, he adds, some technology companies are even telling their legal department to look around for other patents the company holds, with an eye to licensing them.

A Diversified Practice Base

Having the right niche at the right time is clearly a blessing. But having a diversified practice can also mean the difference between feast and famine: If some practice areas stall, others can kick in. Employment cases are usually the big matters for Minami Tamaki, a 16-attorney firm in San Francisco and Sunnyvale. And the recruiting firm Seltzer Fontaine Beckwith confirms that recessions often generate wrongful-termination, discrimination, and harassment lawsuits, as well as wage-and-hour class actions. But Minami Tamaki balances its employment caseload with business transactions, consumer class actions, immigration (it handles Google's H-1B foreign visa work), and negotiating contracts for local television news personalities. The firm also represents small businesses and community health clinics that can't afford in-house general counsel.

Donald K. Tamaki, the firm's managing partner, says the big money often is in contingency cases. "But a prolonged slump in hourly work can be risky, because that's your firm's lifeblood between contingency cases." Finding the right balance of cases, he admits, can be tricky.

Jack W. Lee, a Minami Tamaki partner in San Francisco who specializes in complex employment, antitrust, consumer, and civil rights litigation, observes that "individual employment-discrimination cases tend to go to trial—which can run up costs—but class actions tend to settle." Lee has litigated employment matters against Abercrombie & Fitch, Lucky Supermarkets, and State Farm Insurance. Navneet S. Chugh, founder and managing partner of The Chugh Firm in Cerritos, laments a falloff in his firm's transactional work. But he says the recession has produced a jump in its bankruptcy and debt-

restructuring practice. "It's a boon resulting from unfortunate circumstances," he sighs. The Chugh Firm has four offices in the United States and three in India. Its 44 lawyers—and 34 CPAs—handle franchise and commercial transactions, mergers and acquisitions, securities cases, and immigration matters. All those areas have slumped to a degree, but the firm has adjusted.

"Startups in the United States and India are fewer, because the economic crisis is global," Chugh says. To diversify, he recently added criminal defense, family law, and personal injury work to the firm's practice areas. "When business clients are scarce, why not pluck the low-hanging fruit?" he chuckles.

The Never-Ending Hustle

New business, however, doesn't just come knocking—you have to hustle for it. "With a lot of time available these days, people are thinking, 'Am I going to play golf, or am I going to combine golf with business development?'" says Matthew D. Feuer of McClure & Feuer, a legal search consultancy in San Francisco.

There's a lot of aggressive legal marketing going on—business lunches, phone calls to former clients who've dropped off the radar, trade meetings, and social events of every variety. Some lawyers no longer charge for short phone consultations, or for travel time.

Liner says he's proud to acknowledge that he does all of these things to market his firm. "Listen, if I'm going to keep bringing in \$15 million a year in new business, I've got to be 'on' 24/7," he says. "I've got a contact list of 1,500 people. You bet I'm paying attention to them. I engage them—phone calls, openings, off-the-clock meetings, you name it. How else will I know their needs, and how else are they going to know we're around if they need us?" He encourages associates to also make rain by paying them 15 percent of the fees from any new clients they bring in.

In a recession, it's all about keeping the firm's name "out there"—at trade shows, on talk shows, or by publishing articles in academic journals and legal publications. "I'm deliberately marketing," says Bernstein. "I go to as many networking events as I can to make people aware of our expertise." Many lawyers who have never considered marketing to be part of their job are now attending rainmaking courses. "Marketing has been a big thing with firms for a while now," says Nussbaum of the Liner firm. "In fact, some firms hire 'life coaches' to train their lawyers in business development."

And some are hiking their advertising budgets to increase visibility. Chugh raised his firm's ad budget by 25 percent, buying space and time in technology-industry media, as well as in ethnic publications—primarily targeting the Indian and Chinese communities. He also launched a firmwide campaign to attract new clients in the first quarter of 2009. His attorneys and staff, he says, increased their presence at public events and scoured networks of relatives and friends to bring in 238 new clients by the end of March. Minami Tamaki lets it be known—through regular newsletters, mailings, and online posts—that its lawyers have a "day job," meaning the firm is a business. "We've done lots of good pro bono for the community, so there's a misconception that we work for free," says Tamaki. "It's dismaying when people send us nonpaying clients but send paying clients to other firms. Now we make it known we work for a *fee*," Tamaki adds, laughing.

According to Lee of Minami Tamaki, the best marketing tool is still a reputation for doing good work. "We've never done or knowingly accepted B.S. cases," he says. "Because of that, people know we're serious—and potential clients know they can trust us."

Nussbaum adds, "A good reputation is key to gaining the attention of general counsel, and to getting big law firms to refer work that they can't handle themselves." Another important practice is keeping up good relations with lawyers who have moved on to another firm or gone in-house. "If you've been good to them, they will send you clients they can't accommodate," he says.

Nussbaum also points out one of the unwritten rules of rainmaking: "You have to reciprocate," he explains. "When there's work that's not in your area of expertise, you should send it out to others, too. And when big law firms send you [work for] their long-standing clients, you must make it clear to them that you won't try to steal those clients."

Tweaking Rates

Flexible billing rates are among the most attractive selling points that small and midsize firms can offer. Modest size and the lower degree of specialization often found within practice groups allow more room for creative rate structures. The billable hour is out of fashion at many smaller shops; Liner contends the profession's dominant pricing model is unsustainable—and doomed.

When smaller firms emphasize pricing flexibility, they may include combinations of contingency and hourly billing, the percentage of a recovery, blended rates, and flat fees. Liner says his firm typically bills at rates 20 to 25 percent lower than national firms. Tamaki says he charges about 20 percent less than most midsize firms for hourly work, and offers flat rates for certain services. He says the firm is always negotiating billing rates that clients can afford.

Key to midsize firms' ability to make these billing accommodations is shaving expenses. Coates says Greines Martin can offer flexible rates, based on client needs and case requirements, by "closely reviewing our numbers each month—assessing each client in terms of prospects, cost requirements, and potential returns—and making constant adjustments."

Bernstein cuts costs by carefully "individualizing" staffing decisions—making the right fit for each matter instead of mechanically assigning people to each case. He has a standing support staff but hires contract paralegals according to the size and complexity of a case.

Some smaller shops report that they've cut costs drastically by replacing high-priced vendors with discounters. Others have scrapped perks, such as unlimited expense accounts for partners and elaborate office events. Chugh says he lopped off \$100,000 in airfares and lodging by canceling the firm's annual retreat. Tamaki emphasizes the careful use of bank credit lines. "You don't want to be in debt if at all possible," he says.

Riding It Out

Make no mistake—though small and midsize firms may be faring better than some larger competitors, everyone is praying for relief. "There's so much blood on the street, everybody—large, midsize, or small—is hurting," says Feuer. "Lawyers are keeping their heads down, figuring out what's the right play, because times are riskier."

According to Bernstein, the constant pressure to generate new business is always of greater urgency to smaller firms—in bad times or good. "For us," he says, "the difference between lots of work and very little work is just a few cases."

At Goodman & Associates in Sacramento, sole proprietor Karen M. Goodman says "business is actually good" for the litigation boutique she runs with three associates. "Countercyclical matters are up, like professional liability lawsuits," she says. "Attorneys, brokers, and management-counseling lawsuits increase in a downturn because people who lost money want it back from someone."

Although Goodman says she's made all the right moves—she's careful not to waste resources, and her credit line is safe at a financially conservative local bank—the recession has created frustrating obstacles for her practice.

"Due to budget cutbacks, government agencies in Sacramento are relying on in-house counsel instead of

sending regulatory-enforcement work out to private lawyers," she says. And though Goodman has managed to stave off home foreclosure for some clients victimized by predatory lenders, banks have been very slow about agreeing to loan modifications. "And, of course, banks are not lending," she adds. "It's a scary situation. I've turned down clients [for contingency work] because the projected costs are just too high."

Cutbacks mandated in California's new budget are also causing backlogs in trial court that affect daily decisions. Each year, according to the Administrative Office of the Courts, the state's courts receive 9 million new filings, which are handled by 2,000 judicial officers and 22,000 court employees in 500 facilities. But budget cuts could mean the loss of 50 new judgeships, less money for government lawyers, shortened court hours, and forced leave for judicial employees.

Goodman sees the effects already. She reports that Sacramento has fewer courtrooms and judges available for civil cases, which have come to a virtual standstill. "It normally takes 12 to 18 months to take a case to trial," she says. "Now you file and the clerks says, 'Come back in three to four years.'" Delays that long raise the ante of going to trial. "For plaintiffs, you're talking about spending more to take a case to the mat; for the defense, it means three or four times the normal cost."

Tamaki points out that even when firms are fortunate enough to win a contingency case, these days they face a heightened risk of not being able to collect the judgment from the opposing party. "You can run into an insolvent defendant," he warns. Goodman confirms that the biggest challenge is collecting damages from a defendant who has gone bankrupt.

On the brighter side, the Obama administration's stimulus package will offer opportunities for law firms of all sizes—particularly those involved in renewable energy, intellectual property, foreclosure relief, and financial and environmental regulation. And if Congress passes the Employee Free Choice Act of 2009, there will be plenty of work for employment attorneys on both sides of the picket line. Lee also expects that changes in staffing at the Department of Justice will expand opportunities for civil rights enforcement.

As Navneet Chugh surveys the bloodletting of associates at large firms, he remains cautiously optimistic about his shop's prospects. "This is the scariest recession ever," he says. "Of course, you tend to say that when you're in the middle of one. On the other hand, if you're [already] in the deep end, every day only gets better."

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